

EXPLANATORY MEMORANDUM TO
THE SMALL SOCIETY LOTTERIES (REGISTRATION OF NON-COMMERCIAL
SOCIETIES) REGULATIONS 2007
No. 2328

1. This explanatory memorandum has been prepared by The Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 These regulations relate to the registration of non-commercial societies for the promotion of small society lotteries. They prescribe the registration fees and application form, the time for paying the annual fee and the information local authorities are required to enter on their register.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These regulations are the first made under Part 5 of Schedule 11 to the Gambling Act 2005 (the Act).

4. **Legislative Background**

4.1 The Act introduces a new system of regulation for gambling in Great Britain, which will replace the system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

4.2 The formal implementation date for the Act is 1 September 2007. On this date, the majority of permissions issued under existing legislation will expire and be replaced by new licences, permits and registrations under the Act.

4.3 Section 258 of the Act makes it an offence to promote a lottery unless there is a relevant operating licence for that lottery, or it is an exempt lottery. There are four categories of exempt lotteries, which are set out in Schedule 11 to the Act:

1. *Incidental non-commercial lotteries.*
2. *Private lotteries.*
3. *Customer lotteries.*
4. *Small Society lotteries.*

4.4 These regulations only concern small society lotteries, which are lotteries promoted wholly on behalf of non-commercial societies (also referred to in Schedule 11 as 'promoting societies'). Non-commercial societies are defined in section 19 of the Act. These are essentially societies established for any of the following purposes:

- charitable purposes,
- to enable participation in, or to support, sport, athletics or a cultural activity, or
- for any other non-commercial purpose other than that of private gain.

4.5 The promoting society of a small society lottery must be registered with a local authority under Part 5 of Schedule 11 to the Act throughout the period during which the lottery is promoted. Registration under Part 5 is of indefinite duration (subject to payment of the annual fee, revocation or cancellation).

4.6 Small society lotteries are distinguished from large society lotteries by the amount of the proceeds they can generate. A lottery is a large society lottery if its proceeds exceed the thresholds set out in paragraph 31 of Schedule 11 to the Act. If the limits are exceeded, the lottery becomes a large society lottery and the promoting society will require an operating licence from the Gambling Commission. If the promoting society promotes any other lotteries within three calendar years of promoting a large lottery, all those other lotteries would also be treated as large lotteries. A large society lottery requires an operating licence from the Commission under Part 5 of the Act.

4.7 Under paragraph 47 of Schedule 11, a local authority **must** refuse an application for registration if, in the previous five years, the applicant has had an application for a gambling operating licence refused or, following a review, has had an existing licence revoked by the Gambling Commission because it thought that:

- the licensed activity was being carried out in a manner inconsistent with the licensing objectives;
- a condition of the licence was breached;
- the licensee failed to cooperate with a review; or
- the licensee was unsuitable to carry out the licensed activity.

A gambling operating licence may also be revoked for other reasons but only these reasons constitute a basis on which registration of small society lotteries must be refused.

4.8 Under paragraph 48 of Schedule 11, a local authority **may** also refuse an application if:

- the applicant is not a non-commercial society;
- a person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence (as defined under section 126 and schedule 7 of the Act); or
- information provided in or with the application for registration is false or misleading.

4.9 These regulations give effect to the provisions in Part 5 of Schedule 11 to the Act (which relate to the registration of non-commercial societies) by prescribing the application form for registration, the fees payable, the period within which the annual fee must be paid and requiring the date of registration to be entered in the local authority register. These Regulations replace broadly similar arrangements currently in operation under the Lotteries and Amusements Act 1976.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland, except regulations 3(1)(a) and (b), which apply only to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objectives of the Gambling Act 2005 are: to prevent gambling from being a source of crime and disorder; to ensure that it is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by it.

7.2 These regulations are basically administrative and relate to the procedure under which the promoting societies of small society lotteries must register with a local authority.

Consultation on draft regulations

7.3 These Regulations have been drawn up following seven weeks of formal consultation, which began in June 2007 and involved licensing authorities, promoters of small society lotteries and other interested parties. As these Regulations deal with the administrative aspects of the registration procedure, and are in line with previous proposals on which we consulted in the course of implementing provisions in the Act relating to premises licences and permits, stakeholders did not object to having a shorter formal consultation period in this instance. A list of those who responded is attached as an annex to this memorandum.

7.4 The consultation paper sought the input of stakeholders about the practical aspects of establishing the registration process, and asked questions concerning:

- the draft application form, and whether it would provide sufficient information to determine whether an application for registration could be granted;
- whether applicants should be asked to include any specific supporting documentation with their application;
- whether the period of 30 days (before each anniversary of registration) was an appropriate length of time for payment of the annual fee, or whether a period of a different length would be more appropriate.
- whether the regulations should require that local authorities date the entry of registrations in their register

7.5 As anticipated, the consultation exercise did not provoke a large response (there were seven replies in all) but those who did respond included representative bodies able to speak for a cross-section of stakeholders, and they largely endorsed our proposals. The majority of comments concerned practical suggestions about the layout of, and language used in, the application form, and we took account of these where possible. For example, we have clarified in the form that an operating licence is an operating licence under the Act, in case users are unfamiliar with the terminology. We have also added a guidance note at the end of the form setting out the grounds on which a local authority is required, or has a discretion, to refuse the application.

7.6 We received a suggestion that the form should request a copy of the promoting society's constitution, but we do not believe that it is appropriate or necessary to do so. We understand that the only reason for requesting the constitution is to check that the applicant is a non-commercial society, but we consider this to place a disproportionate burden on applicants and on local authorities in terms of locating, sending and checking the relevant document. The form already asks for the information necessary to determine whether the society making the application meets the registration criteria, including details of the purpose(s) for which the society is established and conducted. It must be signed by a representative of the society and it includes a declaration that the applicant is aware that it is an offence to provide false or misleading information. The form also includes a guidance note setting out the grounds for refusal of the application, one such ground being the provision of false or misleading information. We believe that this is the appropriate level of detail to request in relation to this particular registration process.

7.7 We received a suggestion that the form should request the personal details of all the members of the society to enable local authorities to carry out criminal records checks. We do not consider that local authorities have powers to request criminal records certificates in respect of applications for registration under Part 5, and we consider that this would also place a burden on applicants and a cost on local authorities that would be disproportionate to the regulatory goal.

7.8 We have incorporated a suggestion that we extend the period during which the annual fee may be paid. We had proposed that this should be within the 30 day period prior to the anniversary of registration, but accept that some societies may have had difficulty in working within such a narrow window, so we have widened it to two months.

7.9 The Act requires that local authorities must maintain a register of the promoting societies that have registered with them and that they should pass this information to the Gambling Commission who will maintain a central register for monitoring purposes. Responses to earlier consultation exercises indicated that we should allow the local authorities and the Gambling Commission discretion about the details that they include in these registers, and we have aimed to do so here. In this instance, however, the regulations prescribe that entries in the local authority register should be dated. This is simply to ensure that there is a clear record of the date of registration, to facilitate payment of the annual fee, which must be calculated with reference to the anniversary of registration. Those who commented agreed that this was a sensible measure.

7.10 The fees prescribed in these regulations have been set on the basis of our separate consultation on Premises Licences and Permits Fees, carried out between July-September 2006, but this consultation provided stakeholders with a second chance to comment. We have set the initial registration fee at £40 and the annual fee at £20, which represents a small increase on the existing fees of £35 and £17.50 respectively. In the course of these two consultation exercises we received only one comment to the effect that the fees should not be increased, and decided, therefore, that it was reasonable to go ahead with our proposal. The fees are simply to cover the local authorities' administration costs.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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Regulatory Impact Assessment

1. Title

Gambling Act 2005

The Small Society Lotteries (Registration Of Non-Commercial Societies) Regulations 2007

2. Purpose and intended effect

Objectives

The Order makes provision for the process of registering small society lotteries with the appropriate local authority. In particular, it concerns the following powers contained in Part 5 of Schedule 11 of the Gambling Act 2005 for the Secretary of State to prescribe:

- the form on which an application for registration must be made;
- the fee to accompany the application for registration;
- the annual fee;
- the period within which the first annual fee is to be paid;
- information to be included in the register of registrations held by the local authority.

Background

The Gambling Act 2005 introduces a new system of regulation for gambling which will replace the current system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

The formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under the existing legislation will expire and be replaced by new licences, permits and registrations under the 2005 Act.

Part 5 of Schedule 11 of the Act deals with how small society lotteries should register with local authorities. Small society lotteries are lotteries promoted wholly on behalf of non-commercial societies (also referred to in Schedule 11 as 'promoting societies'), which are defined in section 19 of the Act. These are essentially societies established for any of the following purposes:

- charitable purposes,
- to enable participation in, or to support, sport, athletics or a cultural activity, or
- for any other non-commercial purpose other than that of private gain.

Small society lotteries are also subject to the limits set out in paragraph 31 of Schedule 11, including the following:

- the proceeds of the individual lottery must not exceed £20,000, and
- the aggregate proceeds of all the society lotteries promoted by that society in a year must not exceed £250,000.

If these limits are exceeded, the lottery becomes a large society lottery and the promoting society will require an operating licence from the Gambling Commission. If the promoting society promotes any other lotteries within three calendar years of promoting a large lottery, all those other lotteries will be treated as large lotteries. At least 20% of the proceeds of a small society lottery must go to a purpose for which the society is conducted, and no single prize may be worth more than £25,000.

Rationale for government intervention

The intention behind these proposals is to ensure that we have in place consistent, light-touch and user-friendly procedures for the registration of small society lotteries. These lotteries are important fund-raising mechanisms for community groups - including sports clubs, village halls, school and church groups - which have limited

administrative resources. We have sought to ensure, therefore, that we do not place any unnecessary administrative burden either on these small societies, or on licensing authorities, while ensuring there is proportionate regulatory framework which promotes the Act's licensing objectives.

3. Consultation

Within government

DCMS consulted the Gambling Commission on these proposals.

Public consultation

Background

The proposals here are procedural, and in line with proposals on which we have previously consulted in relation to premises licensing and permits to be issued under the Act. These in turn were based on informal consultation with the Department's Premises Licence Working Group, which comprised representatives of licensing authorities and industry. Earlier proposals also drew on a number of presentations given by the Department to LACORS policy fora and working groups.

Our aim has been to develop practical, user-friendly procedures which strike a balance between the need to be prescriptive - in order to provide consistency and clarity to licensing authorities, enforcement agencies, the public and other stakeholders - and the need of those same groups for flexibility and proportionate regulation.

Consultation Questions

These regulations were out to formal consultation between June and July 2007. The consultation paper asked questions concerning:

- the content of the application form;
- whether applicants should have to provide specific supporting documentation with their applications;
- the period during which the annual fee may be paid; and
- whether local authorities should be required to date entries in their register.

Responses

As anticipated, the consultation exercise did not provoke a large response (we had seven replies in all), but those who responded included representative bodies able to speak for a cross-section of stakeholders. These included LACORS, Action with Communities in Rural England (ACRE) and the National Confederation of Parent Teacher Associations (NCPTA).

4 Options

Option 1. Do nothing

While some of the powers relating to the registration process are reserve powers, and as such optional, the Secretary of State is required to prescribe the application form for registration, the fees payable and the period within which the annual fee must be paid. Doing nothing is not an option if the relevant provisions of the Act are to function as intended by Parliament. The Government therefore rejects this option.

Option 2. Implement regulations

By adopting light touch regulations we will ensure that the process for registering small society lotteries will be administered in a consistent way nationally and that costs for licensing authorities and organisers of small society lotteries are kept to a minimum.

Consultation Options

Respondents broadly endorsed our proposals. The majority of comments concerned the application form and we took account of these where possible. For example, we clarified the term 'operating licence' (as users of this particular form are likely to be unfamiliar with the Act), and added a guidance note explaining the grounds on which applications might be refused.

We did not act on a suggestion that applications should be accompanied by copies of the society's constitution. The form already asks for the necessary information to determine that a society meets the registration criteria, and must

be signed by a representative who declares they are aware that it is an offence to provide false or misleading information. We believe this is the appropriate level of detail for this particular registration process.

Nor did we act on the suggestion that applicants should have to provide the personal details of each member of their society so that local authorities can conduct criminal records checks. We do not consider that local authorities have powers to do so in respect of applications for registration under Part 5, and consider that this would place a burden on applicants, and an administrative cost on local authorities, that would be disproportionate to the regulatory goal.

In response to a comment that the period during which the annual fee may be paid might be too narrow for small societies who meet infrequently, we have extended the period during which it may be paid from one calendar month to two calendar months.

The Act requires that local authorities must maintain a register of the promoting societies registered with them, and that the Gambling Commission must maintain a central register for monitoring purposes. Previous regulations have allowed discretion about the details that such registers must contain, but these regulations prescribe that local authorities must date the entries in their register. This is simply to facilitate payment of the annual fee, which must be calculated with reference to the anniversary of registration. Respondents who commented agreed that this was a sensible measure.

The Department carried out a major fees costing exercise with all licensing authorities in England and Wales during July-September 2006, which informed the proposals in our separate consultation on Premises Licences and Permits Fees. The fees prescribed in these regulations have been set on the basis of that exercise.

5 Costs and benefits

Groups affected

There is no centrally held data about how many small society lotteries have equivalent permissions under the existing legislation (under the new Act the Gambling Commission will maintain a central register and such figures will be available). However, the community groups most likely to benefit from the fund-raising potential of small society lotteries include the 106,000 sports clubs and the 8500 village halls in the UK, as well as schools and charitable organisations.

Benefits

The procedures prescribed in these regulations are broadly comparable to the procedures under current law (the 1976 Act), in relation to lotteries with proceeds of less than £20,000. These regulations will ensure a straightforward, light-touch application and registration process for small society lotteries, which will keep effort and costs to a minimum both for promoting societies and licensing authorities.

Costs

We have set the initial registration fee at £40 and the annual fee at £20, which represents a small increase on the existing fees of £35 and £17.50 respectively. The fees are simply to cover the local authorities' administration costs.

6 Small firms impact test

These regulations concern the registration of small society lotteries by non-commercial societies, and will not impact on small businesses.

7 Competition Assessment

These regulations will not limit the number of small society lotteries that are allowed to operate. So long as the lottery meets the criteria set out in the Act a local authority must allow it to be registered. The limits set on the size of a small society lottery mean that they are not in competition with large society lotteries

8 Enforcement, sanctions and monitoring

These regulations require licensing authorities to maintain a register of the promoting societies which are registered to run small society lotteries.

The Gambling Commission will have overall responsibility for monitoring compliance with the requirements of the Act, and will maintain a central register. The Commission will advise and work closely with licensing authorities in

the exercise of their own monitoring and enforcement functions under the Act. Above all the regulations advocate a risk-based proportionate enforcement policy.

9 Implementation and delivery plan

The intention is to bring these Regulations into force on **1 September 2007**.

10 Post-implementation review

The registration process for small society lotteries will be monitored through the information maintained in the registers held by licensing authorities and the Gambling Commission. We will also seek feedback through formal mechanisms including the DCMS Community Liaison Group and the LACORS Gambling Reform Policy Forum, which comprise key representatives from industry, community groups and licensing authorities. DCMS also has a sponsorship role with the community groups affected by these regulations and has established channels through which it maintains regular dialogue with them.

11 Summary and recommendation

Ministers have decided to proceed with bringing in regulations on the registration of small society lotteries with effect from 1 September 2007.

12 Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Gerry Sutcliffe
Parliamentary Under Secretary of State

Date

13 Contact point

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ANNEX

List of respondents to DCMS Consultation on:

The Small Society Lotteries (Registration Of Non-Commercial Societies) Regulations 2007

National Confederation of Parent Teacher Associations

The Methodist Church

Local Authority Co-ordinators of Regulatory Services (LACORS)

Rochford District Council

Action for Communities in Rural England

North Cornwall District Council

Bircham Dyson Bell (Solicitors and Parliamentary Agents)