



MRS Regulations for Administering
Incentives and Free Prize Draws

January 2008

Introduction

These regulations update a guidance note issued by MRS in May 2000. Following the enactment of the Gambling Act 2005 the law in this area, though practically unchanged, has been significantly clarified. The Act's provisions will come in to force in October 2007.

As specified in the *MRS Code of Conduct*, it is the responsibility of researchers to keep abreast of any legislation which could affect research and to ensure that all those involved in projects are aware of and agree to abide by the *MRS Code of Conduct*.

These regulations are binding of all MRS Members and MRS Company Partners. In cases where additional legal requirements apply the most stringent set of rules must be applied. The most applicable rules from the MRS Code of Conduct are included (in the shaded boxes) in this document.

This material is provided for information only. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to specific issues.

Free Prize Draws and the law

Free draws are, and will remain under the Gambling Act 2005, free of statutory regulatory control. Such competitions and draws will continue to be able to be organised commercially for private benefit and profit. This contrasts with public lotteries which remain the preserve of good causes and must, unless they qualify in one of the 'exempt' categories, continue either to be licensed by the Gambling Commission, if above a certain size, or to be registered with a local authority.

The 2005 Act defines the basic elements of a lottery as follows:

- Persons are required to pay to participate
- One or more prizes are allocated to the participants in the scheme; and
- Prizes are allocated wholly by chance.

This definition thus codifies in legislation the longstanding convention established by case law that a lottery consists of three elements, that is payment, prize and chance, all of which have to be present. Thus any scheme which falls within this definition needs to operate within the statutory provisions relating to lotteries if it is to be organised lawfully.

'Free entry'

An arrangement is a lottery only if the participants are required to pay to enter. Thus, free draws always have been and will remain exempt from statutory control. Schedule 2 to the 2005 Act gives details of what is to be treated as amounting to 'payment to enter' for the purposes of distinguishing free draws from lotteries.

For draws connected to research projects there will only be one method of entry. Here, "free" will include any method of communication (post, telephone or other) at a "normal rate". "Normal rate" is defined as "a rate which does not reflect the opportunity to enter a lottery" (paragraph 5(2)(a) of Schedule 2). It includes "ordinary first-class or second-class post (without special arrangements for delivery" (paragraph 5(2)(b)). There can thus be no premium over what it would normally cost to use the particular method of communication. Any competition which fails that test involves 'payment to enter' and will thus be a lottery if the other two elements (chance and prizes) are also present.

Other sources of guidance

Other bodies, such as the Direct Marketing Association, the Committee of Advertising Practice Codes of Advertising and Sales Promotion and the Consumers Association all, in varying degrees, have guidelines on the subject of free prize draws.

These regulations have drawn from the guidelines of the above-mentioned bodies where individual best practice aspects are appropriate to market researchers using free prize draws for incentives purposes. The contributions of these bodies and their guidelines are gratefully acknowledged.

Even though, apart from the guidelines of these three bodies, there is no specific legislation governing free prize draws, there are common law principles such as transparency, equity and fairness that clearly must be incorporated into the administration of free prize draws by those researchers who organise them as an incentive for survey participation, especially as these common law principles are implicit in the *MRS Code of Conduct*.

Definitions

Agency:

Agency includes any individual, organisation, department or division, including any belonging to the same organisation as the Client which is responsible for, or acts as, a supplier on all or part of a research project.

Client:

Client includes any individual, organisation, department or division, including any belonging to the same organisation as the Member, which is responsible for commissioning or applying the results from a research project.

Company Partner:

An organisation with MRS Members that has signed the MRS Company Partner Service Quality Commitment which applies throughout the organisation.

Free Prize Draw:

A draw where prizes are allocated by chance, with no payment to enter.

Free Prize Draw Organiser:

The organisation identified to the respondent as responsible for the administration of the free prize draw

Identity:

The identity of a Respondent includes, as well as his/her name and/or address, any other information which offers a reasonable chance that he/she can be identified by anyone who has access to the information.

Incentive:

Any benefit offered to respondents to encourage participation (or as a consequence of participating) in a research project.

Interview:

An interview is any form of contact intended to obtain information from a Respondent or group of Respondents.

Member:

A Member is an individual who has been admitted to membership of the MRS in one of the five categories set out in Article 3 of the Articles of Association (i.e. Nominated Members, Full Members, Associate Members, Affiliate Members and Field Members).

The Profession:

The profession is the body of research practitioners and others engaged in (or interested in) marketing, social and opinion research.

Research:

Research is the collection and analysis of data from a sample or census of individuals or organisations relating to their characteristics, behaviour, attitudes, opinions or possessions. It includes all forms of market, opinion and social research such as consumer and industrial surveys, psychological investigations, qualitative interviews and group discussions, observational, ethnographic, and panel studies.

Respondent:

A Respondent is any individual or organisation from or about whom data is collected or is approached for interview.

Sub-contractor:

Any individual or organisation that undertakes a part of a research project under the instruction of the Member (self-employed interviewers are not defined as sub-contractors for the purpose of the Code of Conduct).

The MRS Code of Conduct

The following rules of the Code are applicable to the administration of incentives and free prize draws:

A1	Research must conform to the national and international legislation relevant to a given project including in particular the Data Protection Act 1998 or other comparable legislation applicable outside the UK.
A3	Members must act honestly in dealings with Respondents, Clients (actual or potential), employers, employees, sub-contractors and the general public.
A7	Members must take reasonable steps to ensure that others do not breach or cause a breach of this Code. <i>Comment: This includes:</i> <i>Members taking reasonable steps to ensure that the people with whom they work (including other Members, non-member research practitioners, colleagues, Clients, consultants, sub-contractors) are sufficiently familiar with this Code that they are unlikely to breach or cause it to be breached unknowingly or unintentionally, and</i> <i>Members with responsibility for implementing processes, procedures and contracts, taking reasonable steps to ensure that they are such that this Code is unlikely to be breached or caused to be breached by others unknowingly or unintentionally.</i>
A8	Members must not act in a way which might bring discredit on the profession, MRS or its Members.
A10	Members must take all reasonable precautions to ensure that Respondents are not harmed or adversely affected as a result of participating in a research project.
B2	All written or oral assurances made by any Member involved in commissioning or conducting projects must be factually correct and honoured by the Member.

B8	<p>The anonymity of Respondents must be preserved unless they have given their informed consent for their details to be revealed or for attributable comments to be passed on.</p> <p><i>Comment: Members must be particularly careful if sample sizes are very small (such as in business and employee research) that they do not inadvertently identify organisations or departments and therefore individuals.</i></p>
B9	<p>If Respondents have given consent for data to be passed on in a form which allows them to be personally identified, Members must:</p> <ul style="list-style-type: none"> • demonstrate that they have taken all reasonable steps to ensure that it will only be used for the purpose for which it was collected and • fully inform Respondents as to what will be revealed, to whom and for what purpose.
B11	<p>A follow up interview with a Respondent can be carried out only if the Respondent's permission has been obtained at the previous interview.</p> <p>The only exception to this is re-contact for quality control purposes.</p>
B12	<p>Any re-contact must match the assurances given to Respondents at the time that permission was gained e.g. when re-contact was to occur, the purpose and by whom.</p>
B13	<p>Respondent details must not be passed on to another third party for research or any other purposes without the prior consent of the Respondent. The only exception to this is if the Client is the Data Controller of the Respondent data.</p>
B17	<p>Respondents must not be misled when being asked for cooperation to participate in a research project.</p>
B25	<p>Where incentives are offered, Members must clearly inform the Respondent who will administer the incentive.</p>

Regulations for Administering Incentives

1. Respondents must not be required to do anything other than agree to participate in a market research exercise or return a questionnaire to be eligible for entry to a free prize draw.
2. Incentives must not be offered that require the respondent to spend any money. Thus, respondents should not be offered price discounts as incentives because claiming the incentive would involve the respondent paying the balance after discount. However the offer of monetary vouchers is permissible because this does not necessitate expenditure on the part of respondents, subject to Regulation 3.
3. With due regard to the problem of selling under the guise of research (“sugging”), client goods or services, or vouchers to purchase client goods or services, must not be used as incentives or provided as gifts to respondents.
4. Respondents must not be promised that they will receive gifts of the client’s goods or of client branded material at the end of an interview. This includes left over material from product tests. Such incentives are unrelated to the research purpose of the interview and amount to direct marketing or promotion.
5. The use of incentives to stimulate response must not be used by Members, Company Partners or clients as a means of collecting respondent’s personal details. Where a Member or Company Partner offers respondents incentives to participate in a client’s study, the Member or Company Partner (or their sub-contractor) should administer the collection of respondent’s details and the delivery of any incentives promised to them.
6. No respondent’s name or identifying details can be passed to client without the express permission of respondents whose permission is entirely voluntary. Such permission must not be linked to or be a condition of entry to a free prize draw.
7. Where incentives are offered by an organisation’s in-house research department or unit, personal details of all respondents eligible for the incentive must remain confidential and not accessible to anyone in the organisation outside the research department or unit.

Regulations for Administering Free Prize Draws

The following regulations must be read in conjunction with the regulations for administering incentives.

1. Failure to fully complete an interview or questionnaire must not disqualify a respondent from entry to a free prize draw.
2. Respondents must be clearly informed, before participating, of:
 - a. the closing date for receipt of entry
 - b. the nature of the prizes
 - c. if a cash alternative can be substituted for any prize
 - d. how and when winners will be notified of results
 - e. how and when winners and results will be announced
3. The closing date for entry must not be changed unless circumstances outside the reasonable control of the draw organisers make it unavoidable.
4. Extending the closing date for entry will not be acceptable unless the draw organisers can show that unforeseen factors apply and that existing participants will not be disadvantaged in any way.
5. Withholding prizes can only be justified if participants have not met clear criteria set out in the rules.
6. Unless otherwise stated in advance, prize winners must receive their prizes within six weeks after the draw has been held.
7. Winners in a free prize draw must be selected in a manner that ensures fair application of the laws of chance. The process by which winners will be selected must involve a clear audit trail and an independent draw. (This process does not have to be made public but can be explained to individual respondents when specifically requested.)
8. An observer, independent to the free prize draw organisers, must supervise prize draws to ensure that all participants have an equal opportunity of winning.

9. The distinction between a prize and a gift must always be clear to participants. Gifts offered to all or most participants must not be described as prizes. If free prize draw organisers offer a gift to all or most entrants in addition to giving prizes to those who win, particular care is needed to avoid confusing the two.
10. Free prize draw organisers must not mislead respondents about the likelihood of winning a prize. Neither should the respondent's chances of winning a prize be overstated.
11. A poor response or an inferior quality of entries is not an acceptable basis for extending the duration of a free prize draw or withholding prizes unless the draw organisers have announced their intention to do so at the outset.
12. The value of prizes offered in a free prize draw must not be misrepresented.
13. Where the eligibility for prizes is dependent on the promptness of the respondent's response, all entry deadlines and the consequences of failing to meet them must be clearly stated.
14. Free prize draw organisers must communicate in a manner that is clear and readily understandable by respondents.
15. All material terms of a free prize draw must be stated accurately and correctly.
16. A free prize draw must not be subject to unreasonable conditions for winning a prize.

Sources and Acknowledgements

MRS gratefully acknowledges the under mentioned bodies, publications and individuals for their co-operation in producing this document.

The Direct Marketing Association

The Committee of Advertising Practice Codes of Advertising and Sales Promotion

The Consumers Association

HM Revenue & Customs

Home Office D Division

The Gambling Commission

Judith Wardle