

Illegal Lotteries

A significant legal concern when running a prize draw/competition is to ensure that it cannot, even unintentionally, be considered a lottery under the provisions of the Gambling Act 2005. As a registered venue cannot be licensed to operate lotteries and so any lottery which it did operate would be illegal.

You need to know what a lottery is in order to avoid running one. A lottery is where entrants (i) make a **payment** for a (ii) **chance** of winning a prize. To fall outside the definition of a lottery, and therefore to be lawful, the registered venue must only run prize draws/competitions where one or both of these elements (i.e. chance or payment) are removed.

1. The Payment Element

This is, on the face of it, self-explanatory. As long as there is no requirement to pay to enter the draw/competition, there should be no issue. This relates as much to the method of communication required to enter the draw/competition as anything else. To be clear - requiring an entrant to pay the 'normal rate' for a method of communication is **not** considered to be a payment to enter. For example, requiring entries to be posted by 1st or 2nd class post is not regarded as a payment to enter, but requiring entries by recorded delivery would be. The same applies to e-mail, telephone or web entries. The general rule is that the method of communication must not require an *additional* payment over what it would normally cost to use that particular method of communication. Some key points:-

- Requiring entry by premium rate telephone numbers or by texting mobile short-codes will constitute a payment to enter (being charged at more than the normal rate for telephone calls or texts).
- Email and/or Web entry are considered to be 'free' for these purposes.
- Merely requesting data (ie, personal details) as a means of entry (whether online or otherwise) is not generally considered to be equivalent to payment (although requesting large amounts of information irrelevant to the running of the draw/competition might be, particularly if the intention is to re-sell this information).
- Paying to collect a prize can constitute payment – the general rule applies here too; the winner should not be asked to pay more than the 'normal rate' in order to collect the prize.
- Buying a promotional product or service and being automatically entered into a draw/competition as a result will **not** equate to payment **provided** the price is not inflated to reflect the fact that the purchaser is then entered into the draw/competition.
NB: This does not apply in Northern Ireland – so competitions should either exclude entrants from NI, or provide a "no purchase necessary" alternative for entrants from NI.

This does not mean that paid-for routes of entry have to be avoided completely. If an **alternative** method of entry is provided, which is "free" (ie required at the normal rate) and less expensive than the 'paid-for' route of entry, then this will overcome the issue about payment. The alternative method of entry has to be publicised, be offered as a genuine and realistic alternative means of entry (ie, providing sufficient time, for example, for postal entries to be submitted and received ahead of the closing date) and the winners must not be distinguished depending on the route of entry they used.

2. The Chance Element

If the winner of a prize competition is determined by the exercise of skill or judgement or by a display of knowledge, (ie, some form of "**skill requirement**") then the winner is **not** determined "wholly by chance" and the competition cannot be a lottery.

There is a basic threshold for the "skill requirement": answers to questions must not be widely or commonly known, nor blatantly obvious from any accompanying material. Where multiple choice questions are asked, the question has to be relevant to the context of the competition,

there has to be sufficient plausible alternative answers (ie, "joke" answers should be avoided) and, of course, the answer itself must not be obvious.

The threshold is all a matter of degree and needs to be thought about on a case-by-case basis (with, ideally, a paper-trail being kept relating to the thought processes applied in case the place to play is called to account for the competition). Essentially the "skill requirement" should reasonably be expected to prevent a significant proportion of people from entering the competition or, if they do enter, from winning.

If there is a genuine "skill requirement" then entrants to the competition can be required to pay to enter. However removing both elements (payment and chance) is obviously the safest option if this is viable.