

HORSERACE BETTING AND OLYMPIC LOTTERY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part One: Sale of the Tote

Section 1: Dissolution of the Tote

15. **Section 1** provides for the Secretary of State to abolish the Tote on an appointed day. It is intended that this will take place as close to the point of sale as possible.

Section 2: Successor Company: Transfer

16. **Section 2** makes provision for the transfer of the Tote's property, rights and liabilities to a company wholly owned by the Crown. The transfer will occur automatically on the appointed day.

Section 3: Section 1 and 2: Supplemental

17. This section explains in more detail how the measures contained in sections 1 and 2 will take effect.
18. Subsections (1) and (2) ensure that anything done or in the process of being done by or in relation to the Tote is to be regarded as having been done or continued by the successor company.
19. Subsection (3) operates so that after the appointed day any reference in any document or agreement to the Tote is treated as a reference to the successor company. Equivalent provision is made in relation to members and officers.
20. Subsection (5) provides that any property, rights and liabilities of the Tote vest in the successor company without any requirement for further legal formality.
21. Subsection (6) ensures that the Transfer of Undertakings (Protection of Employment) Regulations 1981 will apply to the transfer to the successor company safeguarding existing rights of employees, including the right to be consulted.
22. Subsections (8) and (9) provide that the Secretary of State shall consult the Tote before nominating the successor company and before appointing the appointed day.

Section 4: Tax

23. Subsection (1) provides that for all income tax, corporation tax and capital gains tax purposes the successor company is to be treated as if it had always been the Tote, and the transfer itself will not have any tax consequences.
24. Subsection (2) ensures that liability to stamp duty or stamp duty land tax does not arise on the vesting of the Tote's property in the successor company, or on certain preliminary

transactions and subsection (3) ensures that group relief in respect of stamp duty and stamp duty land tax is unaffected by the vesting provisions of Part 1.

Section 5: Pre-sale of shares, &c. to government

25. **Section 5** provides for the issue of securities in the successor company to the Secretary of State and ancillary matters.
26. Subsections (1) and (2) enable the Secretary of State to request the successor company to issue securities to herself or her nominee. The request may specify the nature and value of the securities to be issued, the timing, and terms of the issue. Securities are defined in subsection (4) of section 12 to include shares, debentures, bonds and other securities.
27. Subsection (3) provides that a request made under subsection (1) which requires the issue of shares must specify the nominal value of the shares to be issued and the shares are to be issued as fully paid. The subsection makes provision for the treatment of shares under the Companies Act 1985 and Corporation Tax Acts as fully paid and subsection (4) makes equivalent provision for the treatment of debentures.
28. Subsection (5) prevents the Secretary of State making a request after the successor company has ceased to be wholly owned by the Crown.
29. Subsections (6) and (7) require the Treasury's consent to be obtained before a request is made under subsection (1) and before the disposal of a security issued pursuant to a request under that subsection.

Section 6: Accounts

30. This section deals with the preparation of accounts by the successor company. The effect of this section is to take, for accounting purposes, the value of the assets etc. in the Tote's accounts at the end of the last accounting period before dissolution and apply those values to the successor company's accounts. It is also provided, by virtue of subsection (4), that any movement in those values, for example through sale or disposal, between the end of the Tote's last accounting period and dissolution will be reflected in successor company's accounts by treating whatever was done by the Tote in that period as having been done by the successor company.

Section 7: Shadow directors

31. **Section 7** disapplies the provisions in the Companies Act 1985 relating to shadow directors in respect of the Secretary of State and the Treasury whilst the successor company is wholly owned by the Crown.

Section 8: Exclusive licence

32. Subsection (1) allows the Secretary of State to request the Gaming Board ("the Board") to issue to the successor company an exclusive licence to carry on pool betting business (in any form) in connection with horse racing in Great Britain and to conduct betting on terms determined by reference to pool dividends. Subsection (2) specifies that the licence shall be for a period of seven years.
33. Subsection (3) enables the Secretary of State to specify the terms and conditions of this licence.
34. Subsection (4) makes provision as to when a request made by the Secretary of State may be exercised. In particular, once a licence has been issued under subsection (1) she may not make a further request for the issue of another exclusive licence. The intention behind this provision is to ensure that where, for example, an exclusive licence has been issued and subsequently revoked, the Secretary of State is not to have the power to request the Board to issue another exclusive licence.

35. Subsection (5) provides that the successor company may authorise other persons to conduct pool betting along similar lines to the Tote's current practice. For example, those who wish to organise a totalisator at point to points will have to be authorised by the successor company. Paragraph (b) makes it clear that no person other than the successor company or a person so authorised may do anything that the successor company is authorised to do under the exclusive licence.
36. In relation to authorising others in respect of pool betting under subsection (5), subsection (6) allows the successor company to give an authorisation on terms and conditions, including as to payment.
37. Subsection (7) enables the Board to revoke the licence if they think a term or condition of the licence has been breached. They may also be required by the Secretary of State to revoke it, but only as explained in paragraph 45 below. Subsections (8) and (9) require reasons to be given for any revocation.
38. Under subsection (10) the Secretary of State may only require revocation under subsection (7) while the successor company is wholly owned by the Crown.
39. Subsection (11) provides that the exclusive licence may not be renewed. It may also not be issued or revoked otherwise than in accordance with the provisions described above.

Section 9: Section 8: Supplemental

40. Subsection (1) sets out the matters the Secretary of State must consider in making a request for the issue or revocation of an exclusive licence. These embody the government's key aims for the legislation relating to the exclusive licence and certificates of approval, namely protecting the interests of those who bet on horse races, and of the sport of horseracing, as well as the objectives of preventing crime and disorder, ensuring that betting is fair and open and protecting children and the vulnerable.
41. Under subsection (2) while the exclusive licence has effect, the restrictions on pool betting on and off track in the 1963 Act (currently in section 4 and 4A and subsequently as substituted by section 10) will not apply in relation to anything done by the successor company in pursuance of the exclusive licence and anything done by any person authorised by the company under that licence.
42. Subsection (3) provides that while the exclusive licence has effect the successor company and anyone authorised by it will be able to apply for a betting office licence, under section 9(2) of the 1963 Act, in respect of the activities covered by the exclusive licence. The subsection goes on to make clear that a betting office licence held by another operator will not override the protection given by the exclusive licence in section 8 to the successor company and authorised persons. The effect of paragraph (c) of section 9(3) is that in the case of the successor company and authorised persons the disapplication of section 1(1) of the 1963 Act (restriction on use of premises for betting) which results from holding a betting office licence will only extend to the activities covered by the exclusive licence.
43. Subsection (4) ensures that during the period of the exclusive licence the successor company and persons authorised by it are not, by virtue of the exclusive licence alone, to be treated as bookmakers. This reflects the present operation of the 1963 Act in relation to the Tote.
44. Subsection (5) provides that any person who, without the authority of the successor company, purports to do anything which that company would be able to do under the exclusive licence is to be treated as having committed an offence under new sections 4 to 4A.
45. Subsection (6) provides the successor company with a statutory right, subject to the procedural rules specified in subsection (7), to enforce in the civil courts an

infringement of its licence. This right is similar to that provided in section 14(2) of the 1963 Act.

Section 10: Control when no exclusive licence

46. This replaces section 4 of the 1963 Act with three new sections: new section 4, section 4A and section 4B and a new Schedule 1A. Under new section 4 a person commits an offence if he carries on a pool betting business on track unless:
- it is in connection with horse racing which is carried on –
 - by the holder of a bookmaker’s permit,
 - on an approved horse racecourse,
 - as long as horse racing takes place on that day,
 - in accordance with the regulatory regime in Part 2 of Schedule 1A, or
 - in accordance with a “point-to-point” exemption notice, issued by the Gaming Board to a single course, on which horse racing is carried out on no more than seven days a year and to which the Gaming Board may attach other conditions relating to the operation of the totalisator and the publication of betting arrangements.
 - it is in connection with dog racing which is carried on –
 - on a dog racecourse which is a licensed track,
 - by means of a totalisators operated –
 - in accordance with section 16 (totalisators on licensed tracks) of the 1963 Act, and
 - by the occupier of the track or by a person authorised by him in writing.
47. Under section 4A a person will commit an offence if he carries on pool betting business otherwise than on a track, unless:
- it is in connection with horseracing and is carried on –
 - by the holder of a bookmaker’s permit,
 - in a licensed betting office,
 - in accordance with the regulatory regime provided for in Part 2 of Schedule 1A,
 - the person is a registered pool promoter in accordance with Schedule 2 (registration and conduct of business) to the 1963 Act,
 - the pool betting business is carried on in accordance with a licensed inter-track betting scheme under Schedule 5ZA (licensing of inter-track betting schemes) to the 1963 Act.
48. Section 4B introduces a new Schedule (Schedule 1A) which provides for the regulation of pool betting business in connection with horse racing.
49. The effect of subsections (2) and (3) of new section 4B is that where a condition imposed by Part 2 of Schedule 1A requires action by a person after the conclusion of a race or set of races and that action is not taken he will be treated as not having carried on a pool betting business in accordance with Part 2 of that Schedule. The consequence of this is that in relation to pool betting on track an offence is committed under new section 4(1) (read with new section 4(2)(d)) and in relation to pool betting off track under new section 4A(1) (read with new section 4A(2)(b)).

These notes refer to the Horserace Betting and Olympic Lottery Act 2004 (c.25) which received Royal Assent on 28 October 2004

50. The effect of subsections (4) and (5) of new section 4B is that where a person who conducts pool betting in connection with horse racing fails to comply with a requirement of Part 3 (supervision) of Schedule 1A he will be treated as having failed to carry on a pool betting business in accordance with Part 2 of that Schedule. The consequence of this is similar to that explained in the previous paragraph, namely that an offence will be committed by virtue of new sections 4(2)(d) or 4A(2)(b).
51. Subsection (3) of section 10 ensures that the provisions of sections 281 and 282 of the Criminal Justice Act 2003 (under which penalties on summary conviction may be altered) will apply to the 1963 Act as amended by the section.

Section 11: Preparatory work by the Tote

52. This section enables the Tote or the Secretary of State to do anything necessary to facilitate the sale of the Tote.
53. Subsection (2) gives the Secretary of State the power to request information or assistance and to direct the Tote in connection with the sale of the successor company.

Section 12: Interpretation

54. This section makes provision for the interpretation and definition of a number of expressions. In particular, expressions used in the Companies Act 1985 and the 1963 Act have the same meaning for the purposes of Part 1 of the Act.