



# National Lottery Act 1998

## 1998 CHAPTER 22

### PART I

#### PROVISIONS RELATING TO THE NATIONAL LOTTERY

##### *Licensees*

## 2 Financial penalties for breach of conditions in licences

(1) After section 10 of the 1993 Act (revocation of licences) there shall be inserted—

### **“10A Financial penalties for breach of conditions in licences**

- (1) If the Director General is satisfied that a person has contravened a condition in a licence under section 5 or 6, he may impose a financial penalty on that person in respect of the contravention.
- (2) The matters to which the Director General may have regard in imposing a financial penalty include the desirability of both—
  - (a) deterring persons from contravening conditions in licences under section 5 or 6, and
  - (b) recovering any diminution in the sums paid to the Secretary of State under section 5(6) which is attributable to the contravention.
- (3) If the Director General proposes to impose a financial penalty on a person, he shall serve on that person a notice—
  - (a) stating that the person has contravened conditions in the licence,
  - (b) identifying the contraventions in question,
  - (c) stating that the Director General proposes to impose a financial penalty,
  - (d) specifying the amount of the financial penalty,
  - (e) stating the Director General’s reasons—
    - (i) for the imposition of a financial penalty, and

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- (ii) for the amount of the financial penalty,
  - (f) stating the person to whom the financial penalty is to be paid and the manner in which, and place at which, payment may be made, and
  - (g) stating the effect of subsections (5) and (12).
- (4) A notice under subsection (3) must state that the person may, within the period of 21 days beginning with the date of the notice, either—
- (a) make written representations about the matter to the Director General, or
  - (b) notify the Director General in writing of the person’s intention to make oral representations,
- and that the right of appeal conferred by section 10B is dependent on the person having made such written or oral representations.
- (5) If, within the period mentioned in subsection (4), the Director General receives neither—
- (a) written representations, nor
  - (b) written notification of the person’s intention to make oral representations,
- the financial penalty shall become payable at the end of that period.
- (6) The Secretary of State may make regulations as to the procedure to be followed where a person’s intention to make oral representations is notified to the Director General as mentioned in subsection (4).
- (7) The regulations may in particular make provision—
- (a) for the financial penalty to become payable if the person fails to comply with any requirements imposed by or under the regulations, and
  - (b) as to the hearing by the Director General of oral representations.
- (8) If—
- (a) any written representations against the imposition of the financial penalty are made as mentioned in subsection (4), or
  - (b) any oral representations against the imposition of the financial penalty are made in accordance with regulations under subsection (6),
- subsection (9) shall apply.
- (9) Where this subsection applies, the Director General shall after taking the representations into account—
- (a) decide whether or not to impose a financial penalty, and
  - (b) serve a further notice on the person informing the person of the decision.
- (10) Where the decision is to impose a financial penalty, the further notice must—
- (a) identify the contraventions in question,
  - (b) specify the amount of the financial penalty imposed,
  - (c) state the Director General’s reasons—
    - (i) for the imposition of a financial penalty, and
    - (ii) for the amount of the financial penalty,

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- (d) state the person to whom the financial penalty is to be paid and the manner in which, and place at which, payment may be made, and
  - (e) state the effect of subsections (11) and (12).
- (11) A financial penalty imposed by virtue of a decision under subsection (9) becomes payable on the date of the further notice.
- (12) A person on whom a financial penalty is imposed is required to pay the penalty within the period of fourteen days beginning with the date on which the financial penalty becomes payable.
- (13) If the whole or any part of a financial penalty is not paid within the period mentioned in subsection (12), then as from the end of that period the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (14) A financial penalty imposed on any person, and any interest accrued under subsection (13) in respect of the penalty, shall be recoverable from that person as a debt due to the Secretary of State from that person (and the person's liability to pay it shall not be affected by the person's licence ceasing for any reason to have effect)."
- (2) In section 11 of the 1993 Act (directions to the Director General in respect of his functions under sections 5 to 10) for "sections 5 to 10" there shall be substituted "sections 5 to 10A".
- (3) In section 21 of the 1993 Act, in subsection (2) (Secretary of State to pay into the National Lottery Distribution Fund all the sums paid to him by virtue of section 5(6)) after "section 5(6)" there shall be inserted "or 10A".
- (4) In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals) in the second column, in paragraph 33A (National Lottery: functions of the Director General etc under specified provisions of the 1993 Act) for "section 10" there shall be substituted "sections 10 and 10A".
- (5) Subsection (1) above has effect in relation to any contravention, after the coming into force of that subsection, of a condition in a licence under section 5 or 6 of the 1993 Act, whenever granted.

### **3 Appeals against financial penalties**

After section 10A of the 1993 Act (financial penalties for breach of conditions of licences) there shall be inserted—

#### **"10B Appeals against financial penalties**

- (1) Where the Director General decides under subsection (9) of section 10A to impose a financial penalty on a person, the person may appeal against the decision on the grounds specified in subsection (2) or, as the case may be, subsection (3).
- (2) To the extent that an appeal under this section is against a finding by the Director General that a person contravened a condition of a licence, the grounds for the appeal are—
  - (a) that the Director General made an error as to the facts,

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- (b) that there was a material procedural error, or
  - (c) that the Director General made some other error of law.
- (3) To the extent that an appeal under this section is against the amount of a financial penalty, the grounds for the appeal are—
- (a) that the amount of the penalty is unreasonable,
  - (b) that there was a material procedural error, or
  - (c) that the decision was based on a manifest material misapprehension as to the facts.
- (4) Where on an appeal under this section a court reduces the amount of a financial penalty, the powers of the court shall include power to make such orders as to interest on the penalty as the court considers just and equitable in all the circumstances of the case.
- (5) The power conferred by subsection (4) includes power to make orders as to—
- (a) the rates of interest which are to apply, and
  - (b) the date from which interest is to run.
- (6) An appeal under this section lies to the High Court or, in Scotland, to the Court of Session.
- (7) Any appeal under this section to the Court of Session shall be heard in the Outer House.”

#### **4 Appeals against revocation of licences**

- (1) Part II of Schedule 3 to the 1993 Act (which relates to procedure and appeals in connection with the revocation, under section 10, of licences under section 5 or 6) shall be amended as follows.
- (2) In paragraph 6(1) (which specifies what a notice of proposed revocation must state) the word “and” at the end of paragraph (c) shall be omitted and after that paragraph there shall be inserted—
- “(cc) that the right of appeal conferred by paragraph 11 is dependent on the licensee having made such written or oral representations, and”.
- (3) In paragraph 7(2)(a) (duration of suspension of licence) for “or the Secretary of State allows an appeal against the revocation” there shall be substituted “or an appeal against the revocation is allowed”.
- (4) In paragraph 9(2) (time at which revocation takes effect) for paragraph (b) (determination of appeal to Secretary of State) there shall be substituted—
- “(b) if the licensee appeals within that period against the revocation and the court makes an order under paragraph 11(2), until such time as is specified in the order,
- whichever is the later.”
- (5) Paragraph 10 (appeals to the Secretary of State) shall cease to have effect.
- (6) After paragraph 10 there shall be inserted—

*“Appeals*

- 11 (1) Where the Director General decides under paragraph 9 to revoke a licence, the licensee may appeal against the decision on the grounds—
- (a) that the Director General made an error as to the facts,
  - (b) that there was a material procedural error, or
  - (c) that the Director General made some other error of law.
- (2) Where a licensee appeals under this paragraph, the powers of the court pending the withdrawal or final disposal of the appeal shall include power, on the application of the licensee or the Director General, to make an order, if the court considers it just and equitable to do so in all the circumstances of the case, preventing the revocation taking effect until such time as may be specified in the order.
- (3) An appeal under this paragraph lies to the High Court or, in Scotland, to the Court of Session.
- (4) Any appeal under this paragraph to the Court of Session shall be heard in the Outer House.”

**5 Access by Comptroller and Auditor General to documents etc**

- (1) Section 33 of the 1993 Act (accounts of Secretary of State and National Debt Commissioners) shall be amended as follows.
- (2) After subsection (3) there shall be inserted—
- “(4) For the purpose of exercising his examination function in relation to any accounts prepared under subsection (1), the Comptroller and Auditor General—
- (a) shall have a right of access at all reasonable times to any documents which he reasonably requires which are in the custody or under the control of any section 5 licensee; and
  - (b) shall have a right to require from any officer or employee of any section 5 licensee, or from the auditors of any section 5 licensee, an explanation of, or information relating to, any such documents;
- but a section 5 licensee shall not, by virtue only of this subsection, be a body to which section 6 of the National Audit Act 1983 applies.
- (5) For the purpose of—
- (a) exercising his examination function in relation to any accounts prepared under subsection (1), or
  - (b) deciding whether, or to what extent, to exercise any right conferred by subsection (4),
- the Comptroller and Auditor General shall have regard to any information which the Director General has obtained from any section 5 licensee and which is relevant to the exercise of that function.
- (6) Where, in exercising his examination function in relation to any accounts prepared under subsection (1), the Comptroller and Auditor General obtains any information which gives him grounds to believe that a section 5 licensee

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has, or may have, contravened any of the conditions of its licence under section 5, the Comptroller and Auditor General shall as soon as practicable disclose that information to the Director General.

- (7) A section 5 licensee shall be under a duty—
- (a) to permit the Comptroller and Auditor General to exercise the right conferred by subsection (4)(a); and
  - (b) to do all that may be reasonably practicable to secure that any person who under subsection (4)(b) is required to provide an explanation of, or information relating to, any document complies with that requirement;
- and any breach of that duty shall be actionable at the suit of the Comptroller and Auditor General.
- (8) The right of access to documents conferred by subsection (4)(a) includes a right to take copies of or make extracts from documents.
- (9) In this section any reference to documents includes a reference to information held by means of a computer or in any other electronic form; and in the case of information so held the right of access conferred by subsection (4)(a) includes a right of access to, and to take copies of, that information in a visible and legible form.
- (10) In this section—
- “examination function”, in relation to the Comptroller and Auditor General, means his function under subsection (3);
  - “section 5 licensee” means a body which holds or has held a licence under section 5.”
- (3) This section has effect in relation to accounts prepared under section 33(1) of the 1993 Act so far as they relate to periods beginning on or after 1st April 1999.