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The National Lottery (Amendment) Bill

Bill No 15 of 2000-2001

The *National Lottery (Amendment) Bill* seeks to amend the *National Lottery etc. Act 1993* to allow the National Lottery Charities Board to make grants to endowment trusts. The Bill has been introduced by Dr Ian Gibson, who came fifth in the ballot for Private Members' Bills, and is due to have its second reading on 23 March 2001.

The Bill came about as a result of representations made by the Committee of the *Eastern Daily Press We Care 2000 Appeal*, which has set up the Norfolk Millennium Trust for Carers.

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Summary of main points

The *National Lottery etc. Act 1993* prohibits the National Lottery Charities Board (NLCB) from making grants to endowment trusts although the other distributing bodies may do so.

To mark the Millennium the *Eastern Daily Press We Care Appeal 2000* set up the Norfolk Millennium Trust for Carers to provide long-term provision of support for unpaid carers. The appeal has raised more than £530,000 towards its target of £1 million.

Although the trust was able to apply for lottery funding for the running of the appeal it is barred from seeking major funding from the NLCB because it is an endowment scheme.

With the support of all Norfolk MPs a meeting was held in December 2000 with the Secretary of State for Culture, Media and Sport, who admitted that there was an anomaly in the 1993 Act.

Dr Ian Gibson, MP for Norwich, came fifth in the ballot for Private Members' Bills and introduced the *National Lottery (Amendment) Bill* into the House of Commons on 17 January 2001.

The purpose of the Bill is to remedy the anomaly in the *National Lottery etc. Act 1993* to allow the National Lottery Charities Board to make grants for use as part of the endowment of charities, including use as a permanent endowment.

The Bill extends to Northern Ireland.

Private Members' Bills are not subject to the requirement of section 19 of the *Human Rights Act 1998* that the Minister in charge of a Bill should make a statement on its compatibility with the European Convention on Human Rights before second reading.

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I Background

The *Eastern Daily Press* (EDP) We Care 2000 Appeal was established to mark the Millennium in a meaningful way in Norfolk by funding the Norfolk Millennium Trust for Carers. The EDP We Care 2000 Appeal aims to raise £1 million to establish a long lasting endowment trust to provide financial help to the estimated 110,000 unpaid carers in Norfolk. The purpose of the trust is to respond to an identified need of carers. This may be to buy a piece of equipment to help some practical aspect of their caring role or to provide a specialised sitter to allow the carer a break. Information about the Appeal is available from its website.¹

The appeal was launched in October 1998 and over the past two years the increased publicity through the EDP has highlighted the plight of unpaid carers. A sum of more than £500,000 has been raised by the people of Norfolk through fund raising events. A number of Parish and Town Councils have also contributed to the appeal. All the money raised by the appeal has been invested and the resulting income has enabled the Trustees of the Norfolk Millennium Trust for Carers to begin giving grants to carers. But the amount so far available to give as grants is not considerable.

In February 1999 the appeal received a lottery grant of £23,000 from the Millennium Commission for the running costs of the appeal, including collecting tins, printing costs and to pay for a part time assistant administrator.

However the endowment trust itself cannot seek major lottery funding because the *National Lottery etc. 1993 Act* specifically precludes the National Lottery Charities Board (NLCB) from making grants to endowments. This has highlighted an anomaly in the 1993 Act which at present restricts the NLCB guidelines under section 38(1) for grants to charities to “meeting the expenditure of charities”. This differs from the wording in the guidelines to the other boards which says that they may “fund or assist in funding” projects.

The EDP We Care Appeal wrote to Rt Hon Chris Smith, the Secretary of State for Culture, Media and Sport, on 10 December 2000 repeating three possible options which had apparently been suggested by Rt. Hon Charles Clarke MP. These were:

1. Subject to the exigencies of legislative time, would the Government be prepared to consider amending the 1993 Act to meet the needs of endowment funds? Would there be sympathy for a Private Members Bill on this matter?
2. If the EDP We Care 2000 Appeal sought revenue grant support for care projects would that be eligible for lottery support?

¹ <http://www.norfolk-now.co.uk/Content/Sponsors/htm/WeCare.htm>

3. Could another part of the lottery, for example the Millennium Fund, support an endowment fund, such as the EDP We Care 2000 Appeal?

The We Care Appeal suggested one further option:

4. Could lottery funding be used to bring an annuity to the appeal for 10 years? This revenue would be committed to annual revenue expenditure on carers and would provide vital support meeting the aims of the appeal.

The We Care Appeal 2000 has highlighted the problem but an amendment to the Act would clearly benefit many endowment trusts across the country. There has been cross party support for the Bill in Norfolk and with the support of all the county's MPs a meeting was held last year with the Secretary of State.

From 9 April 2001 the National Lottery Charities Board is changing its name to Community Fund and introducing two new improved grants programmes that will make it easier for charities, voluntary and community groups to get access to Lottery money. The NLCB will be publishing further updates about the progress of rebranding on their website.² A database of awards granted is also held on the website.

² <http://www.nlcb.org.uk/> (from 9 April www.community-fund.org.uk/)

II Current legislative position

The National Lottery was established under the *National Lottery etc. Act 1993*, and began life on 14 November 1994. About 30 million people play it every week, by buying tickets for the two weekly ‘on-line’ draws or purchasing ‘instant-win’ scratchcards. Since the introduction of the Lottery, about 50% of the Lottery's proceeds have gone in prizes, and 28% to the good causes through the National Lottery Distribution Fund (NLDF).

The distributing bodies which allocate Lottery funds for six good causes are:

- The Arts Councils for England, Scotland, Wales and Northern Ireland³
- The National Lottery Charities Board (NLCB)
- The National Heritage Memorial Fund
- The UK Sports Council & the Sports Councils for England, Scotland, Wales and Northern Ireland
- The Millennium Commission
- The New Opportunities Fund (NOF)

Each of the bodies are responsible for sifting through the applications made to them for Lottery money, determining which are eligible, and deciding which among these should be awarded a grant. They are required to comply with directions given by the Secretary of State, on matters of policy and financial propriety - but the Secretary of State does *not* have any role in deciding which applications for Lottery grants are successful. In one respect the relationship between the Secretary of State and NOF is different, as the Minister has the power to specify which initiatives NOF should finance,⁴ although again he does not have any responsibility for the success or failure of any specific grant application.

The financial directions given by the Minister establish the statutory responsibility for each distributing body to ensure that the grants they have awarded are spent for the purposes to which they were made. Generally speaking, in the event of the successful applicant ceasing to operate, the Lottery grant will become repayable to the distributing body.

The New Opportunities Fund (NOF) - the new sixth good cause - was set up under the *National Lottery Act 1998* and started inviting applications for grants in January 1999.⁵ The creation of NOF was set out in the White Paper *A People's Lottery* published in July

³ In April 2000 responsibility for Lottery funding for film production was taken on by the Film Council, and its sister Scottish body, Scottish Screen.

⁴ under section 7 of the *National Lottery Act 1998*

⁵ Prior to the introduction of NOF, the NLDF was divided into five equal parts for the five good causes: arts, sport, the heritage, charities and the celebration of the millennium.

1997.⁶ At this time, the predicted size of the NLDF over the seven-year licence had risen to £10 billion: £1 billion more than first estimated. It was proposed that this extra £1 billion be channelled into a new fund to support initiatives in health, education and the environment and a one-off £200 million grant to set up NESTA.⁷

Section 38 (1) of the *National Lottery etc. Act 1993* restricts the NLCB to making grants “for meeting the expenditure of charities or of institutions.”

38 Grants to charities etc

(1) The Charities Board may make out of any money they receive grants for meeting the expenditure of charities or of institutions such as are mentioned in paragraph (b) of the definition of “charitable expenditure” in section 44 (1).⁸

(2) In making a grant under this section, the Charities Board may impose such conditions as they think fit, including conditions requiring the amount of a grant to be repaid forthwith on breach of any condition.

(3) the Charities Board may for the purpose of enabling them to exercise their functions acquire and dispose of land.

This is in contrast to the provisions of section 43B relating to the New Opportunities Fund (NOF) which allows the NOF to make grants “to fund or assist in the funding of projects”:⁹

43B Functions of the New Opportunities Fund

(1) The New Opportunities Fund--

- (a) may make grants out of any money they receive to fund or assist in the funding of projects, or
- (b) may make or enter into arrangements,

which are designed to give effect to such initiatives concerned or connected with health, education or the environment as may from time to time be specified in an order made by the Secretary of State.

⁶ Cm 3709 July 1997 The background to this reform is discussed in *The National Lottery Bill [HL] 1997/98*, Library Research paper 98/41, 2 April 1998.

⁷ the National Endowment of Science, Technology and the Arts

⁸ 44.—(1) In this Part—

“charitable expenditure” means expenditure—

- (a) by charities, or
- (b) by institutions, other than charities, that are established for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes;

⁹ Similar wording is used in section 41 of the National Lottery etc. Act 1993 in respect of the Millennium Commission.

(2) In making a grant under this section, the New Opportunities Fund may impose such conditions as they think fit, including conditions requiring the amount of a grant to be repaid forthwith on breach on any condition.

(3) The New Opportunities Fund may do anything that they consider desirable for enabling them to determine—

(a) the projects in respect of which grants under this section are to be made; or

(b) the arrangements which are to be made or entered into under this section.

(4) The New Opportunities fund may for the purpose of enabling then to exercise their functions acquire and dispose of land.

(5) The function of the Secretary of State under subsection (1) to specify initiatives may, in relation to initiatives applying in Scotland only, be exercised separately.

Legislation has already been enacted to set up an endowment fund, NESTA, and to allow it to receive funding from the National Lottery. Section 16 and Schedule 4 of the *National Lottery Act 1998* provided for the setting up of NESTA:

16. - (1) There shall be a body corporate known as the National Endowment for Science, Technology and the Arts (in this Part of this Act referred to as "NESTA").

(2) Schedule 4 to this Act makes provision in relation to NESTA.

Section 19 allows NESTA to receive funding from the National Lottery Distribution Fund:

19. - (1) For the purpose of providing NESTA with an endowment to enable them to achieve their objects, the Secretary of State may, before the end of the period of one year beginning with the day on which this Act is passed, make one or more payments to NESTA out of money held in the National Lottery Distribution Fund and allocated for expenditure on or connected with health, education or the environment.

(2) For the purpose of increasing the amount of NESTA's endowment, the Secretary of State may, at any time after the end of the period of one year beginning with the day on which this Act is passed, make an order permitting him to pay to NESTA, out of money held in the National Lottery Distribution Fund and allocated for such one or more of the descriptions for the time being mentioned in section 22(3) of the 1993 Act as may be specified in the order, such sum or, as the case may be, such sums (whether or not of equal amounts) as may be so specified.

NESTA is an endowment funded by a one-off payment from the National Lottery of £200 million. Its income is about £10 million a year from the interest on the £200 million endowment.

The EDP Appeal was unable to establish from the Department of Culture, Media and Sport (DCMS) any reason for the rule banning the NLCB from granting money to endowments. Out of all the National Lottery distributing bodies, only the NLCB is prevented outright from granting to endowments, although the others are given guidelines that they should carefully consider such requests.

III The *National Lottery (Amendment) Bill*

A. Provisions of the Bill

This is a Private Members Bill, introduced by Dr Ian Gibson on 17 January 2001, which is due to have its second reading debate on 23 March. At the time of writing the Bill has not been printed so the following is based on a draft version.

Clause 1 of the Bill inserts a new provision in section 38 of the *National Lottery etc Act 1993*, section 38(1)(b), to allow the National Lottery Charities Board to make grants, out of any money they receive, for use as part of the endowment of charities, including permanent endowment.

1. For Section 38 of the National Lottery etc Act 1993 (grants to charities etc) there is substituted:

38(1) The Charities Board may make out of any money they receive grants for;-

(a) meeting the expenditure of charities or of institutions such as are mentioned in paragraph (b) of the definition of “charitable expenditure” in section 44(1); and

(b) use as part of the endowment of charities upon such terms as the Charities Board may specify in the grant including use as permanent endowment.

(2) In making a grant under this section, the Charities Board may impose such conditions as they think fit, including conditions requiring the amount of a grant to be repaid forthwith on breach of any condition.

(3) The Charities Board may for the purpose of enabling them to exercise their functions acquire and dispose of land.

(4) In sub-section (1) “permanent endowment” shall be construed in accordance with Section 96(3) of the Charities Act 1993.

Section 96(3) of the *Charities Act 1993* construes “permanent endowment” as follows:

(3) A charity shall be deemed for the purposes of this Act to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act "permanent endowment" means, in relation to any charity, property

held subject to a restriction on its being expended for the purposes of the charity.

The term “permanent endowment” is well known in the charity context. It is defined as follows in a leaflet published by the Charity Commissioners.¹⁰ “Permanent endowment means property of the charity (ie land, buildings, investments or cash) which the trustees may not spend as if it were income. It must be held permanently - sometimes it is to be used in furthering the charity's purposes, sometimes to produce an income for the charity. For the purposes of this leaflet it is also referred to as capital.”

The trustees of a charity may only spend a permanent endowment with special authorisation of the Charity Commissioners on the understanding that it will be replaced out of future income.

Clause 2 of the Bill replaces the definition of charitable expenditure in section 44(1) of the 1993 Act. It changes the definition of expenditure from “expenditure **by** charities or **by** (charitable) institutions” (as defined) to “expenditure on grants **to** charities or **to** (charitable) institutions.

“charitable expenditure” means expenditure on grants –
(a) to charities, or
(b) to institutions, other than charities, that are established for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes;

If this amendment were to be implemented grants to a charity from the NLCB would not have to be used only to fund specific projects.

B. Responses

The Secretary of State, Rt Hon Chris Smith, in evidence to the Culture, Media and Sport Select Committee, expressed agreement with the principle of the Bill:¹¹

661. There have been a couple of Ten Minute Rule Bills, there has been one by Ian Gibson and one by myself, and Ian Gibson's one is about whether the Lottery can top up trust funds, and mine was about whether it would be much fairer if the community could keep 10 per cent of the total Lottery expenditure in the community, instead of having to bid for £500 or £1,000 little bits, so that if a football team wants shirts, if you want a scanner in the hospital, the community could come up and decide. Do you not think that both those principles are much fairer than the current way the Lottery works?

¹⁰ CC38, *Expenditure and Replacement of Permanent Endowment*, April 1994

¹¹ Culture, Media and Sport Select Committee First Report HC 56-II 2000-2001, page 226

(Mr Chris Smith) The proposal that Ian Gibson is putting forward is I believe very much arising from a particular East Anglian issue which he has been pursuing very vigorously together with some of his East Anglian colleagues, and indeed he came to see me on the subject a few weeks ago. I think he may well be considering putting forward a Private Member's Bill to try and achieve the change that he desires. I believe it looks as if it would be a sensible change. I obviously want to look at the detail of what he is proposing but the principle seems to me to be a sensible one.

The NLCB is broadly supportive of the Bill in that it is a permissive measure giving the Board another power to make grants. It has concerns over the value for money aspects of the power to grant endowments. Endowments can offer long term security to particular projects. But with interest rates currently low it would require a large sum of money to be invested to yield a worthwhile annual return. Many projects could be supported now with such resources. There are also resource constraints. The NLCB consider that £300,000 (yielding an annual income of around £15,000 at current interest rates) would be required to provide a sufficient annual return for an endowment trust. This might absorb the entire annual budget of a regional office of the NLCB.

There is also a technical problem with the Bill. As currently drafted, under the new section 38(1)(b), it restricts grants for endowments to registered charities (excluding institutions established for philanthropic and beneficial purposes).