

2021 Licence Amendment – Additions to Clause 6

Prize Fund Account – Annual Reconciliation

Background

The management of the National Lottery Fund is a core function of the Regulator of the National Lottery. The National Lottery Fund (the “**Fund**”) is a bank account held at the Central Bank of Ireland. Every week, monies are paid into the Fund by the Operator and out of the Fund by the Regulator.¹ Amounts for Good Causes are retained in the Fund each week and transferred to the Exchequer by the Regulator periodically (currently every two months).

The Operator is required to hold a Prize Fund Account specifically for the receipt and payment of prizes monies. The amount paid each week into the Prize Fund Account for certain games is based on the *estimated* prizes won, as it is not possible to base it on the *actual* prizes won in a particular week. This is due to security measures in place to ensure that winning scratch card tickets cannot be identified until played. It is also possible for the actual prizes won in a particular week to exceed the proceeds from sales paid into the Fund for the same week (due to high jackpot and top prize wins in a week).

This means that the balance available in the Prize Fund Account will vary from the actual prizes won in National Lottery games that have yet to be claimed. To comply with the Act, the Prize Fund Account must be reconciled periodically to ensure it has sufficient funds to pay prizes. However, the Licence to operate the National Lottery (the “**Licence**”) does not specify how or when any such reconciliation should take place.

While there has never been a situation where the Prize Fund Account has not been able to pay a prize under the Licence to date - and such a situation is unlikely in the short run - it could arise at some point in the future, during the 20-year lifetime of the Licence, if not addressed.

For that reason, the Regulator and Operator have taken steps to address the matter, using an amendment to the Licence. Following extensive engagement with the Operator and

¹ Section 44(3) of National Lottery Act 2013 provides for the payment of amounts to and from the Fund. The method of calculation of the monies to be paid to and from the Fund is as set out in Schedules 1 and 2 to the Licence and the frequency of such payments are set out in Clause 6.

external legal counsels, the Regulator proposed to amend the Licence to provide for an annual reconciliation of the Prize Fund Account and the Operator agreed.

The Regulator determined that the National Lottery Fund is liable for the actual prizes won, and the Licence requires that the amounts to be paid into and out of the Fund on a weekly basis were to be calculated by reference to the estimated prizes associated with the sales in that week (as has been done to date), **with an annual reconciliation to actual prizes won to take place after the end of each Financial Year to calculate the annual payment adjustment required to the Prize Fund Account.**

Given the importance of the reconciliation, it was agreed by the Regulator and the Operator that the form and timing of the annual reconciliation and consequent balancing payments should be agreed and recorded by way of an amendment to the Licence.

The Annual Reconciliation

The Operator and the Regulator have agreed to amend the Licence. This sees the addition of Clauses 6.22 - 6.32 which provide for an annual reconciliation of prizes actually won in a year against the estimated prize amounts paid to the Operator's Prize Fund Account on a weekly basis. The reconciliation results in consequential balancing payments between the Fund and the Operator, which impact on the balance in the Prize Fund Account administered by the Operator and the amount available for Good Causes. A once-off reconciliation from the date the Operator commenced operations to 31 December 2020 is provided for as well as consequential provisions relating to the expiry or the termination of the Licence (the "**Amendment**").

The Amendment provides for consequential balancing payments to be made within 24 hours of receiving a reconciliation statement under two potential scenarios:

- Scenario A – where the actual prizes won in a year are *greater* than the amount of prizes estimated during the year; and
- Scenario B - where the actual prizes won are *less* than those estimated.

The Amendment does not apply to raffle prizes where prizes are known and funded in full in advance nor to the EuroMillions game which is played in several different countries and

funded differently - as no reconciliation is required. It does apply to the EuroMillions Plus game which is an Ireland-only game and to any Christmas Millionaire Raffle games held after 31 December 2020 and all other similar lottery games which may be approved by the Regulator from time to time.

The Amendment provides, in the case of Lotto, that the annual reconciliation will relate to the period after the jackpot was last won in the previous financial year to (and including) the draw in the respective financial year when the jackpot was last won. In respect of scratch card games, the reconciliation will only take place when games are closed, and the actual prizes won become known, and will be for the duration individual games were on sale. The Amendment takes effect on 15 June 2021.

The provisions of the Amendment are set out in full below.

Implications of the Amendment

The reconciliation avoids a risk of a situation developing over the 20 years of the Licence where there are insufficient funds in the Prize Fund Account to pay players the actual prizes won in National Lottery games. Similarly, it avoids a risk of a situation developing where there are excess funds in the Prize Fund Account, which are not required to pay players the actual prizes won in National Lottery games and yet cannot be released for use by Good Causes or to the Operator.

There will be an adjustment every year for Good Causes' (65%) share of the adjustment to the Prize Fund Account, which will be reflected in subsequent transfers to the Exchequer. The timing of adjustment will typically be in April each year. The direction of the adjustment each year could be to increase or reduce returns transferred to Good Causes, to agree with the actual returns earned for Good Causes. The scale of the adjustment required in any financial year will vary from year to year and will be recorded in the accounts for the Fund.

Practical Outcomes of the Amendment

- Annual reconciliation of the Prize Fund Account will take place within 3 months of the end of each Financial Year (with the exception of the first and final reconciliations).

- Resulting balancing payments are made within 24 hours of submission of the annual reconciliation statement.
- A single reconciliation in 2021 for the financial years up to 31 December 2020.
- A final reconciliation will cover and include a reconciliation in respect of the final financial year prior to expiry or termination of the Licence.
- Sufficient but not excessive funds in the Prize Fund Account.
- Transfers to the Exchequer will more closely track actual returns earned for Good Causes.

The Amendment

“ANNUAL RECONCILIATION

6.22 *The Licensee shall in respect of each Financial Year prepare an Annual Reconciliation Statement. With the exception of the first Annual Reconciliation Statement and the Final Annual Reconciliation Statement, the Annual Reconciliation Statement shall be submitted with and form part of Good Causes Contribution statement for the respective Financial Year in accordance with Clause 5 of Schedule 2 of the Licence. The first Annual Reconciliation Statement to be submitted in June 2021 will not accompany a Good Causes Contribution statement but shall be audited and shall cover and include a reconciliation in respect of the six Financial Years from the Effective Date to 31 December 2020 (but shall not, for the avoidance of doubt, include any reconciliation which has already been completed and agreed between the Licensee and the Regulator). The Final Annual Reconciliation Statement is governed by Clauses 6.29 to 6.31 (inclusive).*

6.23 *The Annual Reconciliation Statement must contain:*

- (i) *A statement of the Actual Prizes Payable in each Lottery Game in respect of the respective Financial Year with the exception of (w) Lotto, where the calculation will be as per Clause 6.24, (x) Instant Lotteries (excluding Interactive Lotteries) where the calculation will be as per Clause 6.25 and (y) the Excluded Lottery Games;*
- (ii) *A statement of the total amounts for prizes resulting from taking the cumulative total of the line item described as “Gross Prizes (including*



- free tickets as prizes)” in the weekly settlement statement that has been prepared and provided to the Regulator in accordance with Clause 6 in respect of the respective Financial Year but with the exception of (w) Lotto where the calculation will be as per Clause 6.24, (x) Instant Lotteries (excluding Interactive Lotteries) where the calculation will be as per Clause 6.25 and (y) Excluded Lottery Games;*
- (iii) Calculation of the difference between the amounts at (i) and (ii);*
 - (iv) Calculation of the Good Causes share of the difference at (iii) i.e., 65%;*
 - (v) Calculation of the Licensee’s share of the difference at (iii) i.e., 35%;*
 - (vi) A notification of the amounts which the Licensee is transferring from the Prize Fund account or the Licensee’s account (as applicable) to the Fund, and a request for transfers to the Prize Fund Account or payment to the Licensee’s account (as applicable under scenarios A or B below); and*
 - (vii) A reconciliation showing the Actual Prizes Payable balance in the Prize Fund Account at the end of the relevant Financial Year after the adjustment for the difference at (iii) by Lottery Game type.*

For the purposes of the Annual Reconciliation Statement to be submitted in June 2021, the reference to “Financial Year” in this Clause 6.23 shall mean and be read as the Financial Years from the Effective Date to 31 December 2020 inclusive and shall be submitted with and form part of an adjusted Good Causes Contribution statement for the 2020 Financial Year.

The Licensee may not amend the name, title, description, or calculation used to derive the line item described as “Gross Prizes (including free tickets as prizes)” in the weekly settlement statement for the purposes of (ii) above without the Regulator’s prior written consent.

- 6.24 *Lotto: for the purposes of Clause 6.23(i) and (ii) the calculations will be done based on all Lotto draws after the Lotto draw in the previous Financial Year when the jackpot was last won (the “**ARS previous year jackpot**”) to (and including) the draw in the respective Financial Year when the jackpot was last won (the “**ARS relevant year jackpot**”). When preparing the Final Annual Reconciliation Statement, the calculations will be done based on all Lotto draws after the ARS previous year jackpot up to and including (if applicable) the*



Licence Date (or such other date as may be agreed by the Parties pursuant to Clause 6.30).

6.25 *Instant Lottery games (excluding Interactive Games): for the purposes of Clause 6.23(i) and (ii) the only Instant Lottery Games for which the figures will be included in the Annual Reconciliation and the Final Annual Reconciliation are Closed Instant Lottery Games, and the calculations will be done from the date of the first Settled Pack for the relevant Instant Lottery game to the Closing Date.*

For the avoidance of doubt:

- *Instant Lottery games that have not reached the Closing Date in the respective Financial Year will not be part of the Annual Reconciliation or the Final Annual Reconciliation.*
- *Interactive Lotteries will form part of the Annual Reconciliation and the Final Annual Reconciliation.*

6.26 *Without prejudice to the Regulator's powers to require compliance with the terms of the Act and the Licence at any time, the Parties will proceed as outlined in the following scenarios:*

Scenario A: *Where the calculation at Clause 6.23(iii) confirms that the amount at Clause 6.23 (i) is greater than the amount at Clause 6.23 (ii) for the period and games that are the subject of the Annual Reconciliation Statement (an "Underfunding"):*

- (i) *the Regulator will within twenty-four (24) hours of receiving the Annual Reconciliation Statement and the payment referred to in Scenario A (iii) below make an additional payment to the Prize Fund Account equal to the amount of the Underfunding and requested under Clause 6.23(vi);*
- (ii) *the Regulator will reduce the next payment (or payments) to the Central Fund allocated to Good Causes to adjust the allocation to Good Causes as per the figure set out in Clause 6.23(iv) and recorded in the Good Causes Contribution Statement; and*
- (iii) *the Licensee will on the same day of submitting the Annual Reconciliation Statement make payment(s) to the Fund of an amount equal to the excess paid to the Licensee pursuant to Clause 6.8 as*



evidenced by the Annual Reconciliation Statement and as notified under Clause 6.23(vi).

A worked example of Scenario A, (i.e., an Underfunding in the weekly payments over the course of the Financial Year to the Prize Fund Account) and the steps to be taken by the Parties as a result of the Underfunding is set out in the Schedule – Part A of this Amendment Agreement.

Scenario B: *Where the calculation at Clause 6.23(iii) confirms that the amount at Clause 6.23 (i) is less than the amount at Clause 6.23(ii) for the period and games that are the subject of the Annual Reconciliation Statement (an “Overfunding”):*

- (i) the Licensee will on the same day of submitting the Annual Reconciliation Statement make a repayment from the Prize Fund Account to the Fund equal to the amount of the Overfunding and as notified under Clause 6.23(vi);*
- (ii) the Regulator will increase the next payment (or payments) to the Central Fund to adjust the allocation to Good Causes as per the figure set out in Clause 6.23(iv) and recorded in the Good Causes Contribution Statement; and*
- (iii) the Regulator will, within twenty-four (24) hours of receiving the Annual Reconciliation Statement and the payment referred to in Scenario B (i) above, make a payment to the Licensee from the Fund of an amount equal to the shortfall payable to the Licensee pursuant to Clause 6.8 as evidenced by Clause 6.23(v) and requested under Clause 6.23(vi).*

A worked example of Scenario B, (i.e., an Overfunding in the weekly payments to the Prize Fund Account over the course of the Financial Year) and the steps to be taken by the Parties as a result of the Overfunding is set out in the Schedule - Part B of this Amendment Agreement.

References in this Clause to a payment by the Regulator “within twenty-four (24) hours of receiving the Annual Reconciliation Statement” shall be read to mean that, where expiry of that period does not fall on a Working Day,



payment shall be made by 5.30pm on the next Working Day or by such other date and time agreed in writing by the Regulator and the Licensee at the relevant time.

In the event of any conflict between the provisions of the worked examples referred to in this Clause and this Clause or any other provisions of the Licence, the provisions of this Clause or other provisions of the Licence (as applicable) shall prevail.

- 6.27 *The Regulator will consider the Annual Reconciliation Statement and the Good Causes Contribution statement received from the Licensee. If the Regulator requires any additional information or explanations regarding any calculation in the Annual Reconciliation Statement or the Good Causes Contribution statement, it will notify the Licensee in writing of the relevant information and explanations that it requires. The Licensee will promptly provide the additional information and/or explanations, and, if required by the Regulator, the Parties will promptly meet to address the Regulator's queries on the Annual Reconciliation Statement and/or the Good Causes Contribution statement, assisted if either Party so desires, by appropriate consultants or advisers. The Licensee will notify the Regulator if it becomes aware at any time of any error made in any Annual Reconciliation Statement or the Good Causes Contribution Statement and the provisions of this Clause shall apply in respect of the consideration of any such error. If the Parties agree that an adjustment needs to be made to the Annual Reconciliation Statement or the Good Causes Contribution statement submitted by the Licensee in respect of a Financial Year(s) the adjustment will be made in the Good Causes Contribution statement for the next Quarter to be filed by the Licensee with any adjustments to payments being made in the manner and in the timeframe agreed in writing by the Licensee and the Regulator at the relevant time provided that any payment adjustments shall occur no later than the same time as payment adjustments are being made in respect of the next Annual Reconciliation Statement that is filed with the Regulator.*

- 6.28 *Where an Annual Reconciliation indicates, that, for a particular National Lottery Game, the total amounts allocated to Good Causes for the Financial Year were, in fact, negative, the Regulator may request that the Licensee provide a*



justification for the continued sale of the National Lottery Game, and/or may withdraw the approval for the National Lottery Game.

FINAL ANNUAL RECONCILIATION

- 6.29 *The final Annual Reconciliation Statement shall cover and include a reconciliation in respect of the final Financial Year prior to expiry or termination of the Licence (the “**Final Annual Reconciliation Statement**”). The Final Annual Reconciliation Statement shall be submitted by the Licensee to the Regulator on the Licence Date (or such other date as may be agreed by the Parties pursuant to Clause 6.30). The Final Annual Reconciliation Statement is not accompanied by a Good Causes Contribution statement. In all other respects, the Final Annual Reconciliation Statement shall comply with the requirements of Clauses 6.23, 6.24 and 6.25 unless expressly modified in writing by the Parties pursuant to Cause 6.30*
- 6.30 *The Parties shall:*
- (i) in respect of a termination of the Licence under Clause 25.1.1, no later than eighteen (18) months prior to the Licence Date (or at such other time agreed in writing by the Parties); or*
 - (ii) in respect of a termination of the Licence other than under Clause 25.1.1, within five (5) Business Days of the date of notice in writing of the termination or revocation of the Licence (or at such other time agreed in writing by the Parties),*
- meet with a view to agreeing in good faith the prompt timing, procedure and associated payment matters to apply in respect of the Final Annual Reconciliation Statement.*
- 6.31 *Any payments to be made by the Licensee in respect of a Final Annual Reconciliation Statement shall be secured by the Performance Bond and the provisions of Clause 17.3 and 17.4 shall be read in this respect such that the duration of the Performance Bond in respect of the final Financial Year shall apply to and cover all payment obligations of the Licensee as may arise in respect of the Final Annual Reconciliation Statement unless otherwise agreed by the Regulator in writing where the other provisions of Clause 17.4 apply in*



Rialálaí an Chrannchuir Náisiúnta
Regulator of the National Lottery

respect of a replacement performance bond.

6.32

In Clauses 6.22 to 6.31 (inclusive):

(i) the following terms have the following meanings:

“Actual Prizes Payable” means amounts (whether money prizes or otherwise and including Free Tickets) payable in respect of prizes for Winning Tickets, with the exception of amounts payable in respect of prizes for Winning Tickets given away free by the Licensee pursuant to Clause 9.10.2.

“Annual Reconciliation Statement” is the statement of the Licensee containing the information as required by Clause 6.23; and **“Annual Reconciliation”** means the process by which the Licensee calculates the figures that are contained in the Annual Reconciliation Statement.

“Closed Instant Lottery Games” are those Instant Lottery games (colloquially known as “scratch card games”) but excluding Interactive Lottery games, where the date for retailers to return unsold tickets to the Licensee for credit has passed during the relevant Financial Year (the **“Closing Date”**).

“EuroMillions” means each Lottery Game operated and promoted under the name or style of “EuroMillions” from time to time but excluding EuroMillions Plus.

“EuroMillions Plus” means the Lottery Game operated and promoted under the name or style of “EuroMillions Plus” from time to time.

“Excluded Lottery Games” means:

(a) Raffle Reserves and EuroMillions which are excluded from the Annual Reconciliation; and

(b) Excluded Millionaire Raffle which is excluded from the Annual Reconciliation in respect of certain periods only.

“Excluded Millionaire Raffle” means Millionaire Raffle in respect of the six Financial Years from the Effective Date to 31 December 2020 (but not thereafter).



“Financial Annual Reconciliation Statement” has the meaning given to it in Clause 6.29 and **“Final Annual Reconciliation”** means the process by which the Licensee calculates the figures that are contained in the Financial Annual Reconciliation Statement.

“Free Tickets” means free Tickets provided in accordance with Clause 9.10.1 of the Licence, but excluding, for the avoidance of doubt, Tickets which are given away free by the Licensee pursuant to Clause 9.10.2 of the Licence.

“Game Specific Free Tickets” means free Tickets provided in accordance with Clause 9.10.1 but only where the free Tickets are Tickets to participate in the same Lottery Game in which the Ticket was won as a prize.

“Lotto” means the Lottery Game known as Lotto or any similar National Lottery Games which have a jackpot rollover feature and which are identified as a “Lotto” Lottery Game in the scheme for the Lottery Game proposed by the Licensee under section 45 of the Act and approved by the Regulator from time to time (provided that such name identification as “Lotto” shall be used for the purposes of assessment and consideration of a Lottery Game as part of the Annual Reconciliation and does not prevent that Lottery Game having a different commercial or brand name to “Lotto”).

“Lotto Plus” means the Lottery Game operated and promoted under the name or style of “Lotto Plus” from time to time.

“Millionaire Raffle” means the Lottery Game known as Christmas Millionaire Raffle and all other similar Lottery Games involving a limited number of tickets, which may or may not all be sold, for a draw to take place on an approved date for a fixed prize or prizes, which are identified as a “Millionaire Raffle” Lottery Game in the scheme for the Lottery Game proposed by the Licensee under section 45 of the Act and approved by the Regulator from time to time (provided that such name identification as “Millionaire Raffle” shall be used for the purposes of assessment and consideration of a Lottery Game as part of the Annual Reconciliation and does not prevent the Lottery Game having a different commercial or brand name to “Millionaire Raffle”).



“Raffle Reserve” means a prize in a Lottery Game that is funded by the accumulation of a fixed proportion of total net sales for that Lottery Game which is then won by way of a draw for a fixed amount, on a date to be determined by the Licensee, from an unlimited number of tickets. It includes the Million Euro Raffle prize in the Lotto Plus Lottery Game and all other similar prizes in Lottery Games which conform with this definition, and which are identified as “Raffle Reserves” in the scheme for the Lottery Game proposed by the Licensee under section 45 of the Act and approved by the Regulator from time to time (provided that such name identification as “Raffle Reserve” shall be used for the purposes of assessment and consideration of a Lottery Game as part of the Annual Reconciliation and does not prevent the prize in the Lottery Game having a different commercial or brand name to “Raffle Reserve”); and

- (ii) *references to the Prize Fund Account refer to the Prize Fund Account nominated for the purpose of Clause 6.13.”*

SCHEDULE

[commercially sensitive]”