

SEWEL MEMORANDUM

NATIONAL LOTTERY BILL

Motion

1. The motion to be put to the Parliament is:

National Lottery Bill: That the Parliament agrees that the provisions in the National Lottery Bill that relate to the executive competence of the Scottish Ministers should be considered by the UK Parliament.

Purpose

2. The UK Government aims to make the National Lottery more responsive to the needs of communities.

3. The purpose of the National Lottery Bill is to amend existing legislation - the National Lottery Act etc. Act 1993 (as amended by the National Lottery Act 1998) - to give legal effect to the establishment of the Big Lottery Fund (a merger of the New Opportunities fund and Community Fund) which will distribute half of all Lottery funds and act as a centre for Lottery co-ordination and reform.

4. While the National Lottery is a reserved matter by virtue of section B9 of Part II of Schedule 5 to the Scotland Act 1998, the UK Government has agreed that the Devolved Administrations should have more influence in setting priorities for the National Lottery and in programme development, and that more decision-making should be devolved unless there is a clear need for a UK approach. The Bill therefore provides new functions and powers for the Scottish Ministers in relation to the Big Lottery Fund in Scotland. The Scottish Ministers will be consulted on Scotland's share of funding i.e. its "devolved expenditure" (previously Scotland's share was determined by the New Opportunities Fund and Community Fund themselves); the Scottish Ministers will be consulted on the appointment of a Scottish Member to the UK Board and their agreement will be required to the appointment of a Scottish Committee; the Scottish Ministers will issue policy directions to the Fund in relation to all "devolved expenditure" in Scotland; and Scottish Ministers will receive the Annual Accounts of the Fund which will enable them to be provided to the Scottish Parliament. Within a UK framework, the Bill gives the Big Lottery Fund the required level of operational devolution and provides the Scottish Ministers with powers over all the key controls of the new Lottery Distributor's Scottish operations.

5. Extending the executive competence of the Scottish Ministers as proposed will provide for the delivery of the Executive's Partnership commitment to "work with the UK Government to secure a Scottish Opportunities Fund to provide sustainable core funding to relevant voluntary organisations."

Summary of National Lottery Bill Provisions

6. 50% of Lottery Funds will be for expenditure that is charitable, or connected with health, education, or the environment. (The Bill removes the Millennium as a Lottery good cause but does not otherwise change the shares for the good causes which the UK Government has guaranteed until the end of the current Lottery licence period in January 2009).
7. These funds will be distributed by the Big Lottery Fund, a merger of the New Opportunities Fund and Community Fund (the National Lottery Charities Board).
8. The Big Lottery Fund will have a UK Board of 12 Members appointed by the Secretary of State for Culture, Media and Sport. The Scottish Ministers will be consulted on any changes to the size of the UK Board.
9. 1 Member of the UK Board will be appointed to represent the interests of Scotland, subject to the agreement of the Scottish Ministers.
10. The Big Lottery Fund will establish Committees for each Home Country, with the Scottish Committee chaired by the Scottish Member and appointments to the Scottish Committee subject to the consent of Scottish Ministers.
11. The Scottish Committee will exercise all of the Big Lottery Fund's functions in relation to Scottish devolved expenditure. (The Big Lottery Fund is expected to distribute most of its funds through its devolved committees. A programme of Large Transformational Grants will be administered on a UK basis).
12. The devolved expenditure share for each Home Country will be prescribed by Order by the Secretary of State after consultation with the Scottish Ministers. (The UK Government is not expected to change Scotland's Lottery share for the new good cause. Scotland's share of funding from the New Opportunities Fund and Community Fund is 11.5% of the UK total, based on population and deprivation).
13. The Scottish Ministers will direct the Big Lottery Fund in relation to Scottish devolved expenditure, having consulted the Fund and obtained the consent of the Secretary of State.
14. Directions by the Secretary of State to the Big Lottery Fund, for instance on UK programmes, will be subject to consultation with the Scottish Ministers, except directions which relate to financial accountability or the employment of staff.
15. The operating name of the Scottish Committee shall be subject to the consent of the Secretary of State and the Scottish Ministers.
16. The Big Lottery Fund shall send a copy of its Annual Accounts to the Scottish Ministers, to enable the Scottish Ministers to provide the accounts to the Scottish Parliament.
17. The Big Lottery Fund will be empowered to make grants or loans, to distribute non-Lottery funds (for instance to enable the Fund to operate programmes funded from Lottery or non-Lottery sources), and to invite applications and give advice to applicants

Background

18. The National Lottery has brought £1.4 billion to 23,000 Scottish projects in the 10 years since its launch in 1994. The Big Lottery Fund is expected to bring £60-70 million per year to Scotland between 2006 and 2009.

19. The National Lottery is reserved to Westminster under the general reservation of gambling matters. The Secretary of State for Culture, Media and Sport has the policy lead. There are, however, extensive arrangements for executive devolution. In particular the Scottish Arts Council, Scottish Screen, and Sportscotland are Scottish Lottery Distributors and receive Directions from the Scottish Ministers. Scotland's share of Lottery funding for arts and sport is based on population: 8.9% for Scottish Arts Council and 8.1% for Sportscotland (some sport funding is directed through UK Sport). Scotland's share of Lottery funding for the New Opportunities Fund's projects on health, education, and environment and for the Community Fund's charitable projects is 11.5% based on population and deprivation.

20. The UK Government's Consultation Paper on Lottery distribution policy in July 2002 set out some key thinking for the future:

- The Lottery needs to be more responsive to needs and priorities of communities;
- Lottery distribution must be more effective – avoiding overlap, streamlining delivery, achieving synergies and cross-cutting;
- There is a need for fair distribution and targeting of funding;
- There is value in the strategic use of Lottery funds, in partnership with local, regional and national stakeholders, for instance along the example the 3-way agreement between the Community Fund, the Voluntary Sector and COSLA in Scotland.

21. The UK Government aims to make the National Lottery more responsive to the needs of communities. The UK Government has established the Big Lottery Fund as a new community Lottery Distributor by an administrative merger of the New Opportunities Fund and the Community Fund (The National Lottery Charities Board). The aim of the merger is to provide streamlined and accessible funding for communities. The Big Lottery Fund will distribute half of all Lottery funds and will act as a centre for co-ordination of the National Lottery as well as leading on the Lottery reform agenda. The Big Lottery Fund will pilot innovative approaches to programme delivery and take the lead in pioneering new ways of involving the public in priority setting and decision-taking. It will provide funding in areas that complement wider government priorities, but it will not substitute for funding that would otherwise fall to mainstream government expenditure.

Contents of the Bill

22. The National Lottery Bill is intended to be introduced on 23 November 2004.

23. The Bill provides for a significant increase in devolved controls over the Big Lottery Fund in Scotland. This will ensure that the Fund is able to operate effectively in the devolved environment. The Bill introduces new functions and powers for the Scottish Ministers in relation to the Big Lottery Fund. In particular, the appointment of the Scottish Member for the UK Board of the Big Lottery Fund will be subject to the agreement of the Scottish Ministers and the appointment of the Scottish Committee of the Fund will be subject to the consent of the Scottish Ministers. The Scottish Ministers will direct the Fund on Scottish devolved expenditure. (Currently, the Scottish Ministers are only able to direct the New Opportunities Fund on Scotland-only programmes and cannot direct the Community Fund at all, although the Scottish Ministers are consulted on policy directions to the UK Lottery Distributors).

24. The major proposals in the introductory print of the Bill are arranged under twenty-two sections and two schedules. Five sections of the Bill relate to the functions and powers of the Scottish Ministers under the National Lottery etc. Act 1993:

Section 6 – National Lottery Distribution Fund: Apportionment;

Section 7 – Reallocation of Funds;

Section 12 – Establishment;

Section 13 – Functions;

Section 14 – Dissolution.

25. In addition, Schedule 2 introduces a new Schedule 4A to the National Lottery etc. Act 1993 which provides for the establishment of the Big Lottery Fund, including functions and powers for the Scottish Ministers.

Commentary on Sections Relating to Scotland

Section 6 – National Lottery Distribution Fund: apportionment

26. Section 22 of the National Lottery etc. Act 1993 sets out the existing Lottery good causes: expenditure on or connected with the arts, sport, national heritage, charitable expenditure, projects to mark the Millennium, and (as added by the 1998 Act) expenditure on or connected with health, education or the environment. Section 6 of the Bill amends Section 22 of the 1993 Act by providing that 50% of Lottery funds shall be allocated for expenditure that is charitable, connected with health, education or the environment. This amendment removes the Millennium as a Lottery Good Cause and brings together in a single statement the existing good causes of charities, health, education and the environment which are to be within the remit of the Big Lottery Fund. The good cause will have the same overall scope in respect of charities, health, education and environment as currently applies - the good cause is simply expressed in terms of purposes instead of the 1993 definition of recipients. The definition of charitable expenditure has been modernised to reflect the latest thinking and in anticipation of new legislation on charities but the scope of the definition has not been reduced. The Bill does not change the shares for the good causes which the UK Government has guaranteed until the end of the current Lottery licence period in January 2009.

27. Section 6 also gives the Secretary of State the power for the first time to prescribe “devolved expenditure” for England, Wales, Scotland and Northern Ireland (previously these Lottery shares were determined by the New Opportunities Fund and Community Fund themselves). Although the Big Lottery Fund is a UK body, the UK Government has agreed that most of its funding will be delivered through Committees serving each Home Country and this provision permits the Secretary of State to set the funding available for each Committee. Scotland’s share of the Big Lottery Fund is expected to be the same as for the New Opportunities Fund and Community Fund - i.e. 11.5% based on population and deprivation - although a modernisation at some future date of the formula that determines each Home Country’s share cannot be ruled out.

28. Section 6 also introduces a new provision obliging the Secretary of State to consult the Scottish Ministers before making an Order prescribing expenditure for the Big Lottery Fund, ensuring that Scottish Ministers will be consulted about the level of “devolved expenditure”.

Section 7 – Reallocation of funds

29. Section 7 provides that, subject to consultation with the Scottish Ministers, the Secretary of State may reallocate funds among Lottery Good Causes or Lottery Distributors for instance to deal with the situation where a Distributor is running up a large balance of unspent Lottery funds which might be better employed elsewhere.

Section 12 – Establishment

30. Section 12 provides a new Section 36A to the 1993 Act which establishes a new body corporate to be known as the Big Lottery Fund and states that Schedule 4A to the Act (which will make provision in relation to the Fund) shall have effect.

Section 13 – Functions

31. Section 13 of the Bill introduces the main functions of the Big Lottery Fund. The Big Lottery Fund is empowered to distribute National Lottery Funds which have been allocated by the Secretary of State for prescribed expenditure that is charitable or connected with health, education or the environment i.e. the funding formerly available to the New Opportunities Fund and Community Fund. Subject to consultation with the Scottish Ministers, the Secretary of State may by Order limit the amounts which may be distributed by the Fund.

32. Section 13 also empowers the Big Lottery Fund to make grants or loans, to distribute non-Lottery funds (for instance to enable the Fund to operate programmes funded from Lottery or non-Lottery sources), and to invite applications and give advice.

33. Section 13 also introduces a new Section 36E into the 1993 Act which empowers the Secretary of State to issue Directions to the Big Lottery Fund. Subsection (4)(b), provides that Directions in relation to Scottish devolved expenditure will be issued by the Scottish Ministers rather than the Secretary of State. Scottish Ministers must consult the Fund and obtain the consent of the Secretary of State before issuing Directions to the Fund. This ensures that the Directions are practical and deliverable and that there will be sufficient funds available. Directions by the Secretary of State to the Big Lottery Fund, for instance on UK programmes, will be subject to consultation with the Scottish Ministers, except directions which relate to financial accountability or the employment of staff which are matters for the Department for Culture, Media and Sport and Westminster as the Fund is a UK body. Further, devolved administrations will not be consulted with regard to expenditure only for England.

Section 14 – Dissolution

34. The Big Lottery is formed through a merger of the Community Fund and the New Opportunities Fund. It will also administer the residual functions of the Millennium Commission. Section 14(1) of the Bill provides for the dissolution of the National Lottery Charities Board, the Millennium Commission and the New Opportunities Fund.

Schedule 2: New Schedule 4A to the 1993 Act

Section 1 – Membership

35. Membership of the Big Lottery Fund’s UK Board shall consist of 12 Members appointed by the Secretary of State. One of the Members is to be appointed to represent the interests of Scotland with the agreement of the Scottish Ministers. The Secretary of State may vary the number of members of the Fund but only following consultation with the Devolved Administrations.

Section 7 – Committees

36. Section 7 allows for the Big Lottery Fund to establish a Committee, chaired by the Scottish Member to the Big Lottery Fund, for the purpose of exercising the Fund’s functions in relation to Scottish devolved expenditure. Before appointing the Committee, the Big Lottery Fund must obtain the consent of the Scottish Ministers.

37. Section 7 allows for the Scottish Committee to carry out its activities under a specific Scottish operating name, to be determined by the Committee with the consent of both the Secretary of State and the Scottish Ministers.

Section 21 – Accounts

38. Section 21 specifies that the Big Lottery Fund must send a copy of a statement of accounts in respect of each financial year to the Scottish Ministers. Scottish Ministers will therefore be in a position to provide the accounts to the Scottish Parliament.

Implementation

39. The UK Government has decided on a less prescriptive approach to direction of the Big Lottery Fund than was formerly the case for New Opportunity Fund programmes. This less prescriptive approach will apply across the UK.

40. Broad themes, outcomes and priorities for the Big Lottery Fund will be expressed by Order in very general terms. The intention is to give the Big Lottery Fund some shape and focus, within what would otherwise be an exceptionally broad remit, without fettering its discretion or excluding a wide range of applicants. There is no question of old-style Directions to the new Opportunities Fund which set out specific amounts of funding to be spent on specific purposes with detailed instructions on delivery and timing of programmes. There will therefore be much less Government control of who can access funds and for what purpose, and much more flexibility for the Big Lottery Fund to respond to local circumstances and new ideas.

41. The Secretary of State is expected to use the powers under the Bill to prescribe by Order a limited number of broad overarching themes for the Big Lottery Fund which will apply across the UK. These will be developed in consultation with Devolved Administrations, the Big Lottery Fund, and the public. The current proposals are for 3 broad overarching themes: Community Learning and Creating Opportunity; Promoting Community Safety and Cohesion; and Promoting Well-Being. Within these 3 UK themes, each Home Country will determine its own framework of outcomes and priorities.

42. Scottish Ministers will therefore set a framework of outcomes and priorities for the Fund in Scotland to be set out in Directions to the Fund for delivery by the Scottish Committee.

43. The Big Lottery Fund aims to develop a framework within which local communities can determine their own priorities. The Big Lottery Fund will be responsible for development of programmes to meet these Scottish outcomes and priorities. Making final decisions on programmes, choosing delivery mechanisms and partners and selecting projects will be the responsibility of the Big Lottery Fund, informed by intensive public consultation.

44. The Big Lottery Fund's own consultation document from July 2004 sets out that they want to achieve more than simply adding the 2 existing Lottery bodies together, improving and developing distribution, removing the barriers between funding streams and streamlining funding routes, bringing the funding together to ensure that the new programmes fit together and work flexibly together, and so make funding more open and accessible. The expectation is that this new approach will provide cohesion and synergy, do away with funding "silos" and allow the Big Lottery Fund to act as an intelligent funder by offering a continuum of small, medium and large grants. The Fund will be able to respond flexibly to the needs of its main client groups. This funding approach is expected to apply across the UK although the split in funding between small, medium and large might be different for each Home Country. A light touch approach might apply to small grants and some medium grants. There would be some open grants but, where possible, Big Lottery Fund would work in strategic partnership at local, regional and national level to make their funding more effective. The amounts for Awards for All in England will double, allowing easy access to grants up to £10,000. The expectation is that there will be new opportunities for the voluntary sector to get involved. The Big Lottery Fund will look at a variety of ways of distributing funding via the voluntary and community sector, taking full account of capacity-building, infrastructure, social enterprise, and the voluntary sector's role in delivering public services. The Big Lottery Fund will set up a cross-sectional stakeholder group in Scotland.

Financial Implications

45. Likely expenditure by the Big Lottery Fund across the UK will be £2.41 billion between 2005-Jan 2009. Scotland's share is expected to be in the region of £60-70 million per annum.

46. There are no costs for the Scottish Executive associated with the introduction of the legislation.

47. The main client groups for the Big Lottery fund will be voluntary and community groups and local authorities. The UK Government is proposing to guarantee a minimum share of funding for the voluntary sector, perhaps as high as 75%. The Scottish Ministers have emphasised the importance of the Community Planning process to Lottery distribution in Scotland.

SCOTTISH EXECUTIVE
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