

THE GAMBLING ACT 2005:

Auctions, raffles and fetes are classed as lotteries and are governed by the Gambling Act 2005 which came into force on 1st September 2007, which replaces the Lotteries and Amusements Act 1976 as amended by The National Lotteries Act 1993.

The Act updates existing gambling laws that are several decades old, providing new powers and protections for both new and old forms of gambling.

The Act has three clear objectives:

- Keeping gambling crime free;
- Making sure that gambling is fair and open; and
- Protecting children and vulnerable adults.

The Act introduces a new, unified regulator for gambling in Great Britain, the Gambling Commission, and a new licensing regime for commercial gambling (operated and regulated by the Commission or by licensing authorities, depending on what is being licensed).

LOTTERIES:

A lottery is defined as “a scheme for the distribution of money by chance. It usually, if not always, takes the form of the creation of a fund by the participants in the lottery, who buy tickets or pay subscriptions in consideration of an offer by the promoters to award them a prize on some contingency the happening whereof depends on chance”. Any genuine test of skill or judgement (such as listing the features of a boat in order of desirability or a ‘spot the buoy’ competition) will **not** be a lottery and will not be subject to the Gambling Act 2005.

Under the terms of the 2005 Act all lotteries are unlawful except those for which statutory provision is made. The Act makes provision for Exempt Lotteries. Exempt lotteries are those permitted by the Act to be held without being licensed by the Gambling Commission. There are four types of exempt lottery namely:

- Incidental non-commercial lotteries;
- Private society lotteries;
- Small society lotteries; and
- Customer lotteries.

In the context of clubs, only incidental non-commercial lotteries, private society lotteries and small society lotteries need be considered.

INCIDENTIAL NON-COMMERCIAL LOTTERIES:

The provisions relating to these lotteries are contained in Part 1 Schedule 11 of the 2005 Act. An incidental non-commercial lottery is one that is not promoted for private gain and which is incidental to a non-commercial event. An event is non-commercial if no sum raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise) is appropriated for the purpose of private gain, i.e. all the money raised goes entirely to purposes that are not for private gain.

Incidental non-commercial lotteries may include a bazaar, sale of work, fete, dinner, dance, sporting or athletic event or any other event of similar character.

The conditions that must be complied with are as follows:

- The lottery must be promoted wholly for a purpose other than for private gain.
- There is no limitation on the price and number of tickets.
- No rollovers are allowed.
- Tickets must only be sold at the premises during the event.
- The result of the lottery must be made public while the event is taking place.
- No more than £500 of ticket income may be spent on prizes, although genuine gifts from sponsors may be of any value.
- The maximum amount that may be deducted from the proceeds for other expenses incurred in organising the lottery should be no more than £100.

Children and young people are able to participate in these kinds of lotteries.

There is **no need to register** with your Local Authority for this sort of lottery.

PRIVATE SOCIETY LOTTERY:

A private society lottery is one promoted by members of a society established and conducted for purposes unconnected with gaming or lotteries.

The conditions applying to such lotteries are that:

- The promoter of such a lottery must himself be a member of the group, authorised in writing by the governing body of the society.
- Each person to whom a ticket is sold is either a member of the club or is present on club premises – *this is an extension to the old rules under the previous law insofar as guests can now participate in a private society lottery.*
- the whole proceeds (less expenses for printing and stationary) must be spent on prizes or given to the club running the lottery and used for the purposes of the club;
- The lottery may not be advertised except in the clubhouse.
- The arrangements for a private lottery must not include a rollover.
- Tickets must be in the form of a document and all tickets must be the same price and the price must be shown on the ticket.
- The price for the ticket must be paid to the lottery promoter before any person is provided with a ticket.
- Each ticket must bear on the face if it the name and address of the promoters and a statement of the persons to whom sale is restricted (i.e. members of the club or society) and a statement that no prize will be paid to any person other than the purchaser of the winning ticket.

There is **no need to register** with your Local Authority for this sort of lottery.

Private Society Lotteries cannot be conducted on vessels. The Act defines a vessel as anything (other than a seaplane or amphibious vehicle), designed or adapted for navigation or other use in, on or over water; a hovercraft; or anything, or any part of any place, situated on or in water.

SMALL SOCIETY LOTTERIES:

Small society lotteries are intended to raise funds for 'good causes'. Society in this context is defined as one formed for charitable, sporting, athletics, or a cultural activity or other non-commercial purpose other than that of private gain. Bona-fide sailing clubs clearly fall within this category.

The main difference between society lotteries and incidental non commercial lotteries and private lotteries lies in the fact that tickets may be sold to the general public rather than confined to restricted groups of people. For this reason a very tight scheme of control is imposed by the 2005 Act.

A lottery of this sort must comply with the following requirements:

- It must be promoted in Great Britain.
- The society must be registered with the Local Authority in which its principal office is located.
- The lottery must be promoted in accordance with a scheme approved by the society (in the case of most clubs the constitution is so framed as to include by inference authority for the management and it may be appropriate to minute an approval by the committee delegating this function to the secretary).
- Every promoter must be a member of the society and must be authorised in writing by the society.
- The maximum prize available for participants to win should be no more than £25,000.
- The society must apply at least 20% of the proceeds of the lottery to the purposes of the society.

- A maximum of 80% of a lottery's proceeds may be attributed to expenses and prizes.
- The arrangements for a small society lottery may include a rollover provided that the maximum single prize does not exceed £25,000 or 10% of the gross proceeds.
- If the total value of tickets or chances to be sold in one lottery exceeds £20,000 or cumulatively exceeds £250,000 in any one calendar year the scheme must be registered with the Gambling Commission. Such lotteries are termed Large Lotteries.

The Act imposes the following requirements in relation to tickets:

- Tickets must be in the form of a document (which includes a virtual ticket eg. email or text message) and must contain the following:
 - the name of the society, the name and address of the promoter, the price of the ticket and the date of the draw;
 - the price payable for each ticket in small society lottery must be the same and the price must be paid to the promoter before any person is given the ticket; and
 - the ticket number and the words 'Registered with XXXXXXXX Council'.
- Sale of tickets to or by a person under the age of 16 is prohibited.
- Tickets must not be sold in a street, in a betting shop, in amusement arcades, in gaming clubs, by vending machines, or at any persons home by a visitor discharging an official, professional or commercial function not connected with lotteries.

Once a society is registered and the scheme has been approved by the society the following requirements must be complied with:

- The promoter of a society lottery must, not later than the end of the third month after the date of the lottery, send to the Local Authority a Return Form certified by two members of the society (other than the promoter) who must be aged eighteen or older, who are appointed for the purpose in

writing by the society, together with a copy of their letters of appointment. Electronic signatures are acceptable if the return is sent electronically.

- The Return Form must include a copy of the Lottery Scheme under which the lottery was promoted and must show:
 - the arrangement for the lottery (including dates on which tickets were available, dates of the draw and value of prizes, including any donated prizes and rollovers);
 - the proceeds of the lottery;
 - the amount applied for each prize;
 - the amounts deducted for expenses;
 - whether expenses were incurred in connection with the lottery that were not paid for by deduction from the proceeds, and, if so, the amount of the expenses and the sources from which they were paid; and
 - the amount applied to the purpose(s) for which the society is conducted (this **must** be at least 20% of the proceeds).

Application must be made to the Local Authority on the prescribed form together with the registration fee (currently £40) and any documentation required by the Local Authority to access the application. A Club may be required to provide the Local Authority with a copy of its constitution in order to prove that it is a bona-fide non-commercial society.

There will be an annual fee (currently £20.00) payable two months before the anniversary of the registration.

Registrations run for an unlimited period, unless the registration is cancelled.

FUND RAISING:

As a fund raising event/club promotion, many clubs consider the possibility of auctioning/raffling a boat trip. The money raised goes to the club and not to the individual member offering the trip. This raises the question of whether such an auction takes the club into

the commercial operations ambit and therefore the coding requirements.

The law generally looks at this issue in two ways:

CATEGORISED WATERS A-D:

The Inland Waters Small Passenger Boat Code applies to categorised waters A-D. This code is, at present, not mandatory it is merely good guidance.

Vessels sailing in categorised waters A-D are now certificated by the Local Authority. Certification applies to vessels carrying not more than 12 passengers for reward in categorised waters and the safety code can be downloaded from the MCA website.

Its application to club members and the public is as follows:

MEMBERS ONLY:

If the successful party is a member of the club and the prize trip is on a club owned vessel, the coding requirements do not apply to the event as long as the proceeds go to the club and not to individual members.

However, if the successful party is a member of the club and the vessel is owned by an individual member of the club as opposed to being owned by the club or on behalf of the club, the bid would take the trip into the commercial charter recommended coding requirements.

PUBLIC ONLY:

Secondly, if the successful party were a non-club member he/she would in effect become a charterer and this would therefore take the club into the ambit of a commercial charter and involve all the resulting recommended coding requirements.

AT SEA:

The MCA advise that all vessels going to sea, as opposed to sailing in categorised waters, carrying passengers for reward be they

members of the general public or club members, should be MCA coded.

It is arguable whether a boat trip offered as part of an auction or raffle is strictly "carrying passengers for reward" however clubs must ensure they comply with the coding requirements, if applicable.

Certainly clubs and members taking sponsors out on a sailing trip do fall within the ambit of the coding requirements; as although money is not strictly passing hands for this type of trip the benefit from it does amount to what is considered to be "monies worth".

We advise you to contact the MCA, your Local Authority or your local branch of Associated British Ports to discuss the issues with them before organising such an event.

INSURANCE:

It is especially important for clubs and members to consult with their insurers to ensure that the vessel and the successful guest(s) are covered under their current insurance policy.

USEFUL CONTACTS:

The Maritime & Coastguard Agency
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9100
Web: www.mcga.gov.uk

The Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP
Tel: 0121 230 6666
Fax: 0121 230 6720
Email: info@gamblingcommission.gov.uk
Web: www.gamblingcommission.gov.uk

The Gambling Commission has produced guidance notes on Lotteries and the Law which can be downloaded from its website.

The Committee of Advertising Practice (CAP) Code on Prize Draws – which provides guidance on how to advertise a promotion and what to include in the advertisement can be found at: www.copyadvice.co.uk/Ad-Advice/Help-Notes/Promotions-with-Prizes.aspx

Associated British Ports
150 Holborn
London
EC1N 2LR
Tel: 0207 430 1177
Web: www.abports.co.uk

Technical Department
RYA
RYA House
Ensign Way
Hamble
Southampton
SO31 4YA
Tel: 0844 5569537
Email: technical@rya.org.uk

For more information kindly contact the RYA Legal Team on 0844 5569519 or legal@rya.org.uk

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