

# NATIONAL LOTTERY ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1: Nature of the National Lottery*

7. This section amends Schedule 2A to the National Lottery etc. Act 1993 (“the 1993 Act”) dealing with the constitution of the Commission. In particular:
- *Subsection (2)* amends paragraph 2(1) to provide that the number of members of the Commission must be five or more rather than fixed at five under the current provision.
  - *Subsection (3)* amends paragraph 4 to provide that the Secretary of State appoints the chairman of the Commission rather than the chairman being selected on an annual basis by the members of the Commission under the current provision.
  - *Subsection (4)* inserts a new paragraph 6A which allows the Secretary of State to appoint the chief executive and another employee of the Commission as members of the Commission, in line with normal commercial arrangements.

#### *Section 2: Disclosure of information*

8. This section inserts new section 4B into the 1993 Act to allow the Commissioners for Her Majesty’s Revenue and Customs (HMRC) and the National Lottery Commission to exchange information. *Subsections (3) and (4)* places limitations on the further disclosure of information received under this section. In particular, subsection (4) (f) allows such further disclosure to the National Audit Office for the purposes of some of their functions under the National Audit Act 1983 (economy, efficiency and effectiveness examinations).
9. This section also inserts new section 4C into the 1993 Act which makes the wrongful disclosure of information received from HMRC relating to an identifiable person a criminal offence carrying a maximum penalty of imprisonment for up to 2 years and an unlimited fine. This is similar to the offence in section 19 of the Commissioners for Revenue and Customs Act 2005 which applies to HMRC officials.

#### *Section 3: Licensees*

10. This section amends sections 5 and 6 of the 1993 Act (and makes other consequential amendments) to allow the National Lottery Commission to grant licences under those sections to run the National Lottery and to promote lotteries respectively to any person rather than only to a body corporate e.g. licences may be granted to individuals and unincorporated associations in addition to companies and statutory corporations.

#### *Section 4: Length of licence*

11. This section inserts provision into section 7 of the 1993 Act to provide that a licence granted under sections 5 or 6 of that Act cannot exceed 15 years. It also provides that such a licence may include provision allowing the National Lottery Commission to

extend the period of the licence or provision allowing the licence to be extended with the agreement of the relevant licensee. The licence cannot be extended beyond the 15 year limit.

### **Section 5: Fees**

12. This section inserts new section 7A into the 1993 Act to provide that the holders of licences under sections 5 and 6 of that Act must pay annual fees, to be set out in regulations, to the National Lottery Commission. The fees will reflect the expenses incurred by the National Lottery Commission in the exercise of all its functions under Part 1 of the 1993 Act e.g. granting licences, considering new games, monitoring the licences, whereas the previous licence fees only reflected the granting of the licences.

### **Section 6 and Schedule 1: Licensing structure**

13. **Schedule 1** sets out the reserve licensing structure to allow the National Lottery Commission to issue more than one licence to operate and promote the lotteries forming part of the National Lottery.
14. **Section 6** provides for Schedule 1 to be commenced by an order under that section rather than under the normal commencement provision (section 20). In particular, it requires the order to be subject to negative resolution procedures. Schedule 1 is to be commenced in this different way to reflect the intention that the Secretary of State will not commence Schedule 1 immediately but only if she considers that the current licensing structure has failed in creating an effective competition for the licence under section 5 of the 1993 Act to run the National Lottery and so risks failing to maximise returns to good causes.
15. **Paragraph 2** of Schedule 1 will replace section 1 of the 1993 Act. This section currently provides that a lottery only forms part of the National Lottery if it is promoted by the body licensed to run the National Lottery (currently Camelot Group plc-) under section 5 of the 1993 Act or in pursuance of an agreement between that body and the lottery's promoter. The promotion of such a lottery must also have been licensed under section 6 of the 1993 Act. New section 1 will remove the concept of a licensed person to run the National Lottery as a whole and will provide that a lottery forms part of the National Lottery simply if it is promoted under a licence under new section 5.
16. **Paragraph 4** of Schedule 1 will insert new sections 5, 6 and 6A into the 1993 Act. New section 5 will replace the licensing provisions under sections 5 and 6 of the 1993 Act with the effect that there is only one type of licence – to promote a lottery – rather than the two types of existing licence – to run the National Lottery and to promote a lottery. The current system comprises the section 5 licensee running the National Lottery with section 6 licensees promoting individual lottery games. The section 6 licensee can only promote the lotteries with agreement of the section 5 licensee. In practice, Camelot, the section 5 licensee, also holds all the current section 6 licences. Under new section 5 there will only be one type of licence to promote individual lotteries or types of lotteries.
17. The provisions in new section 5 will largely re-enact the current provisions in sections 5 and 6. Subsection (3)(c) provides that a licence may require or permit the licensee to make arrangements with other persons for the performance of specified functions. This will allow the National Lottery Commission to require a licence holder to work together with another licence holder for specified reasons e.g. a joint promotion.
18. New section 6A relates to the competition(s) to award licences to run the National Lottery. Subsection (1) will provide that the National Lottery Commission may not issue a licence under new section 5 unless it has complied with the regulations set by the Secretary of State relating to the invitation of applications for licences. However, subsection (3) will allow for exceptions when the Commission does not need to comply with the regulations. That is, if the Commission thinks that it is likely to be in the interests of its duty to do its best to maximise returns to good causes under section 4(2)

of the 1993 Act; or it is necessary to prevent a lapse of the lottery (e.g. a lottery promoter might pull out at very short notice which would not allow the Commission sufficient time to run a competition without a strong risk of there being a period when the lottery in question ceased to operate). In the latter case this exception is not open-ended and under new subsection (4) the period of the licence must be no longer than the Commission considers necessary to complete a new competition.

19. **Paragraph 5** of Schedule 1 will make consequential changes to section 7 of the 1993 Act. New section 7(3A)(a) and (b) will allow section 5 licence holders to be required to provide information and make facilities available in connection to lotteries to other licence holders, potential bidders for licences and others. Such conditions would allow for all bidders as well as incumbent licence holders to have the same information before entering any competition for licences. New section 7(3A)(c), (d) and (e) will allow licence holders to be required to cooperate and participate in arrangements between themselves. For example, to ensure that all licence holders work together and not in competition for the benefit of the National Lottery as a whole and to maximise the returns to good causes.

### ***Section 7: National Lottery Distribution Fund: apportionment***

20. This section amends section 22 of the National Lottery etc. Act 1993 (“the 1993 Act”), which deals with the apportionment of money in the National Lottery Distribution Fund to the good causes, to provide that 50 per cent of all sums paid into the Distribution Fund by the licensee who runs the National Lottery (currently Camelot plc) must be allocated for prescribed expenditure that is charitable, or connected with health, education or the environment. This provision effectively creates a new good cause for the Big Lottery Fund, replacing the existing Community Fund and New Opportunities Fund good causes.
21. The Secretary of State will set out by order what is “prescribed expenditure”. New section 22(3B) will allow such an order to prescribe “devolved expenditure” – the Big Lottery Fund’s functions in relation to such expenditure will be exercised by the English, Welsh, Scottish and Northern Ireland committees set up under paragraph 7 of new Schedule 4A (inserted by Schedule 2 to the Act) and directions on the exercise of the Big Lottery Fund’s functions in relation to devolved expenditure under new section 36E(1) and (2) may only be given by the relevant devolved administration. Such an order will be subject to affirmative resolution procedure.
22. The Secretary of State plans to exercise this power, subject to consultation, to prescribe descriptions of devolved expenditure. Possible examples are expenditure on community learning, promoting community safety and cohesion, and promoting well being. The Secretary of State also plans to exercise this power to prescribe types of expenditure which are not devolved expenditure, such as transformational grants.

### ***Section 8: Reallocation of funds***

23. Sections 22 and 23 of the 1993 Act provide that sums paid into the National Lottery Distribution Fund are held in that Fund for particular good causes and Lottery distributors – these sums are commonly known as a Lottery distributor’s balance. New section 29A as inserted by this section will allow the Secretary of State by order to reallocate these sums from one Lottery distributor to another body but not from one good cause to another. The receiving body would receive the transferred balance only and would not receive either an on-going share of new Lottery income or any investment income on the sum. The Secretary of State would be required to consult with any body mentioned in the order and also the devolved administrations, as well as anyone else she considers appropriate. In practice, the Secretary of State would only use this as a last resort in the event that a distributor was considered to have failed, signally, to reduce balances to a reasonable level. Such an order will be subject to affirmative resolution procedure.

### ***Section 9: Investment income***

24. This section amends section 32 of the 1993 Act, which deals with returns on investments of money held in the National Lottery Distribution Fund. *Subsection (1)* provides that proceeds from investment are allocated according to the same percentage shares as money entering the Distribution Fund, i.e. it is allocated to distributors according to the percentages set out in section 23 of the 1993 Act. This replaces the existing arrangement where returns are allocated to distributors in proportion to their share of money already held in the Distribution Fund on their behalf.

### ***Section 10: Distributing bodies: consultation***

25. The effect of new section 25(2C) is to permit Lottery distributors, when making a decision about distributing Lottery money both to consult any person about it and to take account of the opinions expressed or information supplied as a result of that consultation. It is intended to remove any doubt about whether the Lottery distributors have to power to consult or take into account such matters in exercising their powers to distribute Lottery money.

### ***Section 11: Distributing bodies: publicity***

26. New section 25E is intended to remove any doubt about the powers of Lottery distributors to publicise the National Lottery. While it is already clear that they can publicise their own award of a grant and its purpose, this section allows them to participate in publishing more general information about the work of all Lottery distributors and the intention is that by doing so they will be able to inform the public better about what the money they award is achieving overall for the Lottery good causes. This will ensure that all the Lottery distributors are able to participate in the National Lottery Promotions Unit which seeks to raise positive awareness of and support for the benefits of the distribution of National Lottery funding across the whole country, including participation in events publicising that funding.

### ***Section 12: Distributing bodies: annual reports***

27. This section requires all Lottery distributors to include, in their annual reports, a statement on their policy and practice in relation to the principle that proceeds of the National Lottery should be used to fund projects, or aspects of projects, for which funds would be unlikely to be made available by Government or the devolved administrations.

### ***Section 13: Isle of Man and Channel Islands***

28. *Subsection (1)* provides that a body may distribute money to meet expenditure which relates to the Isle of Man or any of the Channel Islands. In particular, it is intended that the Big Lottery Fund will distribute money to these islands so long as satisfactory arrangements have been made for National Lottery games to be played there (as they have already in the Isle of Man).. *Subsection (2)* provides that a body may delegate under section 25A of the 1993 Act to an Isle of Man or Channel Island body. In particular, it is intended that the Big Lottery Fund will delegate its funding functions in relation to the Isle of Man to Public Lottery Trust.

### ***Section 14: The Big Lottery Fund: establishment***

29. This section inserts provision into the 1993 Act establishing the Big Lottery Fund as a corporate body and inserting a new Schedule 4A (Schedule 2 to this Act), which sets out detailed provisions on the Big Lottery Fund's constitution, proceedings and money.

### ***Section 15: The Big Lottery Fund: functions***

30. *Subsection (1)* amends section 23 of the 1993 Act to allow the Big Lottery Fund to distribute the money in the National Lottery Distribution Fund allocated to prescribed

expenditure that is charitable or connected with health, education or the environment. *Subsection (2)* inserts new provisions into the 1993 Act setting out the functions of the Big Lottery Fund.

31. New section 36B sets out the Big Lottery Fund's main power to distribute funds. The Fund will be able to make grants or loans, or make or enter into other arrangements, in distributing funds. The Secretary of State will be able to limit by order the amounts that the Big Lottery Fund may distribute on types of expenditure prescribed by new section 22(3A). In practice, these order making powers will be exercised together. Both orders are subject to affirmative resolution procedures.
32. New section 36C allows the Big Lottery Fund to distribute non-Lottery funds provided such funds are for expenditure that is charitable or connected with health, education or the environment. Examples might be third party funds from Government Departments or charitable foundations that wished to make use of the Big Lottery Fund's distribution infrastructure.
33. New section 36D allows the Big Lottery Fund to give advice about the distribution of Lottery money and applications for Lottery grants.
34. New section 36E requires the Big Lottery Fund to comply with any directions given to it by the Secretary of State and by the devolved administrations in relation to their devolved expenditure. Directions in relation to policy are confined to matters which must be taken into account in distributing money. The Secretary of State alone has the power to give directions under subsection (3) relating to operational matters such as financial management, staffing and accounts and to give directions under subsection (2) relating to non-devolved expenditure and English devolved expenditure. Before giving directions the Secretary of State must consult the Big Lottery Fund and, except for expenditure relating to England, the devolved administrations.
35. Subsection (4) provides that the devolved administrations have the sole power to give directions in relation to Welsh, Scottish and Northern Ireland devolved expenditure. They must consult the Big Lottery Fund and seek the Secretary of State's consent before giving directions in relation to devolved expenditure.

### ***Sections 16 to 19: Dissolution of old distributors***

36. **Section 16** allows the Secretary of State by order to appoint a day or days on which the Community Fund, the Millennium Commission and the New Opportunities Fund will cease to exist. Section 17 provides for the property, rights and liabilities of the Community Fund, the Millennium Commission and the New Opportunities Fund to be transferred to the Big Lottery Fund. In particular, *subsection (9)* confers on the Big Lottery Fund the power to do anything for the purpose of giving effect to any decision, agreement or undertaking of the Lottery distributors dissolved irrespective of whether it has the power to do so under the 1993 Act as amended. This will allow the Fund to continue to pay grants after dissolution in accordance with decisions made prior to dissolution by the Millennium Commission, Community Fund and New Opportunities Fund.
37. **Section 18** provides that money held in the National Lottery Distribution Fund for the Millennium Commission, the Community Fund and the New Opportunities Fund is now held for distribution by the Big Lottery Fund.
38. **Section 19** makes provision for a number of amendments to the 1993 Act where references are made to the old distributors. In particular:
  - (a) *subsection (2)* provides that the strategic plan prepared by the Big Lottery Fund under section 25C of the 1993 Act includes any directions given under new section 36E;



- (b) *subsection (3)* provides that directions may not be given to the Big Lottery Fund under section 26 of the 1993 Act. Directions given to the Fund will be only be given under new section 36E; and
- (c) *subsection (8)* amends section 60(2) of the 1993 Act to provide that orders made under new sections 22(3A), 29A and 36B(3) are subject to the affirmative resolution procedure.

### ***Section 20: Meaning of “charitable expenditure”***

- 39. This section defines “charitable expenditure”, in relation to the new good cause set out in new section 22(3)(d), as expenditure for a charitable, benevolent or philanthropic purpose. The new definition adopts a purpose based approach in deciding whether expenditure is charitable whereas the previous definition adopted an institutional based approach i.e. expenditure by charities or other institutions set up for charitable, benevolent or philanthropic purposes.

### ***Schedule 2 - The Big Lottery Fund***

- 40. *Schedule 2* inserts a new Schedule 4A into the 1993 Act setting out detailed provisions on the Big Lottery Fund’s constitution (part 1), proceedings (part 2) and money (part 3).
- 41. *Paragraph 1* deals with the membership of the Big Lottery Fund. It provides that there will be 12 members appointed by the Secretary of State. The Secretary of State may vary this number by order, following consultation with the devolved administrations. One member will be appointed as Chairman. One member will also be appointed to represent the interests of each of England, Wales, Scotland and Northern Ireland, with the agreement of the relevant devolved administration.
- 42. *Paragraph 7* requires the Big Lottery Fund to establish a committee for each of England, Scotland, Wales and Northern Ireland, to be chaired by the relevant member of the Fund. The committees will be responsible for devolved expenditure in respect of their countries. The members of the committees will be appointed by the Big Lottery Fund, with the agreement of the Secretary of State in the case of the England committee, or the relevant devolved administration.
- 43. *Paragraphs 12 and 13* deal with disqualifications of members of the Fund from the House of Commons and the Northern Ireland Assembly. Equivalent provision for Scotland and Wales will be made by amending the Scottish Parliament (Disqualification) Order 2003 and the National Assembly for Wales (Disqualification) Order 2003 respectively.
- 44. *Paragraph 20* allows the Fund to invest money in an interest-bearing account. Whilst most money the Fund receives will be held in the National Lottery Distribution Fund and invested by the National Debt Commissioners under section 32 of the 1993 Act, non-Lottery money received pursuant to new section 36C of the 1993 Act may be invested under this power.