

chapter twenty eight

Lotteries

- 28.1 As described in chapter 4, the Lotteries and Amusements Act 1976 states that all lotteries which do not constitute gaming are illegal, subject to a limited number of exceptions. Lotteries are not defined by the Act. The exceptions largely relate either to private lotteries or to charities for good causes. The Act also prohibits certain types of competitions.
- 28.2 We understand why the legislation is drafted in this way, but it does mean that a great deal of time and ingenuity is devoted to inventing competitions which are not defined as lotteries and which escape the prohibitions on competitions. (For example by demonstrating that success depends to a substantial degree on the exercise of skill.) We have considered the purpose of these prohibitions. We believe they go beyond our standard three principles of regulation and are intended primarily to preserve lotteries for the exclusive purpose of good causes. We recognise that is enshrined as a matter of public policy and do not propose changing it. However, we believe that the preservation of that objective is consistent with some simplification and relaxation of the present regulations and our recommendations have been made accordingly.

Definition of a lottery

- 28.3 There is no statutory definition of a lottery. The following criteria were set out by Lord Widgery:¹
- A lottery is the distribution of prizes by chance where the persons taking part, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize.*
- 28.4 There is currently no appetite to prosecute those who run, what seem to be, lotteries masquerading as prize competitions. The operators who are currently regulated under the 1976 Act have made it clear to us how unsatisfactory this situation is.
- 28.5 We believe that in the minds of most people, lotteries are associated with charities and good causes. We accept that some prize competitions may be lotteries within the terms of the criteria set out above, but we do not believe that the customer makes a connection between the two. The argument that a customer would make a choice between buying a charity lottery ticket and entering a free draw or ringing a premium phone line is not one we find persuasive.
- 28.6 We are told by ICSTIS (Independent Committee for the Supervision of Standards of Telephone Information Services) and others that prize competitions are very

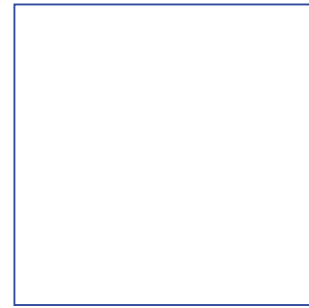
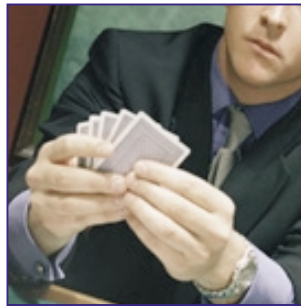
popular with the general public. Where a competition is plainly an illegal lottery, ICSTIS will take action on the basis that the service is in breach of their requirement that services must comply with the law. In the greater number of cases where the nature of the service is less clear-cut, ICSTIS refer complainants to enforcement agencies such as the police, Gaming Board or Trading Standards.

- 28.7 We think that the argument of what is or is not a lottery is a sterile one. We do not believe that there is a case for banning prize competitions, but there must be some acknowledgement that they are different from lotteries. A statutory definition of a lottery would clearly be helpful, which would distinguish between "lotteries" and prize competitions or prize draws. We consider that, of these categories, only lotteries should be the concern of the gambling regulator.

Small lotteries incidental to an exempt entertainment

- 28.8 We received no submissions relating to small lotteries and, because of their nature, we have little solid information about them. Anecdotal evidence suggests that they are very common, popular with the public who participate and an essential fundraiser for many organisations. We see no reason to recommend substantial changes to the existing legislation. We recommend that small lotteries should continue to operate as they do now. If there were any complaints about the way in which a particular lottery had been operated, the Gambling Commission or the police could investigate a potential breach of the gambling legislation.
- 28.9 The limit on expenditure on prizes for small lotteries is currently £250, although prizes above that level can be donated. As we discuss elsewhere, we do not think that specific figures should be included in primary legislation: the Gambling Commission should advise on the limit for prizes, and it should be contained in regulations that can easily be amended. That is not to say that the current limit is wrong. These are one-off unregulated events and we suggest that it would be wise to maintain a relatively low ceiling on expenditure on prizes to guard against abuse.
- 28.10 One provision which we do believe is now out-dated is the ban on money prizes contained in section 3(3)(b) of the 1976 Act. Given the low prize limits and the limited scope for abuse, we consider that this is an unnecessary restriction. **We recommend that the**

¹Lord Widgery CJ, Readers Digest Association Ltd v Williams, 1976, 1 WLR 1109 at 1113



ban on money prizes for small lotteries should be removed.

Private lotteries

- 28.11 As with small lotteries, we have very little information about private lotteries because they are not regulated. Private lotteries are confined to society members, or to people living or working on the same premises. There are no limits on stakes or prizes, but there are restrictions on advertising. The lack of control on stakes and prizes makes the restrictions that do exist all the more important. There would clearly be scope for abuse by unscrupulous operators of such lotteries, although no examples of this have been brought to our attention. We do not know how many private lotteries are operating, but our own experience of such activities leads us to believe that there is a great number.
- 28.12 We do not think that the potential for mischief is great enough for us to recommend that private lotteries should be regulated by the Gambling Commission, but as with small lotteries, if there are complaints the regulator should certainly have the ability to investigate them. **We recommend that legislation should make it clear that private lotteries should not be run for private or commercial gain.**
- 28.13 In its evidence to us, Littlewoods² suggested that there should be two changes to the provisions in the 1976 Act.
- First, societies may currently advertise a private lottery only within their premises. Littlewoods suggested that that this restriction should be lifted, subject to advertising guidelines and regulations. One objective of this restriction is to distinguish private lotteries, which are unregulated and intended to target specific groups, from societies' public lotteries, which are regulated and can be sold more widely. In the unregulated environment of private lotteries we believe that this is a reasonable restriction. Advertising opportunities should be curtailed to ensure that a wider audience is not targeted in competition with societies' public lotteries.
 - Second, Littlewoods suggested that private lotteries should not be confined to a single club. Section 4(2) of the 1976 Act requires that each local or affiliated branch of a society is treated as a separate society. Littlewoods pointed out that removal of this restriction would, for example, allow the British Legion to link lotteries in their clubs. Again this seems to impinge on societies' public lotteries (which, of course, the British Legion could and do run) and we believe that it would be

undesirable to allow such unrestrained growth in an unregulated system.

- 28.14 We recommend that the current restrictions on private lotteries should remain.

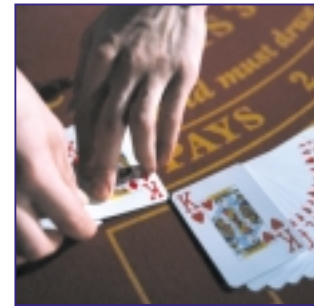
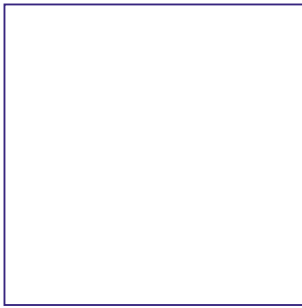
Societies' lotteries

- 28.15 Societies' lotteries are public lotteries which are (S.5, 1976 Act):
- promoted on behalf of a society which is established and conducted wholly or mainly for one or more of the following purposes, that is to say*
- (a) *charitable purposes;*
- (b) *participation in or support of athletic sports or games or cultural activities;*
- (c) *purposes which are not described in paragraph (a) or (b) above, but are neither purposes of private gain nor purposes of any commercial undertaking.*

- 28.16 We have noted earlier that lotteries are generally conducted only on behalf of good causes and not-for-profit organisations. We recognise that, in strict terms, this may not be compatible with sub-section (b) of section 5 set out above. Football, cricket and other sporting clubs, which are plainly commercial organisations, currently run societies' lotteries. We are uncomfortable with this and if we were starting with a fresh sheet, there is no doubt that we would want to define "good causes" more narrowly than section 5 of the 1976 Act. But, as in other areas we have considered, we are not starting from that happy position. We have to acknowledge that many smaller clubs may have come to rely on income from their lotteries, and we imagine that Parliament would find it difficult to justify closing off that avenue of income. Perhaps what is more important here is that the supporters who subscribe to such lotteries should be clear what the proceeds are used for. In the light of these considerations, **we recommend that "good causes" should be interpreted so as not to exclude the purposes currently set out in the 1976 Act.**

Local Authority Lotteries

- 28.17 The number of local authority lotteries has declined over the years. At 31 March 2000 there were only two local authority schemes registered with the Gaming Board and in the previous year only four lotteries were run under such registration. This may be due to a lack of interest on the part of local authorities, may be part of the ebb and flow of the fortunes of lotteries, or it may be that there is simply too much competition.



The Lotteries Council has suggested to us that the limit on expenses has driven local authorities out of the market.

- 28.18 We note that the Rothschild Commission³ was not keen on local authority lotteries:

None of us are enthusiastic about them and it would appear from the report of the public opinion survey we commissioned that the public has little real enthusiasm for them either. The fact that up till now some local authority lotteries have been successful has little relevance. In the main they have simply benefited from the new public interest in lotteries.

- 28.19 It may be that the lack of public enthusiasm the Rothchild Commission detected in 1978 is what lies behind the steady decline of local lotteries in the last few years. We have received no evidence relating to local authorities, and we wonder whether there could be a resurgence in their popularity, particularly if the market becomes even more competitive. Given the attractions of the National Lottery, we do have doubts that the fortunes of local authority lotteries will be revived. However, we recognise that those that do survive are for good causes (as broadly defined) and the only good reason for recommending their cessation would be administrative and legislative convenience. **We recommend that legislation should provide for the continuation of local authority lotteries, which should be registered with the Gambling Commission.**

External Lottery Managers

- 28.20 There are currently seven External Lottery Managers (ELMs) registered with the Gaming Board. ELMs are employed by societies and local authorities to run their lotteries and such persons have only been licensed since 1994. We have no evidence to suggest that there are any regulatory problems arising from the functions they carry out on behalf of charities. We would only make the point that, given the scope for the commercial exploitation of charities by individuals offering a service of this kind, it is important that their activities should continue to be carefully regulated. This comment is not intended to reflect on the integrity of those currently operating in this field, but simply to highlight the potential that there may be for abuse. **We recommend that legislation should continue to provide for the regulation of External Lottery Managers by the Gambling Commission.**

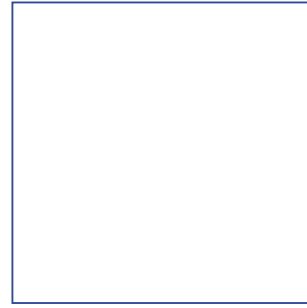
General issues

Age

- 28.21 We have discussed elsewhere our view of what should be the minimum age for gambling. It has been put to us by the Lotteries Council that the minimum age both for buying and selling lottery tickets should remain at 16. The majority of those who have commented on age limits take a different view that the minimum age for all gambling should be 18. That is also the line that Camelot has taken in its evidence to us. We are sympathetic to that view, but overriding that is our concern that charity lotteries should not be treated differently in this respect from the National Lottery. As set out in chapter 22, our recommendation is that the minimum age for buying and selling lottery tickets should be 18, but the age should only be increased if the change applies equally to the National Lottery.

Regulation

- 28.22 Under the 1976 Act, a society operating a lottery must be registered with a local authority or with the Gaming Board. As we discuss in chapter 19, we are recommending that there should be a fit and proper test for all gambling operators that is consistently applied. In pursuit of that, **we recommend that all societies wishing to promote societies' lotteries should register with the Gambling Commission, whatever the size of the proposed lottery.**
- 28.23 This recommendation may result in a large influx of work in the first year, though it is difficult to assess what the numbers might be. Our enquiries suggest that local authorities generally do not maintain any statistics about the societies they have registered. Moreover, whereas societies that register with the Gaming Board currently pay a fee on registration and a renewal fee every three years, societies registered with local authorities pay a fee each January to maintain their registration. So that the Gambling Commission is not overwhelmed with applications in the first year, some administrative action to extend registrations while applications are being processed may be necessary.
- 28.24 We do not believe that the primary legislation should be prescriptive about the conditions that the Gambling Commission must apply to every lottery or society. The regulator may, for example, conclude that returns do not have to be submitted for lotteries involving ticket sales up to a specific level, but they may be subject to random checks. What is more important is that the integrity of those operating lotteries is properly tested and that the Gambling Commission has the ability to investigate and take action in relation to any complaints, for example, of misappropriation.



Stakes, prizes and expenses

- 28.25** The price for a society lottery ticket must not exceed £1, and there is a limit on proceeds of £1 million for a single lottery or £5 million for all lotteries run by a society in a calendar year.
- 28.26** The limit on prizes is £25,000 for a single prize, or 10% of the proceeds whichever is higher. Not more than 55% of proceeds may be used for prizes. No more than 35% of proceeds may be used for expenses. The combined prizes and expenses limit is 80% of lottery proceeds, leaving at least 20% for the good cause.
- 28.27** Both Littlewoods and the Lotteries Council have told us that the 35% limit on expenses makes it very difficult for lottery operators to cope with their rising expenses. They have suggested that the overriding principle should be that no less than 20% of proceeds of the lottery should go to the beneficiary. The Gaming Board has no objection to this.
- 28.28** We have recommended that all lottery operators should be subject to a fit and proper test. In the light of that we have considered whether there would be any scope for abuse if we were to adopt an overriding principle that 20% of proceeds should go to the good cause, but otherwise abandon the existing limits. In its oral evidence to us, the Lotteries Council made the point that in charity lotteries the level of the prize is often unimportant: the player regards the stake as a donation and the prospect of winning is not a material consideration in the decision to buy a chance. That may suggest that there would be room for unscrupulous operators to maximise expenses and reduce prize levels without damaging the customer base. Provided that there is a requirement for expenses to be reasonable, and that the Gambling Commission can check this is so, we consider that this is not a serious danger. There are clear benefits to the operator of giving more flexibility in how proceeds are divided between expenses and prizes; and no detrimental effect on the proceeds to good causes.
We recommend that the limits on expenses and prizes as a percentage of proceeds should be removed, subject to an overriding requirement that no less than 20% of proceeds must go to the good cause.
- 28.29** In addition to this overriding principle, the Lotteries Council has asked for an increase in the maximum proceeds of a single lottery to £2m; and an increase in the value of the maximum single prize to £200,000. However, it suggested that the annual maximum of £5m for all lotteries promoted by a society should be retained, but index-linked. Littlewoods, on the other hand, suggested that the market should determine the level of (stakes and) prizes. The Gaming Board has

taken the view that limits on prizes are not necessary for societies' lotteries. We agree. **We recommend that the limits on the size of prizes and the maximum annual proceeds should be removed for societies' lotteries.**

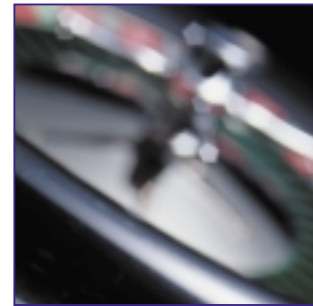
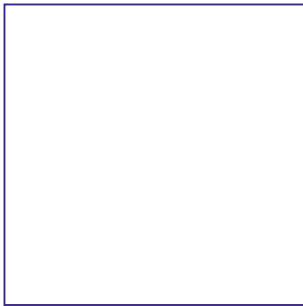
- 28.30** The price of individual chances must currently be no more than £1. The Woodland Trust⁴ made the point to us that many people are happy to spend £5 on a book of tickets and it would reduce costs if the value of each ticket could be up to £5. The Lotteries Council suggested that an increase to a maximum of £2 per chance would be appropriate.
- 28.31** We consider that what the market may stand would be better judged by each lottery operator. Those customers who regard buying a lottery ticket as a donation to charity may be happy to pay £10 for a ticket. Others may be more attracted by a book of 10 chances for the same price. Smaller lotteries might want to offer more modestly priced tickets and prizes. The important principle should be that the price of each chance in the same lottery should be the same.
We recommend that restrictions on the size of the stake in societies' lotteries should be removed, subject to the overriding principle that the price of every chance in the same lottery should be the same.

Rollovers

- 28.32** Both Littlewoods and the Lotteries Council ask for rollovers. Subject to the minimum of 20% of the proceeds of each lottery going to good causes, there seems little reason to object. **We recommend that rollovers should be permitted for societies' lotteries.** We note that this recommendation (and one on relaxing limits on stakes and prizes) was also made by the Culture, Media and Sport Committee of the House of Commons in March 2001⁵.

Geographical restrictions

- 28.33** Under section 2 of the 1976 Act, societies' lotteries are restricted to Great Britain, and lotteries registered or licensed in other countries may not be promoted in Great Britain. We are aware that other countries protect their lottery market in much the same way. For example, where national lotteries can be entered on the internet, there are usually controls to ensure that only residents/nationals can purchase tickets to ensure that the sales are limited to that territory and to appease neighbouring countries who want to protect their own market.
- 28.34** However, restricting sales to Great Britain prevents the promotion of societies' lotteries in Northern Ireland, the Channel Islands and the Isle of Man. That



restriction seems odd, particularly in relation to societies that may operate across the United Kingdom. Subject to the views of those territories, we consider that it would be right to remove the provisions restricting sales and promotion only to Great Britain. We note that the National Lottery operates across the United Kingdom – most recently extending to the Isle of Man in December 1999 – but that sales outside the UK are not permitted (with some exceptions for British Forces).

We recommend that societies' lotteries should be able to promote and sell chances throughout the same territory as the National Lottery.

- 28.35 The proceeds of such lotteries are used in the United Kingdom, although the focus of the charities that benefit may be in other parts of the world. We have noted that, as a matter of public policy, the UK takes steps to protect its lottery market and the same is true of other countries. This has the added benefit of making lotteries more easily regulated. We want to ensure that the UK lottery market is regulated and regulatable. **We recommend that societies' lotteries should not be promoted or sold outside the United Kingdom (with the exception of British Forces) and, that the law should continue to prohibit the promotion of overseas lotteries here.**

Sale of lottery tickets by machine and frequency of draws

- 28.36 The 1976 Act prevents the sale by machine of chances for societies' lotteries. There is no such restriction on private lotteries. Both the Lotteries Council and Littlewoods argue that terminals may be an ideal medium for dispensing lottery chances. On the face of it, this seems to be a reasonable request: the Act simply pre-dates the technology. But the decision is more complex than that. It is complicated by issues relating to the frequency of draws, the type of machine used and the location of machines. The consequences of vending by machine and of on-line lotteries can be looked at separately, but it is clear that their potential use also binds them together.
- 28.37 There are currently no limits on the number or frequency of lotteries that may be held. That was exposed by the activities of Pronto, which we discuss briefly below.

Pronto

- 28.38 Interlotto, an External Lottery Manager, started to run Pronto in 1997-98. It was a fast-draw on-line lottery designed to run in pubs. Each participating pub had a terminal, and there were draws every few minutes for

which customers could buy tickets from the bar staff. Customers could choose the numbers or have a 'lucky dip'. The amount they could win - up to £25,000 - depended on how many numbers they chose and how many came up in the draw. The results of each draw appeared on a large screen in the pub, and the pub paid out the smaller prizes over the bar.

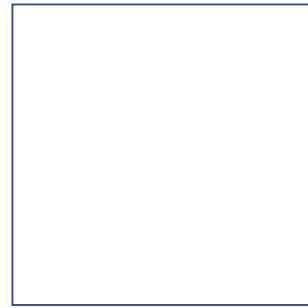
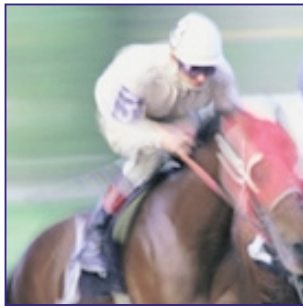
- 28.39 Pronto signed up several charities as beneficiaries. About 50% of receipts were paid in prizes and some 30% related to expenses, including payments to the pubs. The remaining 20% (of a potential £5m in annual ticket sales) went to charity.
- 28.40 The Government objected to the scheme. They recognised that on-line lottery draws of this kind presented several hard gambling features. There were rapid draws and opportunities for repeat play every few minutes, no limit on entries, a continuous sequence of draws throughout the day, and there were immediate payouts.
- 28.41 The Home Office published a consultation document in January 1998 on a draft Lotteries (Frequent Draws) Bill, to "prevent repetitive, frequent on-line lottery games". The Bill would have limited the frequency of on-line draws in societies and local authority lotteries to one a day in particular premises. Ministers announced in July 1998 that they would go ahead with the Bill at an early legislative opportunity. Pronto collapsed soon afterwards and the Bill was not taken forward.

Frequency

- 28.42 We share the concerns expressed by the Home Office in its consultation paper about the problems that rapid draws could create. Our reservations may be increased if lotteries remain available to 16 and 17 year-olds, for whom the attraction of repetitive play may be more crucial. We do not believe that permitting only one on-line draw a day would have an adverse impact on the established lottery market. We do accept that it would impede the growth of the on-line market, but gradual change of this kind is in keeping with our general wish to proceed carefully.
- 28.43 We acknowledge that a daily draw would be more frequent than the National Lottery, but these are draws restricted to particular premises and we do not anticipate that they will achieve a similar scale. **We recommend that the frequency of on-line draws should be restricted to one a day in any particular premises.**

Location of on-line terminals

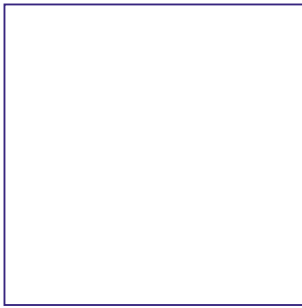
- 28.44 We have set out elsewhere our view that, in general, gambling should be restricted to premises where



gambling is the principle purpose. We recognise that societies' lotteries are an exception to this, because of the wide variety of places where tickets are already sold. We have said that we do not favour extending the gambling opportunities available in pubs and we have to acknowledge that lottery chances are already lawfully sold there. The Home Office consultation paper noted that this practice does not give rise to concern and, therefore, it ruled out making a regulation banning the sale of society and lottery tickets in premises selling alcohol. The Home Office also expressed concern at the prospect of on-line lottery draws operating in places such as airport lounges, railway stations, shops and cafes. The Home Office concluded that the balance lay in permitting on-line draws in any premises, but restricting their frequency to prevent players gambling excessively and chasing losses. **In the light of the proposed controls on the frequency of draws, we agree that it is not necessary to restrict the premises in which on-line terminals for the sale of individual chances may be provided.**

Vending chances by machine

- 28.45 There is no restriction on the sale of private lottery tickets by machine. We understand that such machines do currently exist in some private clubs. It is clear that the 1976 Act did not envisage the use of machines, since the expenses of private lotteries can relate only to printing and stationery. Where machines of this kind are being used, to remain within the law the club will have had to buy or rent the machine from club profits and provide it free for the sale of lottery tickets. The lesson here is that if something is undesirable, the law must rule it out unequivocally.
- 28.46 Societies' lotteries chances cannot be sold by machine: there must be human intervention. What would be permitted under the current law would be for a player to buy a smartcard (which holds data on whether it is a winner) from, say, the bar in a pub and to play it on a machine which would disclose whether it was a winner. The machine would have the appearance of a gaming machine, but because the element of chance is provided elsewhere than the machine on which the person is playing, that machine is not caught by Part III of the 1968 Act.
- 28.47 Permitting vending by machine could mean that machines of the kind described above (without the smartcard) could proliferate in pubs and other venues. These "automated lotteries" have more to do with gaming machines than they do with lotteries, and they would have the same attraction as gaming machines. Elsewhere we have set out our proposals to ensure that gambling opportunities are restricted in pubs and other non-gambling specific venues, and we are keen
- to ensure that there are not loopholes that would quickly undermine the principles on which we have tried to build.
- 28.48 Vending tickets by machine also raises other questions about maintaining the integrity of age controls and changing the nature of the gambling in such a way that removes any justification for a lower minimum age of 16. The Lotteries Council and others are keen to exploit new technology and, in principle, we would be happy to see them do that. But it must not be in a way that circumvents other restrictions designed to protect the vulnerable. As the Home Office noted in its 1998 consultation paper, *"the benefits to individual charities cannot be the overriding consideration in determining the controls necessary over gambling"*.
- 28.49 We hope that there is a balance to be found here. We would be content to see National Lottery-type terminals in pubs and elsewhere and for society lottery chances to be sold on the internet and interactive TV. But we are unhappy at the prospect of machines being placed in pubs (in addition to their two all-cash machines) that would, to the customer, look like rapid-play gaming machines. A restriction on the frequency of on-line draws may not affect such machines, as machine sales would still allow the downloading of large numbers of pre-determined lottery chances once a day in the manner of automated scratchcards.
- 28.50 We know from experience in some US states that a wide definition of a lottery, together with no restrictions on sales by machine, has resulted in large numbers of so-called Video Lottery Terminals (which are in reality gaming machines) being sited in all sorts of premises, including convenience stores. We would not want that situation to develop in the UK.
- 28.51 As far as the internet and inter-active TV sales are concerned, we are satisfied that adequate controls could be put in place to regulate societies' lotteries sales. The Gambling Commission will be regulating on-line gambling sites and will be registering the society. The basic controls should include a requirement to register players, to ensure that those under-age are not playing, and to have measures in place that prevent excessive play by individuals. **We recommend that the selling of individual lottery chances by machine or on-line (as opposed to what amounts to gaming for good causes) should be permitted, subject to regulation by the Gambling Commission.**
- 28.52 Any interactive or electronic lottery play that is not the straight sale of a ticket will look, to the layman, like gaming (whether on a gaming machine in a pub or club, or virtual gaming on the internet). We believe that it



will be essential for such activity to be subject to the same approval and regulation as gaming machines and virtual gaming. The only real difference between the two is that the proceeds of the lottery games go to good causes rather than for commercial profit.

We recommend that the Gambling Commission should approve interactive lottery games in the same way as other virtual gaming and should approve lottery gaming machines, with the proviso that they should be permitted only in premises where gaming machines may be sited, and are instead of not in addition to any entitlement to such machines.

Processing of returned tickets

- 28.53 One other issue mentioned to us by the Lotteries Council is that the Gaming Board's rules on record keeping should be relaxed. We consider that this is an administrative detail, which should be left to the Gambling Commission to determine in due course.

Prize Competitions and Commercial Lotteries

- 28.54 We have considered whether commercial lotteries should be permitted. They could, in theory, operate in the same manner and compete with charitable lotteries, including the National Lottery. Although there are no grounds, under our general principles, for banning them, we recognise that, as a matter of public policy, lotteries are reserved for good causes, broadly defined. We do not wish to challenge that policy.
- 28.55 Other examples of commercial lotteries involve the use of expensive phone lines: these run only for the profit of the operator. We discuss these in more detail later in this chapter. In brief, we believe that a distinction should be made between such lotteries and promotional competitions, or prize competitions that genuinely involve skill. **We recommend that commercial lotteries should not be permitted.**
- 28.56 Prize competitions are currently defined in section 14 of the 1976 Act:

(1) it shall be unlawful to conduct in or through any newspaper, or in connection with any trade or business or the sale of any article to the public –

(a) any competition in which prizes are offered for forecasts of the result either –

(i) of a future event; or

(ii) of a past event the result of which is not yet ascertained, or not yet generally known;

(b) any other competition in which success does not depend to a substantial degree on the exercise of skill.

- 28.57 Subsection (1)(b) causes particular problems. It is used as a somewhat flimsy figleaf to conceal what are, in effect, lotteries in all but name. The exercise of skill required can be utterly trivial. "What is the capital of France?" would be a particularly challenging example. Success depends, in practice, on luck in being picked from the large number of people with the right answer.

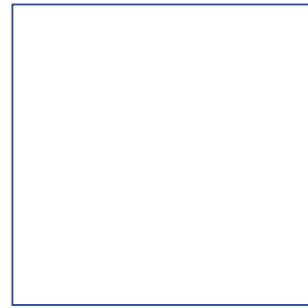
- 28.58 As we have made clear in paragraph 28.5, we do not think that it is helpful to prolong arguments of this kind. Lotteries are generally the preserve of good causes, but that does not mean that other activities, such as prize competitions or promotional draws, should not exist alongside them. The Lotteries Council, and others, are concerned about the proliferation of such competitions on the grounds that it blurs the distinction between games of chance for charity and games for commercial gain. Although their concern to preserve the good reputation of lotteries is understandable, it is difficult to imagine that "illegal lotteries" really do have a detrimental effect on charitable income. Do customers choose between – or even make a connection between – buying a charity lottery ticket and making a premium rate phone call?

- 28.59 In its Code of Practice ICSTIS currently identifies five kinds of telephone competition services: lotteries; competitions; other games with prizes; entry mechanisms into a draw; and services offering information about prizes. Competition services form about one third of the UK's £280million per year premium rate industry.

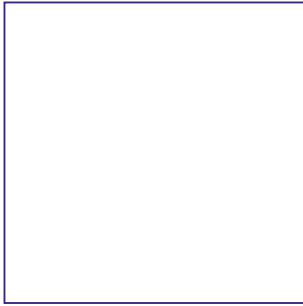
- 28.60 More generally, there are possibly four main types of competitions that may involve a draw:

- promotional competitions linked to a product (price of a stamp or cheap phone call to enter)
- competitions which, for example, are linked to TV and radio programmes. Some are entered using cheap calls or entry by post, and some involve premium lines. The latter are means of paying for the prizes offered in the show and in the competition
- skill competitions, such as crossword or chess competitions, which may involve a draw to identify a winner from a large number of eligible entries
- competitions run principally for commercial gain, most usually using premium lines advertised in magazines and in direct mail shots.

We address each of these categories below.



- 28.61 Promotional competitions.** We understand that in New Zealand it is now legal to operate “promotional lotteries” provided that the customer has to pay no more for the product than he would without the offer. In similar circumstances in the UK, the operator has to demonstrate the “free” nature of the competition by ensuring that entries can also be made without a purchase. In reality few people take up the “no purchase necessary” option and this itself throws doubt on whether the competitions are really free. **We recommend that the New Zealand model should be adopted here, for what we would prefer to call promotional draws or competitions, rather than lotteries.**
- 28.62 Competitions which, for example, are linked to TV and radio programmes.** Such competitions are very popular and we see no grounds to ban them. What is more important is that the real cost of entering so-called free competitions should be transparent. We believe that the key element of a prize competition or draw should be that entry is genuinely free (as with the New Zealand promotional competitions) or that the cost of entry is minimal. We have discussed what “minimal” should mean in today’s currency. We note that the cost of premium rate calls can be reasonably low: we have seen examples of 25p calls of which 15p has been for charity. That suggests that there is a great deal of profit to be made from more expensive lines.
- 28.63** The experience of the 1976 Act is that the courts have not regarded the cost of postage as a significant factor in “free” competitions. That suggests that a call cost of 50p might currently be regarded as minimal. At the top end of the scale we would suggest that a total cost of more than £1 per call could not be described as minimal. Given the analogy of the postage stamp, a link to the cost of a stamp might be a good measure for determining the cost of what would be reasonable for a premium-rate competition. Accepting that phone calls may be more expensive than postage, twice the first class rate could be appropriate: that would currently result in a cost of no more than 54p. **We recommend that the cost of premium-rate competitions should be minimal, possibly linking the maximum cost to no more than twice the cost of a first class stamp.** The Gambling Commission should keep the limits under review.
- 28.64** We recognise that some people may choose to maximise their chances by making a large number of telephone calls to the same competition line. It would be wrong to try to restrict the freedom to do that: it is akin to buying more than one lottery ticket. We do note with concern that considerable debts could be incurred as a result of repeated calls. That perhaps reinforces the desirability of maintaining a minimal entry fee.
- 28.65 Skill competitions.** As set out earlier, the reference to “skill” in the 1976 Act tends to cause some confusion. **We recommend that there should be a category of prize competition that involves “the exercise of a substantial degree of skill”, which may at some point in the competition involve a draw.** The entry fee for such competitions need not be minimal, in the same way as other prize competitions, not involving skill.
- 28.66** In the context of skill competitions, our attention has been drawn to another sub-section of section 14 to the 1976 Act. This relates to competitions involving prizes for forecasting future events. It is arguable whether such competitions would amount to betting: bookmakers would no doubt say that they do. Associated Newspapers’ have suggested to us that newspapers should be able to run competitions won on the results of future events such as the Grand National. As their evidence points out, newspapers are able to run competitions to forecast share prices at a particular date on the basis that this is not a specific event, but is the aggregate of a larger number of events. We accept that this is anomalous. We assume that the object of this section was to try to maintain a distinction between lotteries and betting. In the light of our recommendations on prize competitions, we think that this would be difficult to sustain. **We recommend that the restrictions in section 14(1)(a) of the 1976 Act should be removed.** Competitions involving forecasting would, of course, be subject to the requirements governing skill competitions.
- 28.67 Competitions run principally for commercial gain.** This is the category in which there is most scope for abuse. The cost of a premium-rate call can be very high and a “guaranteed prize” relatively worthless or non-existent. It is interesting that ICSTIS has told us that complaints about competition services have been a significant proportion of all complaints received by them in the last four years, and that the majority of those complaints “can be attributed to a string of similar services connected by the identity of the individual concerned in operating them”.
- 28.68** The Metropolitan Police⁸ told us of a fraud involving premium rate calls costing £9 for the chance to win a top prize of a BMW and several thousand other prizes of mobile phones. Anyone winning a mobile phone was obliged to sign up to an expensive tariff and high call costs to make any use of the prize. What worried the police most about the competition was that the operator had established the premium rate service by providing nothing more than a mobile phone number and an accommodation address.



28.69 We consider that such competitions amount to commercial lotteries. It would be very odd to allow competitions of this kind to continue, having recognised that the public policy is to reserve lotteries for good causes. Moreover, we are recommending that the restrictions that currently exist to protect the lottery market should be preserved (for example, preventing the promotion of overseas lotteries in Great Britain). In

this context, we have noted that it is frequently reported that many of the “lottery scams” to which people fall prey originate from outside the UK. **We recommend that prize draws that are run only for commercial profit should be prohibited.** We recognise that enforcing such a ban may not be easy, but it would greatly assist the enforcement agencies to have the law clarified in this way.