

HORSERACE BETTING AND OLYMPIC LOTTERY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: National Lottery: Olympic Lotteries

Section 21: Licensing of Olympic Lotteries

64. A key component of the National Lottery etc. Act 1993 is the issue of licences for the operation of the Lottery. These are issued and enforced by the regulator of the National Lottery, the National Lottery Commission. There are two kinds of licence: a licence under section 5 of the 1993 Act, which is granted to a company to run the National Lottery; and one or more licences under section 6 of that Act, granted to companies to promote lotteries as part of the National Lottery. The section 5 licence holder is currently Camelot, under a licence that ends in January 2009. It is the responsibility of this licence holder to provide the technical, retailing and marketing infrastructure within which the section 6 licence holders can operate, and for ensuring that payments to prize-winners, the National Lottery Distribution Fund (NLDF), and the Exchequer are made. At present, Camelot holds all the section 6 licences.
65. This section deals with the licensing of Olympic Lottery games. Subsection (1) provides that a licence to promote lotteries granted by the National Lottery Commission under section 6 of the 1993 Act may designate a lottery as an Olympic Lottery. Subsection (2) also provides that the section 5 operating licence must include a provision for determining the proportion of proceeds of Lottery games that are attributable to Olympic lotteries. Under subsection (3), a lottery may only be designated as an Olympic Lottery if the section 5 licence required by subsection (2) has effect. Subsection (4) in turn provides that the National Lottery Commission shall make a variation of an existing section 5 licence to accommodate the requirements of subsection (2) of this section after consulting the section 5 licence holder. The timing of such a variation shall be determined by the Commission (irrespective of whether the licence holder agrees to the variation of the licence).

Section 22: Timing

66. **Section 22** provides that an Olympic Lottery (i.e. a lottery designated as such by a section 6 licence) may only be promoted if London is selected to host the 2012 Olympics and must end if that decision is revoked, or if the Secretary of State makes an order for termination.
67. The International Olympic Committee (IOC) will decide, by vote, on 6 July 2005 which city should host the 2012 Olympics. While it is unlikely that a decision to award a city the right to host the Olympic Games would be revoked, this has been known (the 1908 Olympic Games were awarded to Rome but re-allocated to London after Vesuvius erupted in 1906).

68. Subsection (2) provides that a section 6 licence in respect of a designated Olympic Lottery must contain a condition prohibiting the promotion of that lottery unless the Secretary of State has by order declared that the IOC has elected London as the host city of the 2012 Olympic Games. Such an order, as is the case with one made by the Secretary of State pursuant to subsection (3) below, is to be laid before Parliament as required by section 36(3).
69. Subsections (3) and (4) address the circumstances where London is not awarded the Olympic Games, or having been awarded them, the election is revoked. When an order is made by the Secretary of State declaring that the IOC has elected a city other than London to host the 2012 Olympic Games or the award of the Games to London has been revoked, any licence operating an Olympic lottery shall cease to have effect in relation to that lottery and the National Lottery Commission may not grant a new Olympic lottery licence.
70. Subsection (5) enables the Secretary of State to end existing Olympic Lottery licences and prevent the granting of new Olympic Lottery licences. It is envisaged this power would be used after the 2012 Olympic Games have been staged by London as host city.

Section 23: The Fund

71. This section establishes a fund to be known as the Olympic Lottery Distribution Fund (OLDF), which is to be subject to the control and management of the Secretary of State.

Section 24: Payments into Fund from lottery proceeds

72. Subsection (1) provides that, in circumstances where a licence to promote an Olympic lottery has been granted and a sum is required to be paid under section 5(6) of the 1993 Act (as substituted by section 34), the proportion of that sum which is attributable to Olympic Lottery games should be paid to the OLDF (rather than the National Lottery Distribution Fund (NLDF)). Subsection (2) includes a consequential provision in relation to section 9(3) of the 1993 Act (as substituted by section 34(5)) enabling the Secretary of State to recover sums owing to the OLDF in the same way in which she can in respect of monies owed to the NLDF.

Section 25: Payments into Fund from National Lottery Distribution Fund

73. This section enables the Secretary of State to make an order permitting her to make payments from the National Lottery Distribution Fund (NLDF) to the Olympic Lottery Distribution Fund (OLDF). Such an order pursuant to section 36(4) shall not be made unless a draft has been laid before and been approved by resolution of each House of Parliament.
74. Subsection (2) provides that any payment made from the NLDF to the OLDF in accordance with subsection (1) shall be treated as if paid out of money allocated for good causes as provided in section 22(3) of the 1993 National Lottery Act. Further, subsection (2) also permits the Secretary of State to specify by order the proportions of that money that should be treated as coming from each of the good causes (arts, sport, heritage, charities and health, education and the environment). Subsection (3) requires consultation with the existing good causes prior to the making of such an order.
75. An order under this section would be made only in exceptional circumstances. For example, in the event that the Olympic Lottery Distributor needed to make a grant or loan but had not received sufficient funds from the OLDF, and where the OLDF could not provide those funds.

Section 26: Payments out of fund

76. **Section 26** sets out the types of payments that can be made from the OLDF. Subsection (1) provides for payments to be made by the Secretary of State from the OLDF to the

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Olympic Lottery Distributor (OLD) which is responsible for distributing any monies received in accordance with section 30 of the Act.

77. Subsection (2) permits the Secretary of State to make regulations to provide for further payments. These include meeting expenses incurred by the Secretary of State and the National Debt Commissioners as a result of the exercise of their functions under Part 3 of the Act (subsections (2)(a) and (b)). Subsection (3) provides that Treasury consent is required in relation to payments of this kind.
78. Subsection (2)(c) and (d) enable the Secretary of State to make payments to the NLDF and to the Greater London Authority (GLA). In relation to payments to the NLDF, subsection (4) gives the Secretary of State discretion to divide the money between the good causes as set out in section 22(3) of the 1993 Act or to allocate it entirely to the sport good cause. In circumstances where such a payment is allocated entirely to the sport good cause, subsection (5) gives the Secretary of State a discretion to divide the money between the various sports lottery distributing bodies in proportions that differ from those set out in section 23(2) of the 1993 Act and may result in a particular body receiving nothing.
79. The power to pay money from the OLDF to the GLA and the NLDF as provided in subsection (2)(c) and (d) is included in the Act to accommodate arrangements for the public funding of the 2012 Olympic Games, as set out in the Memorandum of Understanding (MoU) between Government and the Mayor of London (published June 2003), and to allow for public funding to be reimbursed where possible. The MoU makes provision for costs of staging the Olympics to be met from a variety of sources in varying proportions. These include from the GLA through an Olympic Council tax, from the National Lottery through Olympic Lottery games, and from existing Sports Lottery distributors. It also gives an indication as to how it is proposed payment may be reimbursed in the event that the Olympic lottery games generate a surplus.
80. In the event of payment to the GLA, subsection (6) provides that this may be used by the GLA for any purpose it is authorised to incur expenditure on.
81. Subsection (2)(e) enables the Secretary of State to make payments to the British Olympic Association (BOA) in its capacity as the National Olympic Committee (NOC) from the OLDF. If London is successful in its bid to host the 2012 Olympic Games, the NOC may suffer a drop in their income as a result of their having to surrender their property rights to the Olympic symbols, mottos etc. In these circumstances it may be necessary to make payments to the NOC from the OLDF.
82. Subsection (2)(f) enables the Secretary of State to make payments from the OLDF into the Consolidated Fund for the purpose of meeting the expenditure of the NLC which is initially defrayed out of money held in the Consolidated Fund in accordance with Paragraph 10 of Schedule 2A to the 1993 Act. Such expenditure will be incurred by the NLC, in licensing new Olympic Lottery games.

Section 27: Investment

83. **Section 27** enables monies in the OLDF to be paid to the National Debt Commissioners (NDC) for the purpose of investment and possible reinvestment in the event that the proceeds of investment are not required for immediate distribution or for meeting expenses. Subsection (3) provides that when undertaking any investment or reinvestment of funds the NDC must comply with any directions issued by the Treasury.

Section 28: Winding up

84. **Section 28** enables the Secretary of State by order to provide for the winding up of the OLDF and for any money in or due to it to be paid to the NLDF. Subsection (3) gives the Secretary of State the power to specify whether money is to be allocated to the NLDF for distribution to the good causes in the proportions set out in the 1993 Act, or to be

allocated to the sport good cause (in the proportions determined by her). The power to allocate solely to the sport good cause may be used in order to reimburse sporting distributors for their contributions to the costs of staging the Olympic Games.

Section 29: The Olympic Lottery Distributor

85. This section establishes a body corporate to be known as the Olympic Lottery Distributor. Its constitution together with other matters relating to its proceedings etc. are set out in Schedule 5.

Section 30: Distribution

86. **Section 30** requires the Distributor to make grants or loans (subject to conditions) in connection with staging the London 2012 Olympic Games. The MoU between Government and London proposes that the broad intention is for Lottery funding to be primarily directed to sports investment, Olympic facilities and event staging and for money raised through Council Tax to address the capital requirements of the Games including transport infrastructure. A further revenue stream is provided by the IOC in the form of marketing and the sale of television rights. This revenue is provided to the Organising Committee of the Olympic Games (OCOG) and must be used to defray expenditure directly related to staging the 2012 Olympic Games. In order to ensure that Lottery funding is spent appropriately, and to give the flexibility to enable costs to be met according to need, it is necessary for the OLD to be able to make loans. It is difficult to anticipate, in advance of complex decisions which need to be taken on staging and delivery mechanisms for hosting the 2012 Olympic Games, exactly how such loans might operate. One example of exercise of the power to make loans might be the OLD making a loan to enable the OCOG to create a media village in anticipation of their receipt of television rights income from the IOC. Once received by the OCOG, the income from television rights could be used to repay the loan from the OLD.
87. Subsections (2), (3) and (4) relate to the purposes for which the OLD may distribute money, namely for provision of facilities, services or functions in connection with London hosting the Olympics and Paralympics in 2012.
88. The nature of these facilities, functions and services will to a large extent be detailed in the host city contract which is an agreement between the IOC and the host city which is signed by both parties and comes into effect on the day of the decision (6 July 2005). The host city contract will set out how the 2012 Olympic Games will be delivered, based on the proposals made by the host city in the Candidature File which is submitted to the IOC in November 2004. The Candidature File contains details of venues, transport, timetabling, how and when the 2012 Olympic Games will be delivered etc. Subsection (3) requires the OLD to have regard to the host city contract and to the Olympic Charter.
89. The Olympic Charter sets out the aims and objectives of the Olympic Movement, the legal status and structure of the International Olympic Committee, and regulations and guidance in relation to National Olympic Committees, the Olympic Games and Olympic Protocol. The current version has been in force as from 4 July 2003.
90. In the event of a successful London bid, certain sporting events will take place outside London, the host city, for practical reasons. Subsection (4) makes clear that the OLD may fund facilities outside London and also could fund non-sporting events which form part of the wider Olympic programme, including cultural events. The IOC provide that the organising committee must organise a programme of cultural events as part of staging the Olympics.

Section 31: Distribution Policy

91. **Section 31** enables the Secretary of State to require the OLD to produce a policy for the distribution of funds, or to review and revise an existing policy. A distribution policy, as described in this section, is a strategic plan for the distribution of Lottery funds which

is analogous to that which may be prepared under Section 25C of the 1993 Act. The policy will provide a framework against which the OLD will operate and against which individual grant decisions will be made.

92. Subsection (3) allows the Secretary of State, when requesting a distribution policy, to ask the OLD to provide additional information to supplement or amplify that set out in subsection (2).
93. Subsection (4) requires the OLD, prior to submission of a policy or revised policy, to submit a draft thereof to the Secretary of State and to consult the National Lottery Commission, the Mayor of London, the NOC and the British Paralympic Association.
94. Subsections (5) and (6) require the OLD to send copies of the final policy or revised policy to the Secretary of State, the Mayor of London, the NOC and the British Paralympic Association, and requires the Secretary of State once she has received a copy to lay it before Parliament.

Section 32: Dissolution

95. This section provides for the dissolution of the OLD and for the transfer of its property, rights and liabilities to be effected by the Secretary of State by order. It is intended to provide sufficient administrative flexibility for the future at a time when it is not possible to anticipate what body or bodies might be established to deliver and stage the 2012 Olympic Games, for example to co-ordinate Olympic transport arrangements or development of the Olympic Zone, or determine how the OLD might best apportion property, rights and liabilities in the event of its winding up. Subsection (2)(d) allows on dissolution for any liabilities and duties of the OLD to be transferred to another body where necessary. In particular, subsection (2)(d)(ii) makes specific reference to the fact that legal proceedings commenced against the OLD can be continued even after the OLD has been dissolved.
96. In relation to employees of the OLD subsection (6)(b) requires the Secretary of State to give due regard to the Transfer of Undertakings (Protection of Employment) Regulations 1981 which are regulations designed to safeguard employees' rights where businesses transfer between employers.
97. Subsections (3) and (4) allow for revenues held by the OLD to be paid to the NLDF in the same manner as provided in Sections 26 and 28.

Section 33: Interpretation

98. This section makes provision for the interpretation and definition of a number of expressions primarily in relation to the 2012 Olympic Games.

Section 34: Consequential amendments

99. This section makes provision for a number of amendments to the National Lottery etc Act 1993. In particular:
 - Subsection (2)(a) provides that the overriding duties of the Secretary of State and the National Lottery Commission as set out in Section 4 of the 1993 Act - to exercise their functions under Part 1 of that Act in such a way as to ensure that the National Lottery is run and promoted with propriety, that the interests of participants are protected, and that the proceeds of the National Lottery are as great as possible - will also apply to the exercise of their functions under Part 3 (this part) of this Act;
 - Under subsection (2)(b), the "net proceeds of the National Lottery," which under the 1993 Act referred to monies paid into the National Lottery Distribution Fund, will also include monies paid into the Olympic Lottery Distribution Fund;

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- The changes proposed under subsections (3) and (4) of this section are designed to advance administrative efficiency in the way that proceeds are allocated to the NLDF and accord with operational practice. At present, under section 5(6) of the 1993 Act, payments made by the licensee from Lottery proceeds are made to the Secretary of State who in turn is under a duty contained in section 21(2) of the 1993 Act to pay those sums to the NLDF. The provision in subsection (3), amends section 5(6) of the 1993 Act to require payments in respect of Lottery proceeds instead to be made by the section 5 licence holder directly into the NLDF. The provision in subsection (4) is consequential on this, and is intended to ensure that the current section 5 licence is construed in a way that is consistent with section 5(6) as amended. As this section provides for the payment to be made by the section 5 licence holder to the NLDF, subsection (5) provides in consequence for any sum due to be paid to the NLDF to be recoverable as a debt by the Secretary of State. Subsection (5)(b) provides for the licence holder's liability to subsist beyond the lifetime of their licence;
- Subsection (6) provides for any penalty levied on the operator for breach of a licence condition to be recoverable as a debt and for the penalty to be payable partly to the NLDF and the OLDF. The apportionment of the financial penalty payable to the Funds will be determined by the National Lottery Commission by reference to the nature of the breach of licence condition in accordance with section 10A of the 1993 Act;
- Under section 11 of the 1993 Act, the Secretary of State is able to give directions to the National Lottery Commission about the exercise of its functions under Part 1 of that Act (authorisation and regulation of the National Lottery). Subsection (7) of this section provides the Secretary of State with the ability to also exercise her powers under section 11 of the 1993 Act in relation to Part 3 of this Act (National Lottery: Olympic lotteries);
- Under subsection (8), section 21(2) of the 1993 Act, which provides for the Secretary of State to pay into the National Lottery Distribution Fund all the sums paid to her from the National Lottery proceeds under Section 5(6) of that Act, shall cease to have effect. This amendment is consequential on the changes made to section 5(6) of the 1993 Act provided for in section 34(3) of this Act;
- Subsection (9)(c) extends section 22(4) of the 1993 Act to allow for payments to be made from the National Lottery Distribution Fund to the Olympic Lottery Distribution Fund, as provided for under section 25 of this Act. Subsection (9)(a) provides for some further amendments to section 22(1) of the 1993 Act to reflect the fact that section 21(2) of that Act ceases to have effect (see explanatory notes above in relation to subsection 8). Subsection (9)(b) removes the power in section 22(3) (e) of the 1993 Act to make lottery payments in respect of millennium projects as this power is now redundant;
- Section 30 of the 1993 Act provides for the procedure to be followed in winding up the 'millennium fund.' As new funds are no longer being channelled to the 'millennium fund' section 30 of the 1993 is now redundant so subsection (10) provides that that section shall now cease to have effect; and
- Under subsection (11), the Secretary of State and the National Debt Commission must prepare accounts for the Olympic Lottery Distribution Fund as required for the National Lottery Distribution Fund under Section 33 of the 1993 Act.

Section 35: Changes in Olympic Procedure

100. The International Olympic Committee is an independent body governed by an Executive Board which retains overall control of the organisational framework for the Olympic Movement and the Olympic Games. If London is elected to host the

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2012 Olympic Games and the IOC changes its arrangements or organisation it may be necessary for legislation to be amended to enable the obligations under London's host city contract to be fulfilled. This section gives the Secretary of State the power to effect legislative change by order in response to those changes. The circumstances in which this power is exercisable are narrow. The order making power is only triggered when the IOC makes a change in arrangements relating to the Summer Olympic Games, and where the Secretary of State considers it to be necessary or expedient to make provision in legislation as a result of that change. Any such order would need to be laid in draft and approved by resolution in each House of Parliament, as provided in section 36(4).

Section 36: Regulations and orders

101. This section provides that orders and regulations made under Part 3 of the Act are to be made by statutory instrument and specifies the Parliamentary procedures to be adopted when making such statutory instruments.