

CHARITY LOTTERIES PAST AND PRESENT

Peter Luxton¹

A. Introduction

Under English law, a lottery is a scheme for distributing prizes by lot or chance. If skill can enhance the chances of success, the scheme cannot be a lottery.² It may, however, be subject to other statutory provisions: those, for instance, governing prize competitions.³ The current legislation governing lotteries is contained in the Lotteries and Amusements Act 1976, which consolidates provisions previously contained in the Betting, Gaming and Lotteries Act 1963. The present Act has already been the subject of amendment at different times. For present purposes, the relevant amendments have been those of the monetary limits.⁴

Lotteries permitted by the Act are: small lotteries incidental to exempt entertainments,⁵ private lotteries,⁶ societies' lotteries⁷ and local lotteries.⁸ A private lottery is one confined to members of a society or to persons who all work

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² See further, Picarda, *The Law and Practice Relating to Charities*, 1977, pp. 477-482.

³ Lotteries and Amusements Act 1976 (hereafter LAA 1976) s.14.

⁴ Lotteries (Variation of Monetary Limits) Order 1981, SI 1981 No 110 (hereafter L(VML)O 1981); and SI 1989 No 1218.

⁵ LAA 1976 s.3.

⁶ *Ibid*, s.4.

⁷ *Ibid*, s.5.

⁸ *Ibid*, s.6.

or reside in the same premises.⁹ A local lottery is one promoted by a local authority. The type of most importance to charities, however, is the societies' lottery.

When enacted, the National Lottery, etc., Bill (which was introduced in the House of Commons in December 1992, and received its Third Reading in the House of Lords on 23rd July 1993¹⁰) will affect charities in various ways. First, it introduces the National Lottery which, while it may have an impact (as yet difficult to predict)¹¹ upon existing giving to charity, will itself provide an additional direct source of funding for charities. Secondly, the Bill proposes significant changes to the present law governing (inter alia) societies' lotteries.¹² The Bill is expected to complete its stages in the House of Commons and to receive the Royal Assent in October or November 1993.

This paper examines these developments, but seeks first to put them into context by outlining the history of lots and lotteries.

B. Lots and Lotteries of Antiquity

The casting of lots has a long history which can be traced back to the ancient Egyptians and Assyrians.¹³ The Bible contains many references to the drawing of lots: in connection with the deciding of disputes,¹⁴ the division of land;¹⁵ and even the selection of Matthias as an apostle.¹⁶ The Romans drew lots for numerous

⁹ Ibid, s.4(1).

¹⁰ *Parliamentary Debates*, House of Lords, 23rd July 1993, cols 903-921.

¹¹ See the debate at the Second Reading of the National Lottery, etc., Bill (hereafter NLB), *Parliamentary Debates*, House of Commons, 25th January 1993 (hereafter Second Reading), cols. 726-727, 735, 756 and 770.

¹² The NLB also proposes essentially parallel changes to local lotteries; but these are not considered in this paper.

¹³ For much of the historical material, I have drawn upon John Ashton's *A History of English Lotteries, now for the first time written*, Leadenhall Press Ltd, London 1893. For pointing me to the Roman sources, I am extremely grateful to Hubert Picarda QC.

¹⁴ Prov xviii, 18.

¹⁵ Numb xxvi, 55, 56.

¹⁶ Acts i, 26.

purposes. In public life, these included: the division of praetor's duties; the choosing of judges,¹⁷ juries,¹⁸ and proconsuls;¹⁹ the allocation of particular duties from amongst the senators;²⁰ and the assignment of provinces. Lots were used in the partitioning of land;²¹ and, in certain instances, in the division of the property of a testator.²² One of the Vestal Virgins was chosen by lot.²³ Less attractive Roman uses for lots included determining which of the survivors of a defeated

¹⁷ Thus Gaius Suetonius, *The Twelve Caesars* (translated by Robert Graves, The Folio Society, 1957, p.15) records that Julius Caesar was chosen by lot to try Rabinius for high treason, and that magistrates were annually chosen by lot: *ibid* p.68.

¹⁸ The casting of lots for jury service took place in the Forum: Suetonius, *ibid*, p.68.

¹⁹ Suetonius, *op. cit.*, p.79.

²⁰ Caesar Augustus provided that no member of senate need attend during September or October "apart from the few whose names were drawn by lot to provide a forum for the passing of decrees. He also arranged that privy councillors should be chosen by lot every six months, their duty being to study the drafts of bills." (Suetonius, *op. cit.*, p.72).

²¹ Suetonius, *op. cit.*, p.19, states that, as Consul, Julius Caesar partitioned agricultural districts in Campania "among fathers of three or more children...instead of letting them draw the customary lots."

²² *Justinian's Institutes*, Book II, title 20, s.23, which principle was applied in *Re Knapton* [1941] Ch 428. As to the legality in modern times of disposing of one's house by lottery, see R.G. Lawson "Raffling your home", (1991) 141 NLJ 1741. Sales by lot are void: Gaming Act 1738 s.4, amended by Betting and Lotteries Act 1964 ss.32, 33, Sch 2; "but joint tenants and tenants in common and part owners of real property can validly divide their property by lot, and obtain a good title thereby": *Halsbury's Laws*, vol.4(1) (1992), para 152, referring to *O'Connor v Bradshaw* (1850) 5 Ex 882.

²³ Suetonius, *op.cit.*, p.69 "[M]any citizens busily tried to keep their daughters' names off the list of candidates...." (*ibid*).

enemy should be spared,²⁴ or which of the members of a company that had broken ranks should be executed.²⁵ Lots were also used to decide the order in which persons at a dinner party should propose toasts,²⁶ and who should be the master of ceremonies.²⁷

The Romans also had something akin to a lottery:

"First of all were the *Apophereta*, gifts which were presented to the guests at table, and which they carried home with them - a custom which obtained during the Saturnalia...; and this was sometimes done in a whimsical manner, as is on record that Heliogobalus, at a banquet, presented one guest with a ticket for a gold vase, and another for six flies. Other prizes, which were drawn haphazard, were ten bears, ten pounds of gold, or ten ostriches; and, whilst one might draw a thousand pounds, another would gain a prize of a dead dog."²⁸

Of Caesar Augustus, Suetonius remarks:

"He used also at a dinner party to put up for auction lottery-tickets for articles of most unequal value, and paintings of which only the back was shown, thus by the caprice of fortune disappointing or fulfilling the expectation of the purchasers, requiring however that all the guests should take part in the bidding and share the loss or gain."²⁹

C. Lotteries in the Last Four Centuries

²⁴ After the battle of Philippi, a father and son pleaded for clemency. Augustus told them "to decide which of the two should be spared, by casting lots": Suetonius, *op. cit.*, p.58.

²⁵ *Ibid*, p.64.

²⁶ Ovid, *Ars Amatoria* (Loeb ed.), 581.

²⁷ *Arbiter bibendi*.

²⁸ Ashton, *op. cit.*, p.3.

²⁹ Suetonius, *The Lives of the Caesars*, Book II, LXXV. Hubert Picarda has pointed out to me that, although the lottery as a form of gambling is traditionally considered to be a relatively modern invention, this quotation indicates that it dates back to ancient Rome.

Leaving the ancient world, we do not find the lottery used again as a form of gambling until sixteenth-century Italy. The drawing of lots did, however, feature in medieval English law as a means of allocating land, and a few instances have survived into modern times.³⁰ Private lotteries were permissible with the authority of the Crown.³¹ The surplus of the earliest recorded English lottery, organised under the auspices of the Crown and drawn in 1569, was to be applied "towardses the reparation of the havens and strength of the Realm, and towardses other publique good workes." The first prize was of £5,000, payable in the form of £3,000 ready money, £700 in plate gilt and white, the rest in good tapisserie, "meete for hangings, and other covertures, and certain sortes of good linen cloth." There were numerous other prizes, the smallest being 9,418 prizes of 14 shillings in money. Subscriptions were recorded, not in the ticket holders' names, but by means of mottoes or verses which were required to be submitted. Holinshed records that the lottery was begun to be drawn in St Paul's churchyard, at the west door on 11th January 1569, and continued day and night until 6th May.

The next recorded public lottery was for the plantation of English colonies in Virginia in 1612.³² Water schemes in London were a common object of seventeenth-century lotteries. In 1627 and 1631, licences were granted to raise money by means of a lottery to enable water to be conveyed to London by a covered aqueduct.³³ Under the earlier scheme, the Crown was to receive a rent of £4,000 per annum. In 1660, there was a successful petition by one Captain Thomas Gardiner for a three years' lottery to ransom English slaves in Tunis, Algiers or the Turkish galleys, "or for any other charitable use".³⁴

The private lotteries were licensed by the Master of the Revels, and Ashton records that there were never more than eight of them at any time. Many were granted at a rent for a term of years; and the reversioners could sell their unexpired terms. In the years following the Restoration, the size of the profits obtainable from lotteries was appreciating. In 1667, a warrant was issued giving the Marquis of Blanquefort and George Hamilton the sole licence for all sorts of lotteries in England and Ireland and the plantations for seven years.

³⁰ See F.E. Farrer, "A Moveable Fee Simple, Lot Meadows" (1936) 1 *Conv* (N.S.) 53.

³¹ What follows in the rest of this section draws heavily upon Ashton, *op.cit.* See also Holdsworth, *A History of English Law*, vol 4, pp. 306, 307; vol 6, p.404; vol 11, pp. 539-543 and vol 13, p.391.

³² Ashton, *op.cit.*, p.28.

³³ *Ibid*, pp. 29-30.

³⁴ *Ibid*, p.32.

A series of statutes in the eighteenth century sought to eliminate private lotteries by deeming them to be illegal;³⁵ but these measures appear to have been largely ineffective. Ashton records that a fraud took place in regard to the drawing of a private lottery called Cox's Museum Lottery.³⁶ In 1775, a man was charged with attempting to bribe a couple of Blue-coat boys who drew the tickets out of two large wheels.³⁷ As a result of this, the Lords of the Treasury issued an Order which required that in future

"every boy, before he is suffered to put his hand into either wheel, be brought by the proclaimer to the manager on duty, for them to see that the bosoms and sleeves of his coat be closely buttoned, his pockets sewed up, and his hands examined; and that, during the time of his being on duty, he shall keep his left hand in his girdle behind him, and his right hand open, with his fingers extended."

Lotteries of numerous forms proliferated in the latter part of the eighteenth century: there were (inter alia) lottery barbers, lottery shoe-blacks, lottery eating houses, and lottery oyster stalls. There were even lottery sausages.³⁸ Although private lotteries were still illegal, an Act of Parliament of 1782³⁹ obliged lottery office-keepers to purchase licences for £50.

D. A Brief History of State Lotteries

For centuries, until its abolition in 1826, the national lottery had been an important British institution.⁴⁰ Direct State involvement in lotteries began in 1694, when a statute⁴¹ authorised a loan of one million pounds sterling to be raised by lottery in shares of £10 each. The contributors were to be entitled to annuities for sixteen years charged on a yearly fund appropriated out of certain salt and beer duties. Holders of the blanks received ten per cent. Holders of the 2,500 prize tickets received a larger payment.

³⁵ See statutes of 1718 (5 Geo I, c.9, s.43) 1721 (8 Geo I, c.2, s.8) and 1739 (12 Geo II, c.28, s.1).

³⁶ Authorised by Act of Parliament: 13 Geo III, c.41.

³⁷ Ashton, *op.cit.*, p.79.

³⁸ *Ibid*, pp. 88-89.

³⁹ 22 Geo III, c.14.

⁴⁰ Again, my main source is Ashton, *op.cit.*

⁴¹ 5 Will & Mary, c.7.

For a short time at the turn of the century, lotteries were suppressed⁴² on the ground that they led to fraud and the impoverishment of many families, and were a public nuisance. By 1710, however, statute authorised the raising of another loan by means of a lottery; and other State lotteries followed in the next few years. The State lotteries then flourished until 1726, when there was a loss to the Exchequer through unsold tickets, and they do not reappear until 1731.⁴³ A lottery⁴⁴ drawn in 1740, applied its surplus for the building of the first bridge over the Thames in lieu of the old ferry.⁴⁵ Annual State lotteries took place throughout the 1740s. By a statute of 1753,⁴⁶ the nation purchased the library and collection of Sir Hans Sloane and incorporated it with other libraries to form the nucleus of the British Museum. By the same statute, a lottery was authorised to raise funds for a building to house the collections.⁴⁷

From 1783, State lotteries ceased to be connected with loans. In the Lottery Act of 1793,⁴⁸ an attempt was made to eradicate the custom of insuring lottery tickets, which was possible because of the ease with which access could be obtained to the Guildhall, where the lotteries were drawn, in order to take down the numbers of the tickets as they came out of the wheel.⁴⁹ The Act made provision for seats near the wheel to be occupied only by authorised clerks.⁵⁰ By this measure, and that contained in the Act of 1802,⁵¹ which reduced the period of drawing to eight days from the usual forty-two, the volume of illegal insurances appears to have diminished.⁵²

Criticisms of the annual national lotteries, however, based on evidence of the ruin of individuals who had gambled excessively on them, grew in the early nineteenth century. A Committee of the House of Commons appointed to inquire into the

⁴² 10 & 11 Will III, c.17.

⁴³ 4 Geo III, c.9.

⁴⁴ See 12 Geo II, c.33.

⁴⁵ Ashton, *op.cit.*, pp.63-66. The name survives in Horseferry Road.

⁴⁶ 26 Geo II, c.22.

⁴⁷ Ashton, *op.cit.*, p.69.

⁴⁸ 33 Geo III, c.62.

⁴⁹ Ashton, *op.cit.*, pp. 120, 122-123.

⁵⁰ *Ibid*, pp. 123-125.

⁵¹ 42 Geo III, c.54.

⁵² Ashton, *op.cit.*, pp. 130-131.

evils of attending lotteries resolved in 1808 that the State lotteries should be reduced to two per year, and the number of tickets sold limited to 30,000. The Committee adduced evidence of the serious evils of lotteries, including the ruin of individuals who had gambled on them. There were further protests during the passage of the Lottery Act of 1818;⁵³ and, the following year, resolutions were moved in the House of Commons which inveighed against the authorisation of State lotteries. Although the resolutions were lost, it was clear that the days of lotteries were numbered. The Lottery Act of 1823⁵⁴ made provision for its discontinuance thereafter; and the last State lottery in England took place in 1826, its final drawings being completed that year by half-past six in the evening of 18th October.

E. Present Moves Towards a National Lottery

Britain is now the only country in western Europe without a national lottery - even Albania introduced one recently,⁵⁵ and they were also held (until reunification) in the German Democratic Republic. Overseas lotteries generally offer huge payouts to successful punters. Well-known examples of these are to be found in Australia, the USA, Spain (famous for "El Gordo" - "The Fat One"), France and Turkey. State lotteries have also been used to fund prestige projects, such as the construction of Sydney Opera House.⁵⁶

1. The abortive NHS Lottery Scheme

An unsuccessful attempt to exploit an apparent loophole in the law in order to run a national lottery with big prizes was made in 1988 when it was planned to introduce a national lottery with prizes of up to £200,000 for the benefit of the National Health Service.⁵⁷ It was proposed to run the scheme as a series of linked lotteries: a stake of £1 represented a one penny stake in each of one hundred lotteries which were to be run simultaneously. A winning ticket would thereby win in all of the lotteries - hence a top prize one hundred times the maximum permitted under the Act without Gaming Board permission.⁵⁸ The Gaming Board,

⁵³ 58 Geo III, c.71.

⁵⁴ 4 Geo IV, c.60.

⁵⁵ See address by Robert Key, Parliamentary Under-Secretary of State for National Heritage, to the CAF Annual Conference, 30th October 1992.

⁵⁶ See entry "Lottery" in *Encyclopedia Britannica*, 15th ed., vol 11, p.113.

⁵⁷ See further, Luxton, *Charity Fund-raising and the Public Interest*, Avebury, 1990, pp. 105-6.

⁵⁸ I.e., £2,000 under LAA 1976 s.11(5).

however, lodged a complaint with the Director of Public Prosecutions. This led to the withdrawal of the scheme, and the money already contributed was returned to the entrants. Shortly after, the illegality of such schemes was clarified by statutory instrument.⁵⁹

2. The Treaty of Rome⁶⁰

A further potential problem arises from Britain's membership of the European Community. At present, our domestic legislation makes illegal all lotteries not within the exemptions of the 1976 Act. This means that overseas lotteries may not be promoted here.⁶¹ Earlier this century, the celebrated legal historian, Sir William Holdsworth, wrote: "As was said in debate in 1783, and as we now all know, if there was no English lottery, the people would gamble on an Irish, a Dutch, or a French lottery."⁶² Opportunities for such gambling today seem to be growing. At present British customs officials seize lottery tickets discovered to be imported from abroad (even from other member states of the EC) for sale in this country. Most of Britain's partners in the EC have similar prohibitions on overseas lotteries. Such prohibitions may, however, be contrary to the Treaty of Rome, in that they may breach the articles which guarantee, within the common market, free movement of goods,⁶³ freedom of establishment,⁶⁴ and freedom in the provision of services.⁶⁵ There are, however, some derogations from these basic guarantees, including public policy (which is little used and appears never to have been relied upon successfully) and public morality.⁶⁶ Even if Britain might formerly have successfully relied upon the public morality derogation, such reliance would now surely be undermined by the introduction of the National Lottery.

⁵⁹ Lotteries Regulations 1977, SI 1977 No 256, reg. 13 (added by SI 1988 No 2161).

⁶⁰ EEC Treaty 1957. I am grateful to my colleague, Josephine Steiner, for her comments on this part of the paper.

⁶¹ See the general lottery offences in LAA 1976 s.2(1), in particular s.2(1)(d) and (e).

⁶² Holdsworth, *A History of English Law*, (3rd ed., 1945) vol 4, p.543, note 1, referring to Parl, Hist. xxiii, 783

⁶³ EEC Treaty 1957 art 30.

⁶⁴ *Ibid*, art 52.

⁶⁵ *Ibid*, art 59.

⁶⁶ *Ibid*, art 36.

The position, however, remains unclear. In its recent White Paper,⁶⁷ the government took the view that the existing legislation is compatible with EC law. Nevertheless, the possibility that Britain might be unable to prevent the sale of foreign lottery tickets here was no doubt a spur to the introduction of the present National Lottery Bill. The exact legal position may, however, be determined later this year, when the European Court is due to hear a case brought by a German father and son against the seizure by British customs officers of 40,000 tickets from the South German Lottery that were sent through the post in 1990.⁶⁸

The White Paper pointed out, however, that even if the British prohibitions are maintained, they will become increasingly difficult to enforce.⁶⁹ The White Paper also noted that, even setting EC law aside, modern technology - satellite broadcasting and cheaper foreign telephone calls - makes it increasingly difficult to prevent British participation in foreign lotteries.⁷⁰ These considerations, together with the current study by the European Commission of the law relating to gambling, have no doubt been contributory factors to the present moves towards the introduction of the National Lottery.

F. Charities and the National Lottery

The National Lottery, etc., Bill creates the post of Director General of the National Lottery, the occupant of which will be appointed by the Secretary of State.⁷¹ The Director General is empowered to grant a licence to a body corporate to run the National Lottery,⁷² and to grant licences to bodies corporate to promote lotteries as part of the National Lottery.⁷³ Tickets in the National Lottery will be subject to tax at the rate (in the first year of operation) of 12%.⁷⁴ The Bill also provides for

⁶⁷ See White Paper, *A National Lottery: raising money for good causes*, (March 1992) Cm. 1861, para 8.

⁶⁸ See Bates, "Big prize draws could sink UK lottery after Euro-court plea", *The Guardian*, 8th March 1993, p.5d.

⁶⁹ White Paper, *supra*, para 9.

⁷⁰ *Ibid*, para 10.

⁷¹ NLB, cl.3 and Sch 2.

⁷² *Ibid*, cl 5.

⁷³ *Ibid*, cl 6.

⁷⁴ This was announced by the then Chancellor of the Exchequer, Norman Lamont, in his Budget Statement to the House of Commons, 16th March 1993.

the creation of the National Lottery Distribution Fund (the Fund).⁷⁵ After administrative expenses, the balance of the Fund is to be allocated to each of the following categories: 20% each to arts, sports, the national heritage, charities, and projects to mark the year 2000 and the third millennium.⁷⁶ The aim is to have the National Lottery in operation in 1994.⁷⁷

The Bill will also set up a body corporate to be known as the National Lottery Charities Board (the Board).⁷⁸ The Board will distribute that part of the Fund allocated for charitable expenditure.⁷⁹ The Board is to comprise a chairman and sixteen other members, all of whom are to be appointed by the Secretary of State.⁸⁰ The Board is therefore likely to comprise persons with a range of experiences in various walks of life. It will be able to co-opt expert but non-executive advisers,⁸¹ as well as employ staff.⁸² The Board is to establish four committees to exercise its functions in relation to applications by charities for grants in respect of appropriate activities in England, Scotland, Wales and Northern Ireland respectively.⁸³ It is important to note that "charities" for these purposes includes, not merely institutions which are established for charitable purposes in law, but also institutions established for benevolent or philanthropic purposes.⁸⁴ "Charitable expenditure" has a similarly extended meaning.⁸⁵ The Board is to be empowered to make grants for meeting the expenditure of such charities,⁸⁶ and it may make a grant subject to conditions, including conditions requiring repayment on breach of any condition.⁸⁷

⁷⁵ NLB, cl.19.

⁷⁶ *Ibid*, cl 20.

⁷⁷ See address by Robert Key, note 54 *supra*.

⁷⁸ NLB, cl.32, and Sch 5.

⁷⁹ *Ibid*, cl 21(4).

⁸⁰ *Ibid*, Sch 5, para 1(1).

⁸¹ See Peter Brooke, Second Reading, col 726.

⁸² NLB, Sch 5, para 4.

⁸³ *Ibid*, Sch 5, para 5(1).

⁸⁴ *Ibid*, Sch 5, para 5(2), referring to definitions in cl 40.

⁸⁵ *Ibid*, cl 40.

⁸⁶ *Ibid*, cl 33(1).

⁸⁷ *Ibid*, cl 33(2).

The government recognised that, to the extent that existing small lotteries are likely to suffer from the National Lottery, it might be necessary to make some changes to the existing controls to which they are subject.⁸⁸ This is provided for in Part III of the Bill which (inter alia) amends the law relating to societies' lotteries. Furthermore, tickets in societies' lotteries will not be subject to the tax which is to be levied on tickets sold in the National Lottery.⁸⁹

G. Societies' Lotteries

A society's lottery⁹⁰ is one on behalf of a society established and conducted wholly or mainly for purposes which are charitable, or which comprise participation in or support of athletic sports or games or cultural activities, or which are neither of private gain nor of commercial undertaking.⁹¹

A society's lottery is not unlawful if specified conditions are fulfilled. Substantial changes to these conditions are proposed in the Bill. The requirements that the lottery must be one promoted in Great Britain,⁹² and in accordance with a scheme approved by the society,⁹³ will remain. The Bill also leaves in place the requirement that the promoter of a society's lottery must be a member of the society authorised in writing by its governing body to act as the promoter.⁹⁴

1. Registration

There are important changes, however, in regard to the registration authority, which, under the present law, is the appropriate local authority. At present, a society's lottery must be registered⁹⁵ with the relevant local authority. A society is

⁸⁸ See White Paper (supra) para 34.

⁸⁹ Budget Statement, 16th March 1993.

⁹⁰ See *Halsbury's Laws*, 4th ed, vol 4(1) (reprint 1992) paras 148-167.

⁹¹ LAA 1976 s.5(1).

⁹² *Ibid*, s.5(3)(a).

⁹³ Schemes must comply with the provisions prescribed by the Lotteries Regulations 1977, SI 1977 No 256, reg. 3(1) Sch.

⁹⁴ LAA 1976 s.11(1)(a).

⁹⁵ *Ibid*, Sch 1.

not required to register a scheme with the Gaming Board unless the total value of tickets or chances to be sold exceeds £10,000.⁹⁶

Under the Bill, a society's lottery will be required to register either with the Gaming Board or with the local authority. Registration with the Gaming Board⁹⁷ will be necessary if the total value of tickets or chances sold or to be sold

- in any lottery exceeds £20,000; or
- in all lotteries held by the society in the same year exceeds £50,000.

If a society's lottery requires registration with the Gaming Board under these provisions, any subsequent lottery which it holds in the same year or in the three subsequent years must also be registered with the Board. For these purposes, "year" means a period of twelve months beginning with 1st January⁹⁸. Societies' lotteries which fall outside these criteria will need to register with the appropriate local authority.⁹⁹ These changes, if implemented, would oblige many more societies' lotteries to register with the Board; and, as the Board charges a minimum registration fee of £500, as compared with the mere £35 charged by local authorities, the changes are not likely to prove popular with charities.¹⁰⁰

⁹⁶ L(VML)O 1981.

⁹⁷ Under a proposed new Sch 1A to the LAA 1976.

⁹⁸ See NLB cl.42, amending and inserting new subs. (3A-3F) into LAA 1976 s.5.

⁹⁹ Under LAA 1976 Sch 1, which is itself to be amended.

¹⁰⁰ See "Charities win concessions to counter state lottery", Julie Kirkbride, *Daily Telegraph*, 3rd March 1993, p.11g.

2. Tickets or chances sold

Changes are also proposed in the total value of tickets or chances which may be sold. At present, this varies according to how much time has passed since the society held a previous lottery. If this is three months or more, the total value is £180,000. This can cause practical problems for lotteries run by the larger charities. It is in the nature of lottery tickets that far more generally need to be produced than are eventually sold. Where sales are widespread, it can be difficult, even in a well-organised campaign, to ascertain the precise number of sales; yet the sale of even one ticket over the permitted maximum is a contravention and *prima facie* an offence.¹⁰¹

The Bill proposes to increase the total value of tickets or chances which may be sold in any one lottery to £250,000,¹⁰² but subject to a maximum of £5 million in respect of all such lotteries held by the same society in the same year.¹⁰³ The present maximum limit on the value of each ticket or chance (£1)¹⁰⁴ remains, as does the requirement that the price of each ticket or chance must be the same and be stated on the ticket.¹⁰⁵ Unchanged also is the requirement that the whole consideration for each ticket or chance must be paid before a person may participate in the lottery, and that no money may be returned.¹⁰⁶ The Bill does, however, contain a new provision which will prohibit any payment other than the price of a ticket or chance being required of a person as a condition of his admission to participate in a society's lottery.¹⁰⁷

The Bill proposes to restrict the current obligations regarding publication of the name of the society, the name and address of the promoter and the date of the lottery. At present, such information must be specified on every ticket and every notice or advertisement of the lottery lawfully exhibited, distributed or published.¹⁰⁸ The Bill proposes to restrict this requirement to tickets distributed or sold.¹⁰⁹

¹⁰¹ See LAA 1976 ss. 2 and 13, and the defences there specified.

¹⁰² NLB, cl. 46(5) substituting new s.11(6) in LAA 1976.

¹⁰³ NLB, cl.46(5), substituting new s.11(7) in LAA 1976.

¹⁰⁴ LAA 1976, s.11(2).

¹⁰⁵ *Ibid*, s.11(3).

¹⁰⁶ *Ibid*, s.11(4).

¹⁰⁷ NLB, cl 46(4), inserting new s.11(4A) into LAA 1976.

¹⁰⁸ LAA 1976 s.11(1)(b).

¹⁰⁹ NLB, cl.46(2), amending LAA 1976 s.11(1)(b).

3. Prizes

The Bill also proposes to raise the ceiling on prizes in a society's lottery. At present, the maximum prize varies from £2,000 to £12,000 depending upon the total value of tickets or chances sold and the frequency with which such lotteries are held.¹¹⁰ Under the Bill, irrespective of the scale or frequency of a society's lotteries, the maximum prize is to be raised in all cases to £25,000. Furthermore, an amendment tabled in Committee would provide an effective ceiling on any prize of £50,000.¹¹¹ The Bill's proposals will not affect the existing restriction that the total prize money must not exceed one half of the lottery proceeds.¹¹² This restriction does not apply to prize money which does not derive from the lottery proceeds - such as prize money provided by a sponsor.

4. Expenses

At present, the expenses (exclusive of prizes) of a society's lottery must not exceed 25% where the lottery proceeds do not exceed £10,000,¹¹³ and (unless the Gaming Board authorises in a particular case) 15% if they do.¹¹⁴ Under the Bill, this amount is to be doubled to £20,000.¹¹⁵ These expenses limits comprise the only instance in English law of a statutory ceiling upon fund-raising expenses: in regard to the regulation of professional fund-raisers and commercial participators in Part II of the Charities Act 1992, the legislation has chosen the route of disclosure of specified information at source instead of statutory limitation. The reason for this difference may be that lotteries are more discrete operations, in which expenses may be more easily calculated in advance. The retention of the present percentage limits may cause increasing problems for charities, whose expenses have already been increased by the raising of the rate of VAT, and which may incur higher promotional expenses when the National Lottery is running.¹¹⁶

5. Frequency

¹¹⁰ LAA 1976 s.11(5),(6),(7).

¹¹¹ See Kirkbride, *supra*.

¹¹² LAA 1976 s.11(11). Contravention is an offence: *ibid*, s.13(1) but see defence in s.13(2) and (3).

¹¹³ Present figure substituted by SI 1989 No 1218, Sch, art 2.

¹¹⁴ LAA 1976 s.11(12) and (13). Contravention of s.11(12) is an offence: *ibid*, s.13(1) but see defences in s.13(2) and (3).

¹¹⁵ NLB, cl.46(6), amending amounts specified in LAA 1976 s.11(13).

¹¹⁶ See observations of Sir John Hannan, Second Reading, col. 768.

The present restrictions on frequency will remain, i.e., no society may hold more than fifty-two lotteries in any period of twelve months;¹¹⁷ and, generally, the date of a lottery promoted by a society must be at least seven days after any previous lottery it has promoted.¹¹⁸ The Bill does, however, propose one change. At present,¹¹⁹ two or more lotteries promoted on behalf of the same society on the same day (where the value of tickets or chances to be sold does not exceed £45,000) are treated as one. Under the Bill,¹²⁰ each lottery will be counted separately.

6. Lottery Managers

The Bill proposes to restrict the persons who may manage a society's lottery.¹²¹ A lottery manager will need to be a member or employee of the society, or else a person certified as a lottery manager or the employee of such a person. Provisions relating to certification (which is to be administered by the Gaming Board) are also specified.¹²² Under the Bill, a fee of £2,000 is to be payable on an application to be certified as a lottery manager.¹²³

¹¹⁷ LAA 1976 s.10(1).

¹¹⁸ *Ibid*, s.10(2).

¹¹⁹ *Ibid*, s.10(1)(a).

¹²⁰ NLB, cl.45.

¹²¹ *Ibid*, cl.44(1), inserting a new s.9A into LAA 1976.

¹²² See NLB, Sch 9, inserting new Sch 2A into LAA 1976.

¹²³ *Ibid*, Sch 2A, para 1(3).

H. Conclusions

The relaxations in the rules relating to societies' lotteries will enable charities to make better use of lotteries as a method of fund-raising, and the National Lottery offers a useful additional source of income. However, while the recession continues, it must remain in doubt whether these measures alone will be sufficient to off-set the current declining trend in public donations to charity.