

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

HORSERACE BETTING AND OLYMPIC LOTTERY ACT

EXPLANATORY NOTES

1. These explanatory notes relate to the Horserace Betting and Olympic Lottery Act which received Royal Assent on 28 October 2004. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation, none is given.

SUMMARY OF THE ACT

3. The Act concerns the abolition of the Horserace Totalisator Board ('The Tote') and the sale of its assets and the abolition of the Horserace Betting Levy Board ('The Levy Board'). Part 1 covers the sale and dissolution of the Tote, Part 2 the abolition and transfer of the assets of the Levy Board and Part 3 the licensing of Olympic Lottery games.

4. The Act enables Olympic Lottery games to be established as part of the National Lottery in the event that London is chosen to host the 2012 Olympic and Paralympic Games. It creates the necessary structures for holding the proceeds from these Lottery games and a distribution mechanism that will enable those proceeds to be used to meet expenditure in connection with the staging of the Games.

5. The main provisions of the Act concerning the abolition of the Tote and the sale of its assets and the abolition of the Levy Board provide for:

- The vesting of the Tote's assets in a successor company wholly owned by the Crown;
- The subsequent sale of that company;
- The future licensing of horserace pool betting undertaken by the successor company;
- The future regulation of horserace pool betting by the Gaming Board;

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- The abolition of the Levy Board and its associated Levy Appeals Tribunals;
 - The transfer of its assets;
 - The abolition of the horserace betting levy; and
 - The future regulation of race courses by the Gaming Board.
6. The main provisions of the Act concerning Olympic Lottery games provide for:
- The regulator, the National Lottery Commission, to license Olympic Lottery games;
 - The establishment of a fund to hold the proceeds generated by these Olympic Lottery games;
 - The establishment of a body to distribute money held in this fund; and
 - The money held in the fund to be distributed to meet expenditure in connection with staging the 2012 Olympic and Paralympic Games in London.

BACKGROUND

Horserace betting

7. On 2 March 2000, the then Home Secretary made a statement to the House of Commons to announce that the Government had decided to sell the Tote and abolish the horserace betting levy and the Levy Board. Amongst other objectives, the Act seeks to implement this policy.

8. Both the Tote and the Levy Board are Non-Departmental Public Bodies (NDPBs) sponsored by the Department for Culture, Media and Sport. Their current powers and responsibilities are set out in the Betting, Gaming & Lotteries Act 1963 (“the 1963 Act”) as subsequently extended by the Horserace Totalisator and Betting Levy Boards Act 1972 and the Horserace Betting Levy Act 1981.

9. Since 1928, when it was established, the Tote has had an exclusive right to operate, or authorise others to operate, pool betting on horse races in Great Britain. Pool betting is a particular form of betting where all the stakes are pooled, and the total pool is divided amongst the winners, less a deduction for the operator. More recently, following successive deregulation, the Tote has developed a significant fixed odds betting operation and is now the fifth largest bookmaker in the country. The

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business includes telephone and internet betting as well as over four hundred licensed betting offices.

10. The Levy Board has statutory responsibility for assessing and collecting monetary contributions from bookmakers and the Tote, and for allocating them for one or more of the following purposes: the improvement of horseracing; the advancement or encouragement of veterinary science or education; and the improvement of breeds of horses. This is the horserace betting levy system.

11. Both bodies also have some regulatory responsibilities. The Tote is in effect the regulator of horserace pool betting and the Levy Board is responsible for issuing certificates of approval for racecourses and also for the National Joint Pitch rules that govern the operation of bookmakers on racecourses in Great Britain.

Olympic Lotteries

12. On 15 May 2003, the Government announced its intention to support a bid to stage the 2012 Olympic and Paralympic Games in London.

13. If the bid is successful and the 2012 Games are awarded to London, the Government will provide for financial support to the staging of the Games through the National Lottery and, in particular, through the licensing of dedicated Olympic Lottery games forming part of the National Lottery. The decision on which city will host the 2012 Games will be made by the International Olympic Committee in July 2005.

TERRITORIAL APPLICATION

14. Parts 1 and 2 covering the sale of the Tote and the abolition of the Levy Board apply only to England, Wales and Scotland. Part 3 providing for the licensing of Olympic Lottery games applies to the whole of the United Kingdom.

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

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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,

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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

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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

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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

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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)).

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

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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.

PART 2: ABOLITION OF THE HORSERACE BETTING LEVY SYSTEM

Section 15: Abolition of levy

55. Section 15 enables the Secretary of State, by order made by statutory instrument, to abolish the Levy Board and the levy system. Subsection (2) makes it clear that orders may be made in stages. Orders under section 15(1) will be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 16: Property of the Levy Board

56. Subsection (1) allows for the making of transfer schemes so that any property, rights and liabilities of the Levy Board can be transferred to specified persons at specified times. Subsection (7) introduces Schedule 3 which contains supplementary provisions.

57. Subsection (2) gives the Secretary of State the power to direct the Levy Board to make and submit a transfer scheme and once approved the scheme will have effect.

58. Subsection (3) sets out the matters which the Secretary of State can include in the direction, including when it is to be made, what it is to cover and to whom things are to be transferred.

59. Subsection (4) gives the Secretary of State the power to make a transfer scheme herself if the Board fails to comply with a direction to make a scheme or she decides not to approve a scheme submitted by the Levy Board.

60. Subsection (6) provides that the Secretary of State must not make or approve a transfer scheme unless she is satisfied that any property or rights to be transferred will be used for certain specified purposes. These relate to horse breeding, veterinary science and education and horseracing and mirror the Levy Board's existing purposes under section 24(1) of the 1963 Act.

Section 17 and Schedule 4: Consequential amendments

61. Section 17 introduces Schedule 4 which makes a number of consequential amendments to the 1963 Act. Under subsection (1)(b) of section 17 the Levy Board cannot be abolished until these amendments have been brought into force. The most

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significant amendment substitutes the Gaming Board for the Levy Board in respect of certification of race courses under section 13 of the 1963 Act. Subsection (3) of section 17 contains transitional provisions for existing certificates of approval, which if not revoked by the Gaming Board will expire three years after the new arrangements come into effect.

62. The key features of new section 13, as amended by paragraph 2 of Schedule 4 are as follows:

- a new subsection (3) to section 13 is to be inserted to place the Gaming Board under a duty to be satisfied in respect of a number of matters, which relate to the protection of the betting public attending racecourses, before granting certificates of approval to race courses;
- under new subsection (4) the Gaming Board must in particular consider whether the area designated in subsection (2) will be clearly delineated, whether betting rules will be clearly displayed and whether satisfactory conduct controls and complaint procedures will be in place;
- new subsection (5) provides that the Gaming Board should grant the certificate of approval with conditions;
- new subsection (6) provides that a certificate will not be granted unless a fee, prescribed by the Secretary of State under subsections (10) and (11) has been paid for it;
- under subsection (7) the Gaming Board may revoke the certificate if not satisfied that the objectives set out in subsections (3) and (4) are being met;
- new subsection (8) provides that a certificate of approval will expire at the end of a period of three years beginning with the date of issue; and
- subsection (9) requires the Gaming Board to give reasons in writing for the revocation of a certificate.

Section 18: Tax

63. Section 18 enables the Treasury to make regulations providing for the disapplication or modification of various tax legislation in connection with a transfer scheme and related matters. This is so that a transfer is tax neutral and the recipient inherits the relevant tax history of what they receive. The taxes affected are income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax and stamp duty reserve tax.

PART 3: NATIONAL LOTTERY: OLYMPIC LOTTERIES

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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

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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

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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 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.

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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

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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

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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

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Distribution Fund, will also include monies paid into the Olympic Lottery Distribution Fund;

- 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 OLF. 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

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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 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.

SCHEDULE 1: NEW SCHEDULE 1A TO THE BETTING, GAMING AND LOTTERIES ACT 1963

Part 1

102. Paragraph 1 explains that Part 2 of the Schedule specifies the conditions to be complied with, for the purposes of section 4(2)(d) (restriction on pool betting on track) and section 4A(2)(b) (restriction on pool betting off track).

103. Paragraph 2 explains that Part 3 of the Schedule makes provision for the supervision of pool betting business.

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104. Paragraph 3 explains that the term “pool betting business” means pool betting business in connection with horse racing.

Part 2

105. Paragraph 4 provides that any totalisator (which is defined in section 55 (Interpretation, etc – general) of the 1963 Act) being used must be in proper working order and be properly operated.

106. Paragraph 5 requires a person who receives or negotiates bets to display in a conspicuous position a notice stating, prominently and in easily legible print his key terms of business. There are special provisions for those engaged in remote betting, for example over the Internet or over the telephone.

107. Under paragraph 6 where a person makes statements in accordance with paragraph 5 in respect of a race or set of races he is not permitted to alter those statements in respect of that race or races, and must act in accordance with the statements. For example, if a bookmaker makes a statement that he will round down winnings to the nearest 5p in respect of a race or set of races, but in fact rounds down to the nearest 10p he will have acted in contravention of paragraph 6.

108. The purpose of paragraph 7 is to ensure that a bookmaker publishes the winning dividend as soon as possible after the relevant race or set of races has finished.

109. Paragraph 8 makes it a condition of Part 2 that a person who receives or negotiates bets (e.g. a bookmaker) must-

- comply with any requirement imposed by or under Part 3 of the Schedule,
- co-operate with the supervising accountant appointed under Part 3,
- co-operate with the technical adviser appointed under Part 3,
- co-operate with any person authorised by the supervising accountant or technical adviser under paragraph 11(2)(e) or 13(2)(f).

110. Paragraph 9 requires any person who carries on pool betting business to pay a yearly fee to be prescribed by an order made by the Secretary of State. The purpose of paragraph 9(4) is directed at ensuring that the amount paid by way of fees equals the costs of the accountant, the technical adviser and their staff.

Part 3

111. Under paragraph 10 the Gaming Board is given the duty of appointing a supervising accountant (the accountant) to check whether the conditions in Part 2 of

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the Schedule are complied with. The accountant must be eligible for appointment as a company auditor, and may be a firm.

112. Under paragraph 11 the accountant is given powers to enable him to determine whether the conditions in Part 2 have been complied with, and in particular, he may require access to premises on which pool betting business is carried on, may require the production of documents, may authorise a person in writing to do anything that he can do under paragraph 11 and he may delegate his functions.

113. Under paragraph 12 the Gaming Board is given the duty of appointing a technical adviser to advise the accountant on the working condition of totalisators. The technical adviser is given the power to do anything he thinks necessary in order to advise the accountant in relation to the conditions and in particular, may require access to premises in which the totalisator is or has been in operation and may require the examination of a totalisator.

114. Paragraph 14 requires any person who carries on pool betting business in any month to send to the accountant a statement of account for that month. In particular, the statement must specify amounts carried over from one pool to the next where no winning claims have been made in relation to a pool bet and such other information as the accountant may require.

115. Paragraph 16 provides for an annual audit by the accountant of pool betting accounts submitted under paragraph 14. The accountant is required to certify compliance with paragraph 14, whether the accounts are in his opinion complete and accurate and that the pool betting business carried out during the year has been in accordance with Part 2 of the Schedule. The accountant, having audited and certified a person's accounts, is required to send the audited accounts and the certificate to him, and he must then send two copies of those documents to the Gaming Board. The Gaming Board is obliged to make a copy of those accounts and certificate available for inspection by the public.

116. Under paragraph 17 the accountant is required to report to the Gaming Board if he believes that pool betting business has been carried on otherwise than in accordance with Part 2 of the Schedule.

117. Paragraphs 19 to 24 make provision for a number of offences. In particular paragraphs 19 to 21 make it an offence to obstruct, fail to co-operate with or knowingly provide false information to the accountant or technical adviser. Anyone found guilty is liable to a fine not exceeding level 3 on the standard scale.

118. Paragraph 23 makes it an offence not to submit monthly accounts to the supervising accountant and to not submit two copies of the audited accounts and accountants certificate to the Gaming Board in reasonable time. The penalty is a maximum 6 months imprisonment or a fine not exceeding level 5 on the standard scale or both, although the period of imprisonment may be increased to 51 weeks

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under the Criminal Justice Act 2003.

SCHEDULE 2: SALE OF THE TOTE: CONSEQUENTIAL AMENDMENTS

119. This Schedule makes consequential amendments to the 1963 Act and other legislation. The more significant changes are noted below.

120. Paragraph 2 amends section 1 of the 1963 Act (which restricts the use of premises for betting) so that those complying with new sections 4(2), (3) and (5) of the 1963 Act (as inserted by section 10) do not commit an offence.

121. Paragraphs 3 and 4, 6, 8 to 14 and 17 remove references to the Tote (and cognate expressions) from the 1963 Act consequent on the dissolution of that body.

122. Paragraphs 7, 11 and 15 amend sections 11(1), 16(1) and 52(1) of the 1963 Act (which deal with bookmaker's and betting agency permits, totalisators on licensed tracks and penalties) consequent on the replacement of section 4 by section 10.

123. Paragraph 12 removes the Tote chairman from the Levy Board and in section 24 of the 1963 Act reduced the number of ordinary members of the Levy Board to six. It also replaces the reference in section 24(1) to the Tote's levy contribution with a reference to the payment of levy contributions by the successor company while the exclusive licence (under section 8) subsists.

124. Paragraph 13 allows, for as long as the exclusive licence subsists, the successor company to negotiate levy contributions direct with the Levy Board. Once the exclusive licence comes to an end the successor company will be liable to levy contributions on the same basis as any other bookmaker.

125. Paragraph 5 amends section 6 of the 1963 Act (which restricts bookmaking on track) so as not to prevent bookmaking taking place when other events are taking place too.

126. Paragraph 16 makes consequential changes to section 55(1) of the 1963 Act (interpretation), including a change to the definition of "recognised horse race" which will allow other types of race to be run on the same day.

SCHEDULE 3: HORSERACE BETTING LEVY BOARD: TRANSFER OF PROPERTY

127. The paragraphs in this Schedule supplement sections 15 and 16.

128. Paragraphs 3 and 4 provide powers to the Levy Board and the Secretary of State to enter into agreements which confer or impose upon them rights or liabilities

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in respect of anything which has been or is to be transferred by a transfer scheme.

129. Paragraphs 5 to 11 make detailed provision as to the content of a transfer scheme. The purpose of paragraph 5 is to ensure that there is unrestricted power to transfer property, rights and liabilities under the scheme without the need to observe any further formalities.

130. Paragraph 6 provides wide scope to determine which property, rights and liabilities are to be transferred under the scheme and how they are described.

131. Paragraph 7 deals with the possibility that property, rights and liabilities will not exist when the scheme is made but will exist by the time it takes effect. Similarly, under sub-paragraph (b), a scheme may deal with a right which is already in existence but has not yet been transferred to the Levy Board. The purpose of this provision is to ensure that proposed transfers of property, rights and liabilities to the Board do not delay the making of schemes.

132. Paragraph 8 makes provision for the division of property, rights and liabilities. For example, a right held absolutely by the Levy Board may be split between two or more transferees.

133. Paragraph 9 is designed to ensure that rights and liabilities are readily enforceable after the transfer has been effected and provides that new obligations may be created.

134. Paragraph 10 allows a transfer scheme to make provision for third parties to be compensated where the splitting of rights and liabilities results in a reduction in the value of a third party's property or a right held by him. It is provided that compensation may be payable by a transferee, transferor (i.e. the Board), or the Secretary of State and that any dispute as to liability or the amount of compensation may be subject to arbitration.

135. Paragraph 13 gives a power to the Secretary of State to issue a conclusive certificate of title stating that anything specified in the certificate has vested in a person by virtue of the scheme.

136. Paragraphs 14 and 15 provide powers to the Secretary of State to modify a transfer scheme which has not yet taken effect and, by order, where it has taken effect.

137. Paragraph 16 requires the Secretary of State to consult the Levy Board in relation to a transfer direction and in exercising her powers in respect of a transfer scheme, and paragraph 17 requires the Secretary of State to obtain consent from the transferee in relation to a transfer scheme before approving or making a scheme.

138. Paragraph 18 enables the Secretary of State to direct the Levy Board to prepare accounts in respect of a period ending with the day on which a transfer

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scheme comes into effect. It is envisaged that where there is a gap between the end of the Levy Board's last accounting period and a transfer scheme taking effect the Secretary of State may wish to direct the Levy Board to account for its property, rights and liabilities during that gap.

SCHEDULE 5: THE OLYMPIC LOTTERY DISTRIBUTOR

139. This Schedule sets out arrangements for the constitution, proceedings and financial arrangements of the Olympic Lottery Distributor which this Act proposes to establish.

140. Paragraph 1 provides for the appointment of at least five members to the OLD by the Secretary of State. This figure is lower than some other Lottery distributors to reflect its focused remit and the fact that its level of activity may not match that of other distributors particularly in its early years of operation. Paragraph 1 (3) requires the Secretary of State to consult with the Mayor and the British Olympic Association (BOA) before appointing members. This consultation reflects the fact that Government, the Greater London Authority (GLA) and the BOA are the three key parties with a stake in the London Olympic Bid, and the subsequent staging of the Games. The operation of the Olympic Lottery Distributor may have a direct impact on the operation of the GLA and the BOA, and the exercise of their own duties in relation to ensuring the successful staging of the London 2012 Olympic Games.

141. Paragraphs 2 to 6 make further provisions concerning the OLD such as the length of tenure for members and the circumstances in which that tenure may come to an end. Paragraphs 7, 8, 13, 15, 19 to 22 and 24 all provide powers to the OLD such as powers to appoint staff and committees, delegate functions, regulate its own procedures and to make payments (including remuneration). The OLD can also invest in an interest bearing account, receive funds from the Secretary of State to cover certain expenditure and receive gifts (paragraphs 22 to 24). Gifts in paragraph 24 is intended to cover financial donations. Paragraphs 14, 17 and 25 provide for certain duties of the OLD including compliance with directions of the Secretary of State, completion of an annual report and maintenance and submission of proper accounts to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General is the Head of the National Audit Office, the independent body which scrutinises public spending on behalf of Parliament. There are other miscellaneous provisions in the schedule which relate to such matters as designating the OLD's records as public records and relating to its supervision and status (see paragraphs 9, 10 and 16).

SCHEDULE 6: REPEALS

142. This Schedule sets out the legislation that will be repealed by the Act.

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COMMENCEMENT

143. The provisions of the Act will come into force on a day that the Secretary of State will specify by order. However, creation of the OLD under section 29 will not be brought into force unless the Secretary of State has made an order under section 22(2), declaring that the IOC have elected London as the host city for the 2012 Olympic Games.

HANSARD REFERENCES

144. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference:
House of Commons		
Introduction	2 December 2003	Vol 415 Col 371
Second reading	8 January 2004	Vol 416 Col 442-497
Standing Committee	20 January 2004 – 27 January 2004	HC 286 2003/04
Report and Third Reading	2 February 2004	Vol 417 Col 539-94
House of Lords		
Introduction	3 February 2004	Vol 657 Col 559
Second Reading	2 March 2004	Vol 658 Col 552-89
Committee	30 March 2004 – 6 April 2004	Vol 659 c427-94GC Vol 659 c495-562GC Vol 659 c563-614GC
Report	19 July 2004	Vol 664 c15-80
Third reading	14 September 2004	Vol 664 c1029-55

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Royal Assent –28 October 2004 House of Lords Hansard Vol 665 Col 1395

House of Commons Hansard Vol 425 Col 1557

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