

27 February 2004

Draft Gambling Bill Consultation
Gambling & National Lottery Licensing Division
DCMS
2-4 Cockspur Street
London SW1Y 5DH

Dear Sirs,

Draft Gambling Bill

As you may know, the Newspaper Society is the association of publishers of the regional and local press. Its members publish over 1300 newspapers, paid-for and free, dailies and weeklies, circulating throughout the United Kingdom. Our interest in the Gambling Bill relates primarily to the area of lotteries and prize competitions. Our involvement in this regard is twofold: firstly as publishers of advertisements, with the need to be able to readily and with certainty determine whether a scheme is lawful and may be lawfully advertised, and secondly as regards our own activities whether as organisers of occasional "reader competitions", publishers of traditional newspaper prize contests such as Spot the Ball and crossword competitions, or other similar promotional features.

We have submitted comments on the draft Bill to the Joint Scrutiny Committee but should like to take this opportunity to restate our concern in relation to the Bill's definition of a lottery (now Clause 208). Our comments below mirror our submission to the Joint Scrutiny Committee.

We warmly welcomed the Government's statement in June last year that it intended to clarify the definition of a lottery as being a scheme where the determination of prizes was entirely by chance. We regarded this as a sensible and forward-looking approach which would clear up once and for all an area of law which had caused confusion and misunderstanding for many years.

Clause 208(1) itself achieves this aim, cleanly and clearly. It removes the previous uncertainty as to "how much skill suffices" for a scheme not to be a lottery: pursuant to Clause 208(1)(b) only if the determination of prizes was wholly by chance could the scheme be a lottery.

Unfortunately, the clarity and certainty accorded by the new definition is utterly undermined by the inclusion of the proviso set out at Clause 208(4). This actually in our view leaves the practical situation worse than at present in that its effect could be to criminalise a number of schemes which are presently lawful (since for present purposes the crux of the issue in determining whether a scheme is a lottery is, inter alia, whether success depends to a substantial degree on the exercise of skill).

208(4) provides in effect that an element of skill is not effective to prevent a scheme from being deemed a lottery if that element of skill is “not likely to prevent persons who want to enter the lottery from doing so”. In other words, if people are not deterred from entering, it is still a lottery, no matter how at what level the degree of skill is pitched. Subsection (4) does not require any consideration to be given to the level of skill. By this token seemingly a pay – to-enter prize crossword competition could be deemed unlawful since the allocation of prizes depends on chance (first correct entry drawn) and the skill element does not prevent the readership from entering the scheme (presumably because they feel their skill and judgment is equal to the challenge set by the compiler).

It seems that the Government was in 206(4) seeking to address the issue of those schemes which rely mostly on chance but where a small element of skill is appended. This seems at variance with the Government’s statement this summer that the Bill would “provide that a lottery is a scheme, requiring payment to enter, in which the destination of the prize or prizes is determined entirely by chance. A scheme in which a degree of skill or knowledge is needed in order to secure a prize will not, therefore, be capable of being a lottery” (emphasis added).

We would urge the Government to retain this stance. We would question what mischief requires to be addressed by seeking to legislate specifically so as to catch “low skill” schemes. This is often very much a matter for subjective judgment in any event. To seek to address this issue would in our view force the re-adoption of a legislative formula based on the present one ie. requiring a weighing up of the elements of skill and chance as to which was the more significant in terms of one’s overall chances of winning a prize. This would leave us precisely where we started in terms of uncertainty.

We would urge the deletion altogether of subclause 208(4).

On a quite separate issue, we should like to also take this opportunity to query two of the advertising restrictions relating to Exempt Lotteries, in Schedule 8.

Firstly, in relation to private society lotteries (paragraph 12). We accept that the restrictions set out in paragraph 8 mean that tickets can only be sold to members of the society, on the society’s premises. However, we wonder whether it is really necessary to restrict all advertising. Bearing in mind the vital role of the local and regional press in publicising the activities of local clubs and societies of all kinds, we would submit that there would seem to be no harm in permitting a local club to insert an advertisement in the local paper inviting its members to attend a meeting at which a lottery would take place – provided it was clear that it was addressed to “members only”. For example, and advertisement along the lines of “Members of the Smallvillage

Archery Club are reminded that the AGM will take place at 7pm next Friday 5 March, at the Clubhouse, followed by the Annual Spring Prize Draw” There is seemingly an overlap (and possibly an inconsistency) here with Part 1 of Schedule 8 (small incidental lotteries) – provided the criteria in Part 1 were met, presumably a society lottery could lawfully be advertised as an “incidental” lottery. We would welcome your comments on this point.

The new “Customer lotteries” could prove to be a very popular and harmless attraction for local traders and shoppers. We would therefore query why it is intended that the new “Customer lotteries” should not be advertised (Paragraph 20). Unlike private lotteries, these are not restricted to a particular “closed” class of individuals. Particularly in the context of our medium, it would seem a shame if the local High Street florist running a customers’ Easter lottery should be prevented from letting the community know of it by advertising that fact in the local press if they so chose. The provisions of Para 18(b) regarding sales of tickets only to customers on site, and the limit of £50 prizes, seem more than adequate to control and limit these types of schemes without further restrictions. We would urge that the Government reconsider this.

Finally, we would like record that we very much welcome the provisions of Schedule 7, particularly Para 2 (c) and the clarification regarding free entry routes. This is most helpful.

We would of course be very pleased to attend a meeting to discuss these issues in more detail if this would be helpful. Alternatively if there is anything further we can provide at this stage please do not hesitate to let us know.

We thank you for this opportunity to comment and look forward to hearing from you.

Yours faithfully

SUE OAKE
Solicitor