



LOTTERIES AND THE LAW SA



NATIONAL LOTTERIES COMMISSION

a member of **the dtic** group



The National Lotteries Board was established under the Lotteries Act (No 57 of 1997), and opened its doors in 1999 to regulate lotteries and sports pools and distribute a portion of funds from the National Lottery to good causes.

Due to developments in legislation and in response to the needs of the nation, a process of review took place.

In **February 2012** the National Lotteries Board confirmed that a review of the Lotteries Act was underway.

In **April 2013**, the Draft Lotteries Act Amendment Bill was approved by Cabinet. Cabinet also approved the final recommendations of the lotteries policy at the same time. In **May 2013**, the Bill was published for public comment.

October 2013 saw the bill being passed by Parliament and sent for assent, and the national assembly passed the bill in **November 2013**.

The Lotteries Amendment Bill was signed into law by President Zuma in **December 2013**, leading up to the proclamation of the Lotteries Amendment Act (No 32 of 2013) in **February 2015**.

In **April 2015**, the amendments to the regulations of the Act were gazetted. The National Lotteries Commission was launched in **June 2015**.





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INTRODUCTION

1. The Lotteries Act No. 57 of 1997 (the Act) was enacted to regulate lotteries conducted in South Africa by societies and others. The Act sets out the primary controls necessary for effective regulation aimed at eliminating fraud.
2. These notes are intended to provide guidance for societies and others who promote lotteries that may require registration with the National Lotteries Commission (the Commission). These notes are not concerned with the National Lottery.
3. These notes attempt to provide a simple guide to the main requirements of the Lotteries Act. They are not comprehensive and should not be treated as such. Societies and others who plan to conduct lotteries should refer to the Act and the Regulations (No. 21119) that can be obtained from the Government Printer or they should seek professional advice to ensure that they conform to the law.

WHAT IS A LOTTERY?

4. A “lottery” in terms of the Act “includes any game, scheme, arrangement system, plan, promotional competition or device for distributing prizes by lot or chance and any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the Gazette declare to be a lottery”.

SOCIETY AND OTHER LOTTERIES

5. Under the Act, all lotteries are unlawful, unless they comply with the relevant requirements of the Act. The different categories of lotteries are:
 - a. Lotteries incidental to exempt entertainment;
 - b. Private lotteries;
 - c. Society lotteries; and
 - d. Part of the National Lottery.
 - e. Promotional Competitions.

LOTTERIES INCIDENTAL TO EXEMPT ENTERTAINMENT

6. The Act defines “an exempt entertainment” as a bazaar, sale, fete, dinner, dance, sporting event or other entertainment of a similar character where there are no cash prizes
7. Section 38 of the Act gives full details of the conditions that have to be observed in promoting a lottery as an incident to an exempt entertainment. Some examples of the conditions are that:
 - a. the proceeds, after deducting specified expenses, must, along with the proceeds of the “exempt entertainment” be used for the benefit of any deserving section of the public;
 - b. the total value of tickets sold or to be sold is not more than R10 000;
 - c. not more than R5 000 is used for the purchase of prizes;

- d. the tickets may not be sold at more than R10 each.
- 8. Whilst only the Court can give an authoritative interpretation of the law, it is the view of the National Lotteries Commission that selling tickets in a shop is unlawful as exempt entertainment are construed as “one-off” events.

PRIVATE LOTTERIES

- 9. A “private lottery” is defined as a “lottery which is conducted in the Republic in accordance with section 37:
 - a. for and by members of a social or sporting club for purposes not connected with any form of gambling;
 - b. for and by persons all of whom either work or reside on the same premises and
 - c. in the case of a lottery conducted for members of a social or sporting club has been authorised in writing by the governing body of the social or sporting club to conduct the lottery”.

LIMITATIONS TO PRIVATE LOTTERIES

- 10. a. The total value of tickets for any lottery may not exceed R10 000.
- b. The total value of prizes in any one private lottery may not exceed R10 000.
- c. The price of each ticket may not exceed R10.

- 11. The following are other rules that must be observed in promoting a private lottery:
 - a. The promoter must be a member of the club or society who is
 - b. authorised, in writing, by the club's governing body to run the lottery.
 - c. There can be no management fee or expense percentages. The only deductions allowed are for printing, stationery & notices.
 - d. There is no fixed percentage for the distribution of income; it can be used totally for prizes or divided between prizes and the club fund.
 - e. There may be no more than 12 lotteries per year.
 - f. No written notice or advertisement of the lottery may be exhibited except on the club or premises where the members work or reside or on the tickets.
 - g. No ticket may be sent through the post.

SOCIETY LOTTERY

- 12. A society is defined as “including any club, institution, organisation or association of persons, and any separate branch or section of such a club, institution, organisation or association”.
- 13. A Society Lottery means a lottery promoted on behalf of a society that is established and conducted wholly or mainly for purposes not for private gain or any commercial undertaking.

14. The Act provides that a society wishing to promote a lottery must itself be registered with the National Lotteries Commission.
15. The total proceeds of a society lottery, after the deduction of amounts for expenses and prizes, must be applied solely to the following:
 - a. recognised charitable purposes;
 - b. participation in, or support of, sport or cultural activities;
 - c. other purposes not described in (a) or (b) but which the Commission approves and which are purposes neither of private gain nor of any commercial undertaking.
 - b. A copy of the society's constitution, rules or memorandum and articles of association. Where the society is not a formally constituted body, the Commission will accept a copy of the minutes of a meeting recording the purposes of the society and the decision to apply for registration with the Commission.
 - c. The names and addresses of the management committee. The
 - d. appropriate registration fee.
19. After registration the society shall be issued with a Certificate of Registration.
20. Upon registration a society shall forward the following to the Commission:
 - a. A copy of the Lottery Scheme approved by the society. (The society may wish to complete and submit the Commission's model scheme form (SL02/14)
 - b. A copy of the minutes of the society's governing body's full meeting approving the promotion of lotteries under the scheme.
 - c. A letter or statement from the governing body authorising the promoter (who must be a member of the society) to act in that capacity.
 - d. A draft ticket. (It is recommended that societies do not print tickets until the Commission has examined a draft and given a view on whether it meets the requirements of the law.)

REGISTRATION PROCEDURE

16. Application forms for registration can be obtained from the National Lotteries Commission website and from the Regulatory Compliance Division.

No tickets or chances may be offered for sale before the society is registered.

17. No person/organization or society is allowed to conduct society lottery without registration with National Lotteries Commission.
18. To seek registration, the following forms and information should be sent to the Commission:
 - a. A completed application form (SL01/14).

- e. A Personal Declaration form (SL02(a)/14) completed by the promoter. (The Commission may subsequently require any other person connected with the lottery to complete such a form.)
 - f. The appropriate fee for the registration of a scheme. (This fee should be counted as a lottery expense in the society's return.)
21. Where a person is connected with a lottery and is asked to complete a Personal Declaration form (SL02(a)/14), a check will be made to obtain any information to ensure that the person is fit and proper.
22. Applicants are advised to submit application a least two months' prior the date on which it is proposed that tickets for the first lottery under the scheme are to be placed on sale.

VALIDITY OF REGISTRATION

23. Registration with the Commission as a society remains valid indefinitely, unless it is cancelled by the organisation or revoked by the Commission.
24. Modification of approved lottery scheme, is not valid unless authorised by the Commission.

DECIDING A SOCIETY'S APPLICATION

25. The Commission may refuse or revoke a society's registration if:
- a. it appears to the Commission that the society is not established and conducted wholly or mainly for one or more of the acceptable purposes (see paragraph 15);
 - b. any person connected with one of the society's past or future lotteries has been convicted of an offence involving fraud or dishonesty, or one of a number of specified offences under the Lotteries Act;
 - c. the society's scheme is contrary to the law;
 - d. any information given by the society in connection with the application was false in a material particular;
 - e. it appears to the Commission that any lottery promoted on behalf of the society within the last five years has not been properly conducted;
 - f. any fees payable under the Act have not been paid;
 - g. any information requested has not been provided or the Commission has not been allowed to inspect the management of the lotteries, including examining and taking copies of documents;
 - h. an act or omission of a person connected with the society's lotteries was a cause of another society's registration being refused or revoked;

- i. the address of the office or head office of the society is the same as that of the office of another Commission registered society that is established for the same or a connected purpose.

NOTE: The grounds on which registration of a scheme may be refused or revoked are the same as for the registration for societies, except for paragraph (a) and (i).

FREQUENCY AND DATES OF LOTTERIES

26. No more than six lotteries may be conducted by or on behalf of any society in any year. "Year" means a period of 12 months commencing 1 January. A lottery shall be deemed to have been conducted in the year in which the winners of prizes are announced.
27. The date of the lottery, which must be specified on the tickets, is the date on which the winners in that lottery are determined. Where the winners are determined by reference to a draw, the date specified will be the date of that draw.
28. The Commission's advice is that no two lotteries should have the same date. This is because the practice may lead to confusion for the public and administrative difficulties for societies in meeting the requirement to treat each lottery as entirely separate and account for it as such.

LIMITATIONS

29. All lotteries promoted by societies under Commission registration are subject to the following limitations:
 - a. The total value of tickets or chances sold in a single lottery may not exceed R2million.
 - b. The total value of prizes shall not exceed R1million per year per society.
 - c. Where the proceeds of a lottery equal or are less than R1million, up to 15% of the proceeds may be used to meet expenses.
 - d. where the proceeds exceed R1million per lottery, the permitted percentage for expenses is 10%.

Any person intending to conduct a society lottery exceeding the values of the limitations, may, 90 days prior to the start of a particular society lottery and in respect of that particular society lottery apply to the Commission in writing for an exemption.

TICKET REQUIREMENTS

30. The price of every ticket or chance in a lottery must be the same (i.e. inducements such as 5 tickets for the price of 4 are not permitted) and a person cannot be required to make any payment beyond this as a condition of participating in the lottery.

31. A person cannot participate in a lottery unless the whole price of the ticket or chance has been paid to the society. Once money has been received for, or on account of, a ticket or chance it cannot be refunded to the participant.

32. Every ticket must specify:

- a. its price;
- b. the society's name, and the Commission's registration number;
- c. the date and place of the lottery draw;
- d. where the rules of the lottery may be obtained; and
- e. the value of a cash equivalent for a prize won, if applicable.

In the case of a society lottery, the ticket must also state the name and address of the promoter.

33. 25. Ordinarily, no ticket or chance in a lottery may be sold by or to a person under the age of 16. However a society wishing to sell tickets to this or by this category must state reasons for doing so in the Lottery Scheme application form (SL02/14)

34. Tickets or chances may not be sold by means of a machine.

- a. giving details of the proceeds, expenses and prizes; and
- b. showing how the balance of the amount raised was distributed

36. Society shall notify the Commission in writing of any change in the address of the society's office or head office not later than 21 days prior to the day on which such changes take effect.

37. It is a criminal offence for any person to give the Commission any information that is false in any material particular.

38. Where VAT is payable on an individual item of expenditure or on a prize, it should be included in the amount shown for that item on form (SL04/14)

FEES

39. Following the registration of a society with the Commission, a fee is payable for each separate lottery promoted. The appropriate fee should be submitted to the Commission in advance of the lottery. The Commission will not object to a single beneficiary receipt covering a number of separate lotteries provided it clearly identifies the specific lotteries to which it relates.

REQUIREMENTS AFTER REGISTRATION

35. After completion of each lottery promoted under its scheme, the society is required to submit to the Commission by completing (SL04/14) form:

40. The following fees are payable to the Commission:

Registration fee	Amount
The fee payable on application for the registration of a society :	R575
The fee payable by a society for the registration of a scheme :	R116

Lottery fees

For each lottery promoted by a society under a scheme registered with the Commission where:

1.	The total prize value does not exceed R10, 000:	Nil
2.	The total prize value exceeds R10, 000 but not R50, 000:	R230-00
3.	The total prize value exceeds R50, 000 but not R100, 000:	R345-00
4.	The total prize value exceeds R100, 000 but not R500, 000:	R575-00
5.	The total prize value exceeds R500, 000 up to R1-million:	R1, 152-00

Certification of a lottery manager	R5, 798-00 p.a.
Inspection of a lottery return	R29-00

Guarantees

Where the total prize value is R10, 000 or more, the society must satisfy the Commission that it is capable of financing the lottery. This can be done by:

1. providing a bank guarantee for the total prize value; or
2. lodging a security deposit for the total prize value with the Commission.

NOTE: The Commission reserves the right to waive payment of fees and also reserves the right to review the fee structure on an annual basis.

EXTERNAL LOTTERY MANAGER

41. If a society wishes to employ an external Lottery Manager to run its lotteries, it is free to do so. Such managers are only permitted by law to manage lotteries provided they hold the necessary certificate issued by the Commission. Societies will need to satisfy themselves that any external Lottery Manager they propose to employ is the holder of a valid certificate from the Commission.

42. External Lottery Managers holding the Commission's certificate are required to familiarize themselves with the provisions of the Lotteries Act

RECORD KEEPING

43. Lottery Managers should ensure before proceeding with lottery that adequate record keeping and accounting procedures are in place.

RETENTION OF RECORDS

44. It is a legal requirement for societies to preserve all documents relating to their lotteries for at least 5 years after the date of the lottery.
45. Lottery Managers should keep adequate records for unclaimed winning tickets to ensure that fraudulent claims are not successful.

INSPECTION OF SOCIETY ACTIVITIES

46. The Commission has power to inspect any aspect of the management of a lottery and to take copies of the documents.
47. Section 54 of the Act which dealt with Promotional Competitions, was repealed by Section 36 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) and came into operation on 01 April 2008

48. Although promotional competitions are a form of lottery, since April 2011 they have been governed by the Consumer Protection Act (No 68 of 2008) and not the National Lotteries Act. However, the National Lotteries Commission (NLC) remains responsible for monitoring compliance of competition promoters with the provisions of the law.

GENERAL ADVICE

49. If a promoter wishes to seek advice about a lottery scheme at any time, he/ she should not hesitate to contact the Commission's Society Lotteries Section as following:

**REGULATORY COMPLIANCE
NATIONAL LOTTERIES COMMISSION
333 GROSVENOR STREET HATFIELD
GARDENS, BLOSK D HATFIELD
PRETORIA 0083**

**Telephone: 012-432 1300
Fax: 012-432 1387
Email: Compenforce@nlcsa.org.za**

LOTTERIES COME IN MANY SHAPES AND SIZES

In addition to the National Lottery, there are several varieties of lotteries and the Lotteries Act treats them in different ways. Here is a simple guide to keeping lotteries within the law.

Type of lottery	How to keep it legal
Private lotteries Example: The office sweepstake where all tickets are sold to staff and all proceeds split as prize money.	Do not advertise the lottery externally. Do not sell tickets to anyone outside the membership group. Do not employ anyone specially to organise the lottery.
Lotteries that form part of “exempt” entertainment Example: At a fund-raising dinner there is a draw for a stunning prize. At a school fete raffle tickets are sold for a range of prizes.	“Exempt” entertainment is generally of a charitable or fund-raising nature – not commercial. Lottery proceeds must benefit a “deserving” group. The lottery is part of a bigger activity. The prizes are not in cash.
Society lotteries These are run by organisations that are registered to raise funds from the public. They are typically advertised in the media or promoted in public spaces.	Societies conducting these lotteries need to register with the NLC and meet certain conditions (see Running a public fundraising lottery).
Promotional competitions Many big companies promote the purchase of their products through lottery-type competitions. Customers must buy the product or service in order to enter the draw.	There must be no extra charge for entering the competition. The normal product price must include the “ticket” price. Companies must comply with any regulations made by the Minister of Trade and Industry.

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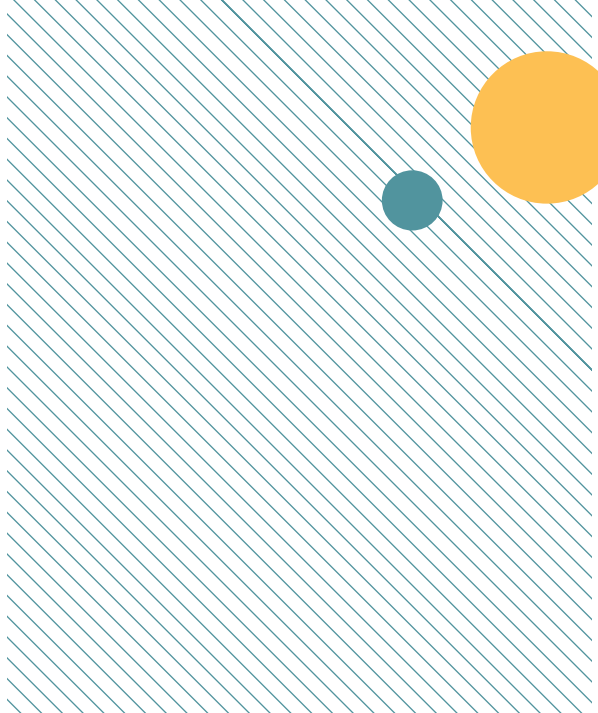
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