

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 10: Family Entertainment Centre gaming machine permits

Part 11: Lotteries

619. This Part of the Act makes provision with respect to lotteries, and should be read in conjunction with Schedules 2 and 11. The provisions here are built upon the foundation of the Lotteries and Amusements Act 1976, which will be repealed by this Act on commencement.
620. The core definition of a lottery is set out in Part 1 of the Act (section 14), as are sections dealing with the overlap between betting, gaming and a lottery.
621. The promotion of a lottery is unlawful under the Act unless the lottery is of a type that is specifically permitted. There are two permitted types of lottery under the Act:
- lotteries that are run in accordance with an operating licence issued under Part 5; and
 - exempt lotteries under Schedule 11. There are four types of exempt lottery set out in Schedule 11.

Section 252: Promoting a lottery

622. This section clarifies what is meant by the promotion of a lottery. *Subsection (2)* sets out the activities which constitute promoting a lottery. A person promotes a lottery if (amongst other things) he arranges for the printing, distribution or publication of promotional material. *Subsection (3)* defines “promotional material” as a document that advertises, invites participation in, contains information about how to participate in, or lists winners in, a particular lottery.
623. Where an external lottery manager is retained to carry out the arrangements for a lottery on behalf of a society or local authority, a lottery is regarded, for the purposes of the Act, as being promoted by both the lottery manager and the society or local authority itself.

Section 253: Lottery ticket

624. This section describes the types of item that may constitute a lottery ticket. It includes any document or article which confers or proves membership of the class eligible for prizes. The definition is deliberately wide so as to include electronic tickets and other items that may not be in the traditional paper format. The terms “sale”, “supply” and “purchase” are defined here in relation to lottery tickets. Requirements as to the form and content of a lottery ticket are set out in section 99 (in respect of licensed lotteries) and Schedule 11 (in respect of exempt lotteries).

Sections 254 to 256: Key terms

625. These sections define certain key terms in relation to lotteries. “Proceeds” is the total amount paid for the tickets in the lottery, before any deductions. “Profits” refers to that amount, less deductions for prizes, sums “rolled over” to another lottery, and reasonable organisational expenses.
626. **Section 255** explains what is meant by the term “draw” in a lottery. The term is defined widely, to include any process by which a prize in a lottery is allocated.
627. A definition of “rollover” in relation to a lottery is provided in section 256. A rollover occurs when a prize that has not been allocated in one lottery, is added to prizes available for allocation in a subsequent lottery. Where prizes from previous draws are made available in the next draw of the same lottery, this will not be a rollover.
628. This section also explains where the line is to be drawn between one lottery and another. A lottery may have more than one draw, but multiple draws will only be part of the same lottery where the lottery is arranged in such a way that the class of persons eligible for prizes remains the same. A new lottery will begin where the class of persons eligible for prizes changes, or may change.

Section 257: External lottery manager

629. The term “external lottery manager” is defined here as a person independent of the society or local authority for whom the lottery is run, who makes the arrangements for the lottery on behalf of the society or local authority. The purpose of this section, when read together with sections 258(3) and 259(3) is to provide that those persons who work with, or on behalf of, societies and local authorities to set up and run the lottery are external lottery managers. Other individuals, who are involved in some ancillary way (for example by selling tickets), are not making arrangements for the lottery and are therefore not external lottery managers. Such individuals do not commit any offence under this Part if they act in accordance with an operating licence held by an external lottery manager or a society or local authority.

Section 258: Promotion of lottery

630. This section makes it an offence to promote a lottery, but no offence is committed under this section if the person concerned holds and complies with an appropriate operating licence; or the person acts (except as an external lottery manager) on behalf of someone who holds such a licence, and the activity in question is carried on in compliance with that licence. Operating licences can be issued to local authorities, larger non-commercial societies, or to an external lottery manager acting on their behalf (see Part 5 for details of these procedures).
631. In addition, no offence is committed if the lottery falls into one of the exempt categories set out in Schedule 11. These are:
- incidental non-commercial lotteries;
 - private lotteries;
 - customer lotteries; and
 - small society lotteries (i.e. society lotteries which do not generate sufficient proceeds to require an operating licence from the Commission, and are instead required to be registered with the local authority).
632. It will be a defence for the person to show that he reasonably believed that he was not committing the offence because:
- the lottery was an exempt lottery under Schedule 11, or a lottery operating licence was held and complied with;

*These notes refer to the Gambling Act 2005 (c.19)
which received Royal Assent on 7 April 2005*

- the arrangement was part of the National Lottery; or
 - the arrangement did not fall within the definition of “lottery” under Part 1.
633. There is a further defence set out in section 265, where a person reasonably believed that the lottery was not one to which this Part applied because it was outside the territorial application of this Part.

Section 259: Facilitating a lottery

634. This section makes it an offence to facilitate a lottery, which means in this context, advertising a particular lottery, or printing tickets or promotional material for it. Since it is provided that these actions must be with respect to a “particular lottery”, this offence is not intended to capture those who, for example, print generic tickets that can be used in lotteries generally.
635. The offence will not apply if the lottery is exempt, or if a person acts in accordance with the terms and conditions of an operating licence. A person does not need to be a licence holder themselves to benefit from this exemption; they will be covered if they act for the licence holder (for example, if they are an employee, or someone who provides services, such as a printing company).
636. It will be a defence for the person to show that he reasonably believed that:
- the lottery was an exempt lottery under Schedule 11, or a lottery operating licence was held and complied with;
 - the arrangement was part of the National Lottery; or
 - the arrangement did not fall within the definition of “lottery” under Part 1.
637. As with the offence of promoting a lottery, there is a further defence to the offence in this section set out in section 265, where a person reasonably believed that the lottery was not one to which this Part applied because it was outside the territorial application of this Part.

Section 260: Misusing profits of lottery

638. This section provides for a general offence of misusing the profits of a lottery. A person will commit the offence if the promoter has, in a statement appearing on the lottery tickets or in an advertisement for a lottery ticket, declared that the proceeds of the lottery are to be used for a particular purpose, and the person uses (or permits to be used) all or any of the proceeds for something other than the purpose stated. This offence is not restricted to any particular type of lottery, and can apply to any lottery where such a fund-raising purpose has been declared.

Section 261: Misusing profits of an exempt lottery

639. This section applies only to certain kinds of exempt lottery (incidental non-commercial lotteries, private society lotteries and small society lotteries), in respect of which there are restrictions on the purposes for which the lottery can be promoted. Under this provision, it will be an offence for a person to use (or permit to be used) any part of the profits of the lottery for a purpose other than a permitted one.

Section 262: Small society lottery: breach of condition

640. This section provides that a non-commercial society commits an offence if a small society lottery is promoted on its behalf without the necessary registration with the local authority. It is also an offence to fail to comply with the obligation to file a statement of the matters prescribed in [paragraph 39](#) of Schedule 11 with the registering authority, or to submit false or misleading information in that statement.

Section 263: Penalty

641. The maximum penalty upon conviction for any of the offences contained in this Part is a term of imprisonment of up to 51 weeks in England and Wales, or 6 months in Scotland, together with a fine not exceeding level 5 on the standard scale.

Section 264: Exclusion of the National Lottery

642. This section excludes lotteries that form part of the National Lottery from the provisions of this Part. The National Lottery is regulated under the [National Lottery etc. Act 1993 \(c.39\)](#), but see also Part 1 of this Act.

Section 265: Territorial Application

643. This section sets out the territorial area over which Part 11 is to apply. It provides that Part 11 applies to anything done in relation to a lottery in Great Britain, or by means of remote gambling equipment in Great Britain. So, if a lottery is provided electronically, and the servers are located in Great Britain, that may be a lottery that falls to be regulated under this Part.
644. However, the territorial application of Part 11 is limited by this section, so that Part 11 does not regulate any lottery where:
- the only people who become participants in it are outside Great Britain; and
 - where there is no-one in Great Britain who possesses tickets with the intention of selling or supplying them to other individuals in Great Britain.
645. The effect of this is that as soon as a person in Britain becomes a participant in a lottery, or a person possesses tickets with a view to their sale in Great Britain, the lottery will be regulated by Part 11.
646. This section also provides a defence where a person reasonably believed that no person in Great Britain would become a participant in the lottery; or that there was no intention to sell tickets to people in Great Britain. Without this defence, innocent printers and distributors could be guilty of promoting or facilitating a lottery, even where they had honestly believed that the tickets they were printing or distributing would only be sold abroad.