The Council's response to the DCMS Consultation on the structure, distribution and governance of the statutory levy on gambling operators

The Council's responses are shown in red. Responded by email to gamblingactreview@dcms.gov.uk.

Consultation question 1

The government proposes to raise around £90 million to £100 million per year for RPT through a levy charged to licensed operators' GGY. We propose the levy is charged at different rates for different categories of gambling operator to take into account the association of different sectors to harm and the higher fixed operating costs incurred by different parts of the industry.

1a. Do you agree with the proposal for how the levy should be charged? No

1b. Please explain your answer.

For the following reasons, the Council does not agree with the proposal for how the levy should be charged to charity lotteries[1], External Lottery Managers (ELMs) and local authorities licensed by the Gambling Commission.

Exemption versus zero-rating

The Council has previously argued that charity lotteries should be excluded from any statutory levy. However, it accepts Government's argument that s123 of the Gambling Act 2005 and the explanatory note thereto require that the levy must apply to all holders of operating licences, meaning that lotteries could not be excluded. However, as Government also acknowledges, the Act places no restrictions on the rates that can be charged to different classes of operating licence. Just over 50 years ago, on joining the then European Economic Community, the UK was obliged to introduce Value Added Tax on all goods and services other than a restricted number of exemptions. In order to continue the previous exemptions to Purchase Tax on various goods and services not covered by those exemptions, the concept of zero-rating was introduced, under which those goods and services would remain taxable to VAT, but at a rate of 0%. Having items that are taxable at a zero-rate is now common practice throughout the world.

It is therefore perfectly possible for charity lotteries to be subject to the levy, but at a zero rate. Government acknowledges the low rate of gambling harm associated with lotteries and the Council therefore strongly urges the adoption of a zero rate of levy for charity lotteries, ELMs and local authority lotteries licensed by the Gambling Commission. This would meet both Government's recognition *"that there are arguments to exclude society lotteries from the scope of the levy"* and the requirement under the Act to apply the levy to all licence-holders.

As Government knows, charity lotteries are different to other forms of gambling for several reasons:

1. As the Gambling Commission states, charity lotteries are *"considered to be low risk in terms of the licensing objectives set out in the Act"*[2]. Their own research into the prevalence of problem gambling concluded that, *"for both low risk and moderate risk gambling, the lowest prevalence*

[1] Formally known as society lotteries

[2] Gambling Commission (2017), "Review of society lotteries advice". October 2017 (https://assets.ctfassets.net/j16ev64qyf6l/e18jvBh4Zr59ks3mYFgcJ/1446a54779578bcd319c26aa97ca5e4c/Society-lottery-advice-provided-to-DCMS-002.pdf)

rates were found amongst those who participated in the National Lottery or other lotteries"[3]. Government itself acknowledged in its December 2020 call for evidence that the *"society lotteries sector … has a low risk of harm"*[4].

2. Charity lotteries exist solely to raise money for good causes. The Culture, Media and Sport Select Committee, in the 2015 report, acknowledged that, *"while they are a form of gambling, and are therefore regulated under gambling legislation, charity lotteries are intended to be primarily a means of raising money for charities and other good cause"*[5]. The Act is clear that lottery proceeds can only be used to pay prizes and reasonable costs. Anything left after that (rather bizarrely referred to as "profit") has to go to good causes. Any increase in cost, therefore, has to come from somewhere else, most likely good causes as any reduction in prizes could adversely affect proceeds and, consequently, good causes. It cannot be the will of Government to reduce the sums raised for good causes.

Furthermore, Carolyn Harris MP, Chair of the All-Party Parliamentary Group on Gambling Harms, stated, *"Charity lotteries are a very different type of organisation from the big international private companies which dominate the betting industry. This is true both in terms of what they exist for – charity fundraising versus private profit – but also in regard to the level of risk related to problem gambling … We must not allow a situation to arise where charity lotteries – and the charities they raise funds for – end up losing out because of regulatory action which is actually about solving issues which are mostly about betting companies."*[6]

A zero-rate levy is therefore both possible and justifiable. In return for such a levy, the Council will commit to continue to pay a voluntary levy on behalf of its members at a level to be agreed with Government. This approach would be consistent with Government's stated intention within the consultation in respect of the National Lottery (a matter expanded upon further below).

Alternatives to zero

Should the Government reject the Council's advice and implement a non-zero levy for lotteries, the Council would urge a significantly lower rate for lotteries than the 0.1% proposed. The Government has proposed that gambling products with significantly higher risks of gambling harm than lotteries will be subject to a maximum levy of 1% of Gross Gambling Yield (GGY). This mere ten-fold difference between the two rates is totally inadequate for a number of reasons.

The Government is proposing to use GGY as the basis for the levy, mainly for simplicity. GGY is not, as the Gambling Commission recognises, a measure of activity but a measure of non-lottery gambling

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[3] Connolly A, Davies B, Fuller L, Heinze N, Wardle H. "Gambling in Great Britain in 2016: evidence from England, Scotland and Wales". Gambling Commission, 2018 (https://assets.ctfassets.net/j16ev64qyf6l/60qlzeoSZIJ2QxByMAGJqz/e3af209d552b08c16566a217ed422e68/Gambling-behaviour-in-Great-Britain-2016.pdf)

[4] Department for Digital, Culture, Media and Sport, "Review of the Gambling Act 2005 Terms of Reference and Call for Evidence", December 2020 (https://www.gov.uk/government/publications/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence)

[5] House of Commons Culture, Media and Sport Committee, "Society Lotteries Fifth Report of Session 2014-15", March 2015.

[6] Lotteries Council "Responsible Play – Charity Lotteries and gambling-related harms" February 2021 (https://lotteriescouncil.org.uk/wp-content/uploads/2021/02/Responsible_Play_Charity_Lotteries_and_gambling-related_harms_March_2021.pdf)

profit. It is a meaningless concept in the lottery sector and a GGY-equivalent has been proposed – proceeds minus prizes minus good causes (hereinafter referred to as "lottery GGY"). However, they are not comparable. For instance, an online casino (one of the groups in the proposed highest rate of levy) typically offers a 95% return to player. This means that it will take 20 plays of £1 to generate £1 of GGY. On average, it will take just 4 lottery chances of £1 to generate £1 of "lottery GGY", and that is before any account is taken of the relative harms. GGY may therefore have the advantage of simplicity, but it is biased against lotteries.

The most recent analysis[7] of gambling behaviour in Great Britain is now quite old but shows that charity lotteries have a problem gambling rate of 1.5%, compared with 13.7% for those activities causing the most harm. In a consultation on the minimum age for playing National Lottery games[8], the then Department for Digital, Culture, Media and Sport stated that, *"Evidence from the latest combined Health Survey showed that problem gambling rates for players of National Lottery draw-based games were 1.0%, while the figure for scratchcards was 1.8%...The problem gambling rates are based on survey data for all National Lottery players including those who participate in both the National Lottery and other gambling activities".* Given that charity lottery problem gambling rates are similar, it could be argued that the actual figures for problem gambling caused by lotteries is lower than the figures quoted in the survey. However, even leaving that to one side and using the published data, the highest rate of problem gambling is over 9 times that for charity lotteries.

Taking the GGY bias and the problem gambling analysis, the levy rate to be applied to charity lotteries (if not zero) should therefore be 45 times lower than the highest rate.

But Government's proposals get worse for lotteries.

External Lottery Managers

The proposals relating to ELMs are contradictory. In one paragraph, the Government states that ELMs will be expected to pay 0.1% of "lottery GGY". However, Figure 1 shows the proposed levy rates over the next few years with the implication that they are based on GGY unless otherwise stated. For charity lotteries, it is clarified that the rates will be based on GGY *"minus good causes contributions"* (ie "lottery GGY"). For ELMs, it states *"based on lottery proceeds"*. There are two issues here.

Firstly, if ELMs' levies are to be based on gross proceeds, as implied, this would be hugely disproportionate and completely out of line with the rest of the gambling industry. Why should casinos, betting companies etc not be levied in the same way? In considering gross proceeds as an option for the basis of the levy, Government concluded that this *"risks being too much of a blunt instrument which does not account for operators' operating costs, which differ widely across the industry"*. It cannot be right that ELMs are singled out for such "blunt" treatment.

Secondly, and most importantly, it is proposed that the lottery sector, alone in the gambling industry, is expected to pay the levy twice – once by the operator and once by the ELM (which account for

[7] Connolly A, Davies B, Fuller L, Heinze N, Wardle H. "Gambling in Great Britain in 2016: evidence from England, Scotland and Wales". Gambling Commission, 2018 (https://assets.ctfassets.net/j16ev64qyf6l/60qlzeoSZIJ2QxByMAGJqz/e3af209d552b08c16566a217ed422e68/Gambling-behaviour-in-Great-Britain-2016.pdf)

[8] "Consultation on the minimum age for playing National Lottery games". Department for Digital, Culture, Media and Sport, 2019 (https://assets.publishing.service.gov.uk/media/606090908fa8f5117addb5d2/Consultation_on_the_minimum_age_for_playing_National_Lottery_games_V2.pdf)

84% of lottery sector proceeds[9]). This cannot be equitable.

The simplest solution to this double-counting in the event of a non-zero levy is to have either the ELM or the charity lottery pay, but not both. In either event this should be based on "lottery GGY".

Should Government persist with the double-counting, the rate would have to be adjusted further to be equitable with the rest of the gambling industry. This adjustment would depend on whether the levy for ELMs will be based on "lottery GGY" or gross proceeds. If the former, the multiple between the highest rate and that charged to charity lotteries and ELMs, taking account also of the GGY bias and relative harms, would have to increase to over 80 and, if the former, to over 230. These would give levy rates of 0.01% and 0.004% respectively.

These are such small percentages that a zero-rate would make much more sense than to try to levy these rates.

National Lottery

In discussing the National Lottery, Government *"concluded that charging a levy to the National Lottery … would be disproportionate"*. The sums proposed to be collected from charity lotteries and ELMs, if unchanged, could dwarf the amount voluntarily contributed by the National Lottery, a sector some 10 times the size of the charity lottery sector.

The Council believes it would be both disproportionate and inconsistent with evidence-based policy making to charge anything other than a zero-rate levy while exempting the National Lottery.

1c. Do you agree with the proposed total that the government estimates the levy needs to raise? No

1d. Please explain your answer.

Government does not seem to have estimated the total "the levy needs to raise". An estimate has been provided of the total the levy is expected to raise, but there appears to have been no analysis at all of what needs to be raised.

1e. Do you agree with the proposed de minimis threshold for the levy? Yes

1f. Please explain your answer.

The Council agrees with the rationale behind the threshold. For those very same reasons, it considers that the rate of levy for charity lotteries, ELMs and local authorities licensed by the Gambling Commission should be set at 0%.

1g. Please provide any additional views or evidence in this area the government should consider here.

Consultation question 2

Option 1: paying the levy alongside the annual fee

[9] "Industry Statistics – November 2023". Gambling Commission, 2023 (https://www.gamblingcommission.gov.uk/statistics-and-research/publication/industry-statistics-november-2023)

The timing of payment of the annual fee varies between licence holders as it is determined by reference to the anniversary of the issue of the licence by the Gambling Commission (with bespoke rules for multiple licence holders). If payment of the levy is aligned with payment of the annual fee, then the levy will fall due on different days of the year for different licence holders. This could make the forecasting and distribution of the levy challenging, and potentially impact funding certainty for commissioning bodies such as NHS and UKRI. Greater consideration of the interaction between the collection of a future levy alongside Commission annual fees will need to be taken into account ahead of any final decisions on the timing of payment of the levy. However, this option would deliver on consistency with existing processes and simplicity in the administration and collection of the levy. It builds on existing and well-understood processes for operators and the Commission, which will be important for the future predictability and success of the levy system.

Option 2: paying the levy on a fixed date

This option would mean that a single day of the year was identified e.g. 1st October and all levy payments from all licence holders would be due on that date. While we recognise this would create clarity for organisations in receipt of levy funding, it would also introduce some administrative complexity for both the Commission and operators, introducing a new type of payment which is not aligned with the payment calendar for fees - thus creating a separate forecasting and payment process.

However, under both options we would expect licensees to pay the levy in advance (i.e. based on projected GGY) and as such would apply in the same way to existing and new entrants into the market.

On the timing of payment of the levy, the government's priority is to maximise the certainty and predictability of the amounts raised by the levy each year, and minimise administrative burden in both payment operators and collection by the Commission. The government has explored two options but recognises the issue is finely balanced and does not have a final proposal at this stage.

2a. Should the government pursue option 1 or 2 in setting the timing of payment of the levy? I don't know

2b. Please explain your answer.

The Council has no opinion on the timing

2c. Do you agree that the levy with the proposal that licensees should make levy payments in advance i.e. based on projected GGY? No

2d. Please explain your answer.

The Council's response here is only relevant if Government ignores its advice to adopt a zero rate of levy for charity lotteries.

No rationale whatsoever is provided for this proposal and there seems to be no good reason for it. If projected GGY is used, no explanation is given of what happens when actual GGY is either much greater or much lower than projected. Is the levy to be adjusted when actuals are available, or is the difference simply to be swallowed or warmly accepted by whomever is the beneficiary of the under/over-forecast? It is surely much simpler to base the levy on the previous year's actual GGY.

2e. Please provide any additional views or evidence in this area the government should consider here.

Consultation questions 3-7

Not answered, other than to suggest that most of these questions would have been irrelevant if Government had estimated the funds that were required to be raised from the levy.

Consultation question 8

The government proposes that administration of levy fund distribution by the Gambling Commission and RPT commissioning bodies should have formal oversight from a central government Levy Board, and decision-making support from an expert Advisory Group.

8a. Do you agree with the proposed role and remit of the Levy Board? No

8b. Please explain your answer.

Government is proposing a Levy Board, an expert Advisory Group, and approval of expenditure of levy funding by no less than two Government Departments. This seems massively bureaucratic and wasteful, and a much simpler model should be adopted.

8c. Do you agree with the proposed role and remit of the Advisory Group? No

8d. Please explain your answer.

See answer to 8b above

8e. Please provide any additional views or evidence in this area the government should consider here.

Consultation question 9

The government proposes that DCMS and HM Treasury approval of expenditure of levy funding will be supported by a Levy Board, with levy receipts and sums distributed for the purposes of research, prevention and treatment reported each year.

9a. Do you agree with our proposal for DCMS and HMT approval of levy spending to be supported by a Levy Board to provide broader government oversight of the allocation of levy funds? No

9b. Please explain your answer.

See answer to 8b above

9c. Is anything further the government needs to consider in putting in place robust accountability mechanisms into the levy system? (Free text box)

Consultation questions 10-13

Not answered