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QUEEN ANNE'S GATE LONDON SW1H 9AT

13 May 1988

Dear Lord President,

"NATIONAL" LOTTERIES

The announcement last month of a "National Health Service" Lottery, with benefits to be distributed by a National Hospital Trust headed by Sir Douglas Black (past president of the Royal College of Physicians) has attracted considerable publicity, most of it either favourable or at least "wait and see". The current law on lotteries (the Lotteries and Amusements Act 1976) envisages, and therefore provides in detail for the regulation of, single lotteries only with, among other controls, specific limits on turnover and prizes. To be lawful, a lottery must be registered with the appropriate authority. Where the maximum first prize does not exceed £2,000, the society promoting the lottery is to be registered with the local authority (registration where the first prize is higher, up to a maximum of £6,000, is with the Gaming Board for Great Britain).

The NHS Lottery advertises a first prize of £200,000. The promoters, Loto Ltd, claim that their scheme will keep within the law by being the function of 100 separate lotteries, each offering a maximum prize of £2,000. If the scheme succeeds, the policy reflected by the 1976 Act will effectively have been circumvented, and the pressure by other potential promoters, already evident, to follow suit would increase.

If, as seems possible, the scheme fails, the public perception may nonetheless be that the principle of "national" lotteries remains intact. In either event, we may come under pressure to amend the law. I thought, therefore, that you and colleagues would wish to have the best assessment of the NHS lottery which can at present be made and an outline of its possible wider implications.

Neither the National Hospital Trust nor Loto Ltd consulted my Department, the Gaming Board for Great Britain or, I understand, the DHSS, about the detail of their scheme in advance. My officials have, however, been approached for advice by the legal department of the Royal Borough of Kensington and Chelsea, to whom Loto Ltd have applied for registration of five societies initially, with an expressed intention to seek registration of one hundred in all. We have indicated to the

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The Rt Hon John Wakeham, MP

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Borough officials that we share their view that registration should be given provided they are satisfied that each society is, indeed, a separate entity; and subject to satisfaction of the only other requirements of the law relating to the registration of societies (the only role which the Borough has at this stage), viz that the societies are established for a charitable purpose or purposes, and that the promoters have no conviction for lottery offences. We understand that the Council have called for further information from Loto Ltd and that a decision on registration will not be taken until the next scheduled meeting of the appropriate Committee, on 24 May. That is only one day before the date of 25 May on which the promoters have said they propose to hold the first draw, on television, of the lottery.

My Department (and the Board) are coming under some pressure to give a view on the lawfulness or otherwise of the scheme. This is difficult in the absence of full details. We had hoped to obtain these via Kensington and Chelsea, but the promoters have become coy about providing the Borough with information. I had intended that my officials should therefore make a low-key approach to Loto Ltd, to ask them for details of the scheme as a matter of interest for policy. But that tactic has now been compromised by the promoters' action in distributing the vouchers or tickets with which to enter the lotteries. Promotion of a lottery by an unregistered society is an offence under the 1976 Act, and the Gaming Board have argued strongly to me that they should refer the evidence of Loto Ltd's apparent offence to the Crown Prosecution Service. I have not thought it right to stand in their way, and it would be wrong for my officials to make an approach to the promoters which would cut across enquiries which the investigating authorities may make. Moreover, the action by the Gaming Board safeguards us from the prospect of allegations that the authorities ignored doubts about the lawfulness of the scheme.

Whilst the success or otherwise of the NHS lottery remains in doubt, I believe we should continue to take a holding line on questions about it and, if asked, say that we are considering its implications for our policy on "national" lotteries and that the legality of the particular Loto Ltd scheme is a matter for the prosecuting authorities.

The indications are that the policy on major lotteries will have to be reviewed in depth. Hitherto the arguments against them have held sway. Work last year by the Gaming Board underlined the problems that even lotteries on the scale contemplated by the 1976 Act can encounter, both in terms of incompetent management and susceptibility to fraud. (The regulatory machinery provided by the Act is unlikely to bear the weight of a scheme on the scale of the NHS lottery.) It has also seemed questionable whether one or more "national" lotteries would tap a new demand, or simply divert funds which now find their way to other forms of gaming, most obviously the football pools, which provided considerable funds, by duty, to

/the Exchequer

the Exchequer and also make donations to sport. A compensating "tax" on lottery income provided for genuinely charitable purposes could be difficult to defend publicly. There could also be problems for smaller charities, which profit from the present law, but which would be ill-equipped to compete with large lotteries such as the better endowed-charities might offer. Before the announcement of the NHS lottery I had, therefore, as colleagues know, intended to see if we might proceed by raising the present monetary limits under the 1976 Act, which can be changed without fresh primary legislation. The aim would have been to test the view that lotteries with bigger prizes would tap a new demand.

That position may not now be tenable and, whilst it is premature to propose a change of policy at this immediate stage, I should find it helpful to have any preliminary views on the merits of a national lottery which you and colleagues may have.

There would, I believe, be broadly a choice of three positions for us to take. The first would be to confirm our current policy. That would entail legislating to end the NHS lottery if it does not collapse of its own accord.

The second option would be to contemplate schemes on the scale at which the NHS lottery promoters are aiming, but to amend the law to provide for their proper regulation. This would need primary legislation. I have already mentioned the likelihood that the current law may be inadequate to police the handling of the large sums which the promoters are soliciting. Equally doubtful is their intention to take 15% of the turnover in administration costs. That is the percentage provided under the 1976 Act, but it would be quite unwarranted for an exercise on the intended scale or for any properly-conceived national lottery if the law were to allow such. This second option would require expansion of regulatory resources, either at the Gaming Board or in local authorities or both.

The third option would be to introduce a state lottery, that is one promoted and run by the Government itself. That could ensure the financial probity of the operation. But it would be a major and controversial departure for us to stimulate a form of gambling; and the evidence from other countries is that state lotteries require intensive advertising and promotional activity to succeed and to be sustained. We could encounter stiff opposition to the enterprise from critics who have mustered against us on issues such as liquor licensing and Sunday trading. The Government would be setting itself up as a target to be shot at. It would require a bureaucracy, albeit self-financing, and it would fly in the face of our policies of privatisation and deregulation.

All these issues raise fairly major policy questions. Furthermore, there is at present no provision for a Bill on lotteries in the legislative programme. For that reason alone we must be wary of being rushed into any legislative commitment

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in the light of the NHS lottery. But it will be timely to have colleagues' views at this stage on the directions we might take. For my part, I will keep H Committee informed of any further, major developments on the NHS lottery which come to light.

I am copying this letter to the other members of H Committee, the Chief Whips in both Houses and to Sir Robin Butler.

Yours sincerely,

Hawes

Approved by the Home Secretary
and signed in his absence.

NAT HEALTH Expenditure pt 12

