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The *Horserace Betting and Olympic Lottery Bill*

Bill 8 of 2003-04

This Bill, due for second reading on Thursday 8 January 2004, would allow for the abolition of the Horserace Totalisator Board ("The Tote") and the sale of its assets. It would also provide for the abolition of the Horserace Betting Levy Board.

The Bill would also enable new Olympic Lottery games to be set up to help finance the 2012 Olympic and Paralympic Games in the event that London is chosen to host these.

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Summary of main points

Parts 1 and 2 of the Bill would enable the Government to sell the Horserace Totalisator Board (the Tote) to a Racing Trust and allow for the abolition of the Horserace Betting Levy Board.

- The Tote is a non-departmental public body which has an exclusive right to offer pool betting on horseracing. It also has a significant fixed-odds betting business and operates 435 high street betting shops.
- Since its foundation in 1928 there have been numerous proposals for reforming the Tote.
- In November 2003 the Government announced its intention to sell the Tote to a Racing Trust, with an exclusive licence to run pool betting for seven years.
- Since no one currently "owns" the Tote, the Government must first take it into public ownership before disposing of it.
- Objections have been raised to the Government's proposals. There are two particular areas of controversy: whether the Tote should be broken up or sold as a single entity, and whether the sale infringes competition rules overseen by the Office of Fair Trading and the European Commission.
- The Horserace Betting Levy is a statutory means by which money is transferred from bookmakers and punters to the racing industry.
- Arguing that there was no need for public involvement in this area, the Government announced in March 2000 its intention to abolish the Levy Board, replacing it by commercial arrangements within the industry, with the British Horseracing Board as the successor body to the Levy Board.

Part 3 of the Bill would provide for a new Olympic Lottery fund, distributor and games. The Government announced in May 2003 that it would support a bid for London to host the Olympic Games in 2012.

- The International Olympic Committee will decide in July 2005 if London has won its bid. It is anticipated that the Games would bring considerable benefits, including regeneration, tourism, and a legacy of sporting and other facilities.
- If London is to host the Games, the National Lottery could provide nearly two thirds of the funding needed to stage them – up to £1.5 billion. The rest will be met by an increased precept on the Council Tax for Londoners, and by the London Development Agency.
- While there is cross party and public support for hosting the Games, there is some concern about the implications for other good causes which rely on lottery funds.

Parts 1 and 2 of the Bill extend to England, Scotland and Wales. Part 3 extends to the whole of the UK.

CONTENTS

I Horserace betting

A. Introduction

The *Horserace Betting and Olympic Lottery Bill*, Bill 8 of 2003-04, received its first reading on 2 December 2003. Second reading is set for 8 January 2004. The Bill is in three parts, the first two concerned with horserace betting, and the third with Olympic Lottery games.

Parts 1 and 2 cover the abolition of the Horserace Totalisator Board (known as the "Tote") and the sale of its assets and the abolition of the Horserace Betting Levy Board. Explanatory notes have been prepared by the Department for Culture, Media and Sport.[1]

Parts 1 and 2 of the Bill 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;
- 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.

B. The Tote

1. What is the Tote?

"Tote" is short for Totalisator, a system introduced to Britain in 1929 to offer pool betting on racecourses. In this form of betting, all the stakes on a race are pooled and a deduction made to cover costs and the Tote's contribution to racing. The remainder of the pool is divided equally among the winning tickets. In other words, pool customers bet against each other, whereas in bookmaking they bet against the bookmaker. Odds fluctuate according to the pattern of betting and betting ceases when the race starts. The winner is paid according to the size of the stake in the pool. The greater the number of winning tickets, the lower the payout to each winner. Last minute backing of a particular horse can

[1] DCMS, *Horserace Betting and Olympic Lottery Bill: explanatory notes*, EN-8, http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmbills/008/en/04008x--.htm

dramatically change payouts. The pot increases with the volume of bets, so in the absence of a winner, the jackpot rolls over. There are no limits on prizes.

The Horserace Totalisator Board, known as the Tote, is a Non-Departmental Public Body set up in its present form under section 12 of the *Betting, Gaming and Lotteries Act 1963* as a "body corporate" with "perpetual succession". A Parliamentary Question in 1999 sought clarification on ownership:

> **Mr. Baker:** To ask the Secretary of State for the Home Department who owns the Tote.
> **Mr. George Howarth:** The Horserace Totalisator Board is a non-departmental public body whose members are appointed by the Home Secretary.[2] The Board is responsible for the assets owned by the Tote, but the Tote itself is owned by no one.[3]

Originally established as the Racecourse Betting Control Board by the *Racecourse Betting Act 1928*, it was given its present name in 1961. The Tote has an exclusive licence to run pool betting on horseracing.[4] More recently, following successive deregulation, it has also developed a significant fixed odds betting[5] operation and is now the fifth largest bookmaker in the country. Total turnover in the financial year 2002-3 was £916m, of which total pool betting accounted for £221m.[6] Interim pre-tax profits for the latest half-year were £9.2m, a record high.[7]

There are four main divisions to the Tote's current operations:[8]

- The Racecourse Division has betting points at every racecourse in Great Britain offering a full range of Tote bets including, at most locations, the facility to bet at other racecourse meetings. Turnover in 2002-3 was nearly £106m.[9]
- Tote Credit Club offers a comprehensive telephone betting service as well as providing offices on every racecourse. Punters must have a bank card featuring the Switch, Delta, Solo or Electron logo.
- Tote Bookmakers operate offices throughout the country and on many racecourses providing a cash betting service. It has 435 high street betting shops.

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2 Now the Culture Secretary. Responsibility for this area passed from the Home Office to the Department for Culture, Media and Sport after the last General Election.
3 HC Deb 26 May 1999 vol 332 c152W
4 *Betting, Gaming and Lotteries Act 1963* section 14
5 A type of betting where the bookmaker offers the punter in advance a fixed rate of return (the "odds") which he is prepared to pay if the horse wins the race.
6 Horserace Totalisator Board, *Annual report and accounts 2003*, p9
7 "Tote profits grow as Treasury plots sale", *Times Online*, 24 November 2003
8 Details on the Tote website at http://tote.co.uk
9 Horserace Totalisator Board, *Annual report and accounts 2003*, p10

- Tote Direct: many off-course bookmakers operate Tote Direct online terminals, enabling Tote bets to be transmitted to the racecourse Tote pools. Turnover in 2002-3 was in excess of £88m.[10]

In addition, the Tote has launched its own new internet betting site under the brand name "totebetXpress".

The Tote's profits, over and above those that are required for reinvestment, remain within racing. It achieves this through its contribution to the Horserace Betting Levy Board, payments to racecourses and its sponsorship programme. In the year 2002-3 the Tote made a contribution to racing of £10.7m.[11]

2. History of the Tote

France has had a totalisator system in horseracing since 1872. The spur to its introduction in Britain was the imposition of betting duty in 1926. The Jockey Club made representations to Winston Churchill (then Chancellor of the Exchequer) that, if the government was going to draw revenue from gambling, racing should be allowed to do the same. Churchill responded that, while the Government would not take the initiative, it would not stand in the way of a Private Member's Bill. Thus the 1928 Act came into being, sponsored by the Jockey Club. The Tote was established at a time when only off-course credit betting with bookmakers was clearly lawful. Much was expected of the new body, which was envisaged as a safe haven for punters, controlled by the state, and beyond the reach of illegal bookmakers. As a history of racing explains:

> Racegoers stood to gain from both better facilities and cheaper admissions; certainly punters would not be welshed by the Tote; and ladies might be encouraged to bet if they could deal with anonymous totalizator clerks rather than with raucous, flamboyant bookmakers.[12]

The 1928 Act provided that bookmaking on approved racecourses on racing days would be lawful and established the prototype of the present Tote with a brief to provide an on-course alternative to the service offered by bookmakers and to ensure that the profits from pool betting were applied, not for private gain, but for "purposes conducive to the improvement of breeds of horses or the sport of horseracing".[13] Between 1929 and 1961 the Tote contributed £8.6m to horseracing.[14] The *Betting Levy Act 1961* transferred to the newly created Horserace Betting Levy Board the distribution functions previously discharged by the Tote. During the late 1960s the Tote suffered a considerable downturn in profitability. In order to revive its fortunes, the then government agreed that the Tote

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[10] Ibid, p14
[11] Ibid, p17
[12] Wray Vamplew, *The turf: a social and economic history of horse racing*, 1976, p226
[13] *Racecourse Betting Act 1928* section 3(6)
[14] Home Affairs Committee, *The Tote*, 22 July 1991, HC 451 1990-91, v, para 3

should be allowed to take off-course bets otherwise than by pool betting. This extension to its powers was effected by the *Horserace Totalisator and Betting Levy Boards Act 1972.*

3. Earlier proposals for reform

There have been several inquiries into the Tote. In the late 1970s the Royal Commission on Gambling, chaired by Lord Rothschild, devoted a chapter to the subject in its report.[15] The principal matter considered by the Royal Commission was the proposal by the Tote that it should have a monopoly of all off-course betting, which would be confined to pool betting. The Commission rejected the case for a monopoly, arguing that service to punters was likely to be poorer while illegal betting would grow. It was also deemed unlikely that any government would be interested in imposing a state-owned monopoly on any new area of economic activity.

In March 1989 Lloyds Merchant Bank delivered a report to the Home Office on the feasibility of privatising the Tote. The full report, which was strongly in favour of privatisation, was confidential although a summary was made public.[16] The Tote's reaction to the Lloyds report "bordered upon the apoplectic".[17]

In 1991 the Home Affairs Committee investigated the Tote as part of a series of inquiries into gambling. They concluded that horserace pool betting is an area where monopoly may actually be in the consumer's interest, since a multiplicity of small pools paying out erratic and conflicting dividends could undermine public confidence in pool betting, and that exclusivity should therefore continue. However, noting a lack of accountability as an argument for changing ownership of the Tote, they recommended that the Government announce in principle its intention to end its present relationship with the Tote and vest[18] the Tote in a racing industry body which would be truly responsible to representative groups of all who work in the industry.[19] The Committee rejected the recommendation in the Lloyds Merchant Bank report that the high street betting shops be sold off. In their response, the Government conceded that the position of the Tote was anomalous but accepted the Committee's view that at that time no suitable body existed in the racing industry to replace it.[20]

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15 *Royal Commission on Gambling: Final Report*, July 1978, Cmnd 7200, chapter 8

16 Home Affairs Committee, *The Tote*, 22 July 1991, HC 451-i 1990-91, pp8-11

17 Home Affairs Committee, *The Tote*, 22 July 1991, HC 451 1990-91, vii, para 11

18 "Vest" here implying a gift, rather than a sale: a point picked up more recently in the Westminster Hall debate on the Tote, HC Deb 19 January 2000 vol 342 c206WH

19 Home Affairs Committee, *The Tote*, 22 July 1991, HC 451 1990-91, xxxv

20 *The Government reply to the Seventh Report from the Home Affairs Committee session 1990-91 HC 451*, January 1992, Cm 1792

With a view to remedying this, the British Horseracing Board was set up in 1993, with the takeover of the Tote as one of its founding aims.[21] In February 1995 the then Home Secretary, Michael Howard, announced a public consultation on carrying forward the proposal in the Select Committee report to vest the Tote in an accountable and representative racing body.[22] However, by the time of his next statement to Parliament on the subject (July 1996), it was clear that preliminary work was pointing strongly towards retaining the status quo:

> […] my officials have been carrying out preparatory work including informal consultations with a number of interested parties. The conclusion which I have drawn from this preliminary work is that those options which involve changing the existing statutory framework might put at risk the contribution which the Tote makes to racing.
>
> I have concluded that, pending further work on these issues, I should end the uncertainty surrounding the future of the Tote by retaining the present statutory framework for the present. In reaching this conclusion, I have had regard to the wish of the British Horseracing Board [BHB] to take on responsibility for the Tote. However, while it is the representative body of racing, transfer of a public asset to a private body such as the BHB raises complex issues which are unlikely to be settled in the short term.[23]

The Conservative Government's decision to retain the status quo was explained further in a Note by the Home Office.[24] The document's conclusions, in summary, were as follows:

- The Tote was not large enough for public flotation. Also, the Government saw little value to be gained from contracting out the Tote's functions; that would not address the central issue of who should be responsible for the Tote.
- Sale by competitive tender could not be ruled out, but would raise difficulties because of the need to guarantee that the Tote continued to support racing to the extent it had hitherto.
- The option of vesting in a racing body would require examination of whether grant of an exclusive licence to operate pool betting on horseracing would be appropriate. Such a licence would ensure the Tote's profits were applied in the best interests of racing and with the minimum disruption to the Tote and racecourses. However, it raised difficult competition issues. It would be contentious to vest an NDPB in a private body without competitive tender; it might not be possible to maintain the exclusive licence on transfer to a private body; the fixed odds business might have to be removed from the Tote.

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21 HC Deb 19 January 2000 vol 342 c213WH

22 HC Deb 28 February 1995 vol 255 cc544-5W

23 HC Deb 18 July 1996 col 281 cc606-7W

24 *Review of the status of the Tote: note by the Home Office*, July 1996 (deposited in House of Commons Library as Dep/3 3868)

- Effective regulation would be needed, in any event. The Tote's present status had enabled the Government to regulate the Tote with a "very light touch". If the Tote came under private control, and particularly if the exclusive licence was maintained, much closer regulation would be necessary.

4. The Government's current proposals

In February 1997 reports appeared in the press that privatising the Tote was one of a list of fund-raising options being considered by the then Shadow Chancellor, Gordon Brown. Robin Cook, then Shadow Foreign Secretary, was said to be dismissive of the proposal: the *Times* quoted him as saying "There will be no proposal by Labour to sell the Tote,"[25] while Lord Wyatt, then Chairman of the Tote, dismissed the idea as "absolutely potty".[26] There was no reference to the Tote in the Labour Party's 1997 election manifesto.[27] However, after the election, as part of a wider statement on economic and fiscal strategy, the Chancellor, Gordon Brown, announced:

> We will consider how to extend the existing public-private partnership in the Tote into a broader partnership with the private sector.[28]

This was followed up by Home Secretary Jack Straw's announcement to the Tote's Annual General Meeting in July 1998 that a tripartite review of the Tote would be carried out by the Home Office, the Treasury and the Tote itself.[29] The Review's terms of reference were given in the accompanying press release as follows:

> To look at the possibility of broader partnership between the Horserace Totalisator Board and the private sector, taking account of:
>
> - the Chairman's recent review of the Tote's operations;[30]
> - its experience of commercial collaboration;
> - the impact on the efficiency and commercial viability of the organisation;
> - the needs of gambling regulation; and
> - the health of horseracing.

The Tote Review reported in March 1999 and made the following recommendations:

> - That Ministers announce the intention to sell the whole of the Tote's business but without specifying method of sale, as a single entity at an

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25 "Prescott angered by spin doctors", *Times*, 19 February 1997

26 "State-run gambling 'will not go on sale'", *Financial Times*, 19 February 1997, p9

27 Labour Party, *New Labour: because Britain deserves better*, 1997, available online at http://www.psr.keele.ac.uk/area/uk/man/lab97.htm

28 HC Deb 11 June 1998 vol 313 c1200

29 Home Office press notice 269/98, *Peter Jones to chair Tote review team*, 14 July 1998

30 A reference to the Tote's annual report which was published the same day: Horserace Totalisator Board, *Annual report 1998*, p5ff

appropriate time and subject to Parliament passing the appropriate legislation.

- That the sale should be planned on the basis of a national exclusive licence to conduct pool betting on horseracing.
- That appropriate regulation be put in place to oversee the operation of pool betting on horseracing. The costs of such regulation should be met by the pool betting operator.
- That the respective, legitimate interests of the taxpayer and Racing should be the subject of further discussion in the planning of the sale.[31]

In a written answer in May 1999 the Home Secretary announced that he had accepted the Review's recommendations:

> The Tote's status as a non-departmental public body has served it well in the past but has become increasingly anomalous as the Tote has become a more commercial operation and developed its non-pool betting activities through acquisition of licensed betting offices. The Review, therefore, concluded that the commercial freedom now required by the Tote would be best provided by transfer to the private sector. This will require legislation and, in view of the time this is likely to take, the Review has made no recommendation as to the precise method of sale. That will need to be determined at the time.
>
> Further work will now need to be undertaken on the various sale options, including the possibility of a sale to racing, in consultation with the Tote, the racing industry and others. The Review also recognised the need to have regard to the interests of the taxpayer, as well as other stakeholders. This means that the Government have rejected the possibility of the Tote being transferred to racing without consideration.
> Although the Tote's new status will now need to be worked out in detail, the Review has marked out the future path for the Tote which will enable it to develop and operate in a fully commercial way.[32]

Returning to the subject in March 2000, Jack Straw confirmed that a sale to racing was now the preferred option:

> I announced in my reply […] on 12 May 1999 […] that the Government had decided to sell the Tote and that further work would be put in hand to determine the most appropriate method of sale. That work, which included the evaluation by independent financial advisers of a range of sale options, has now been completed. The options included flotation of the Tote on the stock market, its sale by open competitive auction and a sale to horseracing. Consideration of the best option was helped by the agreement of all relevant horseracing interests to support a single proposal to buy the Tote on behalf of racing, in order to maintain the position under which all the Tote's profits are used for the benefit of racing.

[31] Home Office, *Tote review: report of the Steering Group*, 1999, p12
[32] HC Deb 12 May 1999 vol 331 cc159-60W

> Following careful consideration of all the available sale options, I have concluded that a sale to racing represents the best match, in principle, with the Government's objectives for the sale as a whole, as set out in my May 1999 statement. While the price to be paid by racing for the Tote will need to be the subject of commercial negotiation, it will be important to ensure that it is a fair one which strikes the right balance between the respective legitimate interests in the Tote of both racing and the taxpayer.
>
> Racing's proposal to Government aims to ensure that those who are responsible for managing and developing the Tote's business do so within a fully commercial operating environment. I believe that this represents the best options for the Tote and its staff, not forgetting, of course, all those who bet with it.
>
> We therefore propose to bring forward legislation, at the appropriate time and when Parliamentary time allows, which would enable the sale to proceed on this basis. However, a final decision will need to take account of circumstances at the time, including the outcome of commercial negotiations and relevant legal considerations.[33]

In May 2000 Viscount Astor, a Conservative peer, introduced the *Horserace Totalisator Bill,* a Private Member’s Bill to bring forward the Tote sale, motivated by his concern that the Government might give other legislative proposals priority.[34] In opposing the Bill, Lord Bassam, Parliamentary Under-Secretary of State at the Home Office, set out the Government’s position on the Tote’s sale:

> […] there is more to selling the Tote than just taking its assets into public ownership and selling them on to racing. Quite simply, that would be unrealistic and leave the job no more than half done. The Government's requirements, as may be expected, are for a piece of legislation that stands up well to scrutiny and which properly addresses all of the issues. We are not talking here about the price to be paid for the acquisition of the Tote. It is now well understood that that is to be determined by commercial negotiation in the light of circumstances at the time; that has to be the best way forward. This is not a matter of price; it is a matter of principle. To that end the Home Office is continuing to work closely with racing and the Tote itself to make sure that those issues are satisfactorily resolved. There will be no avoidable delay.
>
> But resolving some issues may take longer than some of us would like. I am afraid that cannot be helped. Complex matters like the Tote's exclusive licence on the horserace pool betting and its future regulation demand proper consideration. In addition, because the sale of the Tote involves the transfer of a public body to a private one, it raises the question of whether state aid is involved, as has been mentioned by Members of your Lordships’ House.

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33 HC Deb 2 March 2000 vol 345 c371W

34 Bill 60 1999-2000 [HL]

> Our belief is that we can satisfy the European Commission on that aspect of the sale. But there will need to be formal notification. We shall be referring the sale proposal to the Commission shortly, asking it to give the matter the highest priority. It would be premature to legislate in advance of that clearance. In the meantime, the Tote will continue to operate in an efficient and effective way. "Business as usual" will be maintained, and the Tote's profits will, as its popular slogan suggests, remain in racing. The Tote is in good hands. Frankly, I am at a loss to see what dire consequences people fear if the sale takes rather longer to finalise than some may have hoped would be possible. We believe it is much better to get it right than to rush it.[35]

This Bill proceeded no further than Second Reading.

The Government undertook a consultation exercise on its plans for the reform of its involvement in horseracing in November 2000.[36] This paper built on the conclusions of the Tote review. There were 40 detailed responses to the November 2000 consultation. There was strong support from within racing for the sale of the Tote to a racing trust and the retention by the Tote of an exclusive pool betting licence. Bookmakers opposed the sale strategy proposed and instead advocated an open market sale and also recommended that pool betting be opened up to competition after a short transitional period.

The Labour Election Manifesto in 2001 announced: "We are committed to sell the Tote to a racing trust to allow it to compete commercially, with all long-term profits invested in the sport".[37] After the election, responsibility for this matter passed from the Home Office to the Department for Culture, Media and Sport. Following the Government's announcement of its intention to sell the Tote to a racing trust, a "Shadow" Racing Trust was formed to negotiate with the Government on the sale; in November 2002 Lord Lipsey stepped down from the Tote's Board to become chairman of the "Shadow" Trust.[38] It subsequently became clear that the Racing Trust, a consortium of horseracing interests, is to be made up of an independent chairman and one representative for each of the British Horseracing Board, Industry Committee, Jockey Club, Racecourse Association, Racehorse Owners Association, Tote staff and punters.[39]

In November 2003 the Government announced that, under its plans to sell the Tote, the Racing Trust would have an exclusive licence to run pool betting for seven years; the licence would not be extended and at the end of that period there would be a new

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35 HL Deb 14 June 2000 vol 354 cc1739-40

36 Home Office, *A consultation paper on the proposed abolition of the Horserace Betting Levy Board and the licensing of racecourse betting and pool betting on horseracing*, November 2000

37 Labour Party, *Ambitions for Britain: Labour's Manifesto 2001*, p23, online at http://www.labour.org.uk/ENG1.pdf

38 Horserace Totalisator Board, *Annual report and accounts 2003*, p6

39 Dept for Culture, Media and Sport press notice 136/03, *Tote wins seven year licence to operate horserace pool betting*, 27 November 2003

regulatory regime that would allow other operators to provide pool betting. Richard Caborn, Minister for Sport and Tourism, said in a Written Statement:

> We have concluded that it will be in the public interest to open up the pool betting market to effective competition, but that a reasonable preparatory period is necessary in order to safeguard the policy aims underlying the sale.[40]

According to a press report, some Government departments involved in the Tote's sale had pressed for a shorter licence period, but the seven-year period emerged as a compromise.[41] In anticipation of a Bill in the new parliamentary session, the Tote was reportedly making ambitious plans. Chairman Peter Jones said he wanted to double the number of Tote outlets: "'We need to be close to 1,000 outlets to give proper national representation, and spread the overheads over a wider base'" (there are currently 435 high street shops). He also floated the idea that the Tote could expand after the sell-off by creating a joint venture with a rival betting group or a private equity firm.[42]

Thus, by November 2003, the outline of the Government's plans for the Tote was clear. The intention is to vest the Tote's assets into a company owned by the Secretary of State and to allow for the sale of that company. The Tote Board will also be abolished. The effect will be to transfer the Tote into the private sector. However, the Government's preferred option is to sell the Tote to a consortium of racing interests known as the "Racing Trust".

5. How the transfer will be achieved

The likely sequence of events, if the legislation is passed, is as follows.[43] The Government will set up a limited company, in which the Secretary of State will hold all the shares. The Tote will be transferred into that company. The Government will then sell the company, as they have already promised to the Racing Trust. It is not intended that the Secretary of State will hold the shares for any length of time; rather the idea is that, as when people "exchange contracts" on a house sale in a single day, she will acquire the company and dispose of it on the same day. There will be an independent valuation at the time of sale. The Government has indicated that it is not seeking to take the full market value of the asset and that it regards the taxpayer as one of two interests in the Tote, the other being the racing industry. Consequently, the Government (ie. the Treasury) would expect to receive proceeds equal to around one half of the Tote's value at sale.[44] In effect, the Government will be saying to the racing industry: "Buy out our share". It is possible that the Racing Trust will take out a bridging loan to finance its purchase of the Tote. In that

[40] HC Deb 27 November 2003 c18WS
[41] "Tote profits grow as Treasury plots sale", *Times Online*, 24 November 2003
[42] "Tote wants to double outlets after sell-off", *Guardian*, 24 November 2003
[43] Personal communication, DCMS, 22 December 2003
[44] Dept for Culture, Media and Sport, *Horserace Betting and Olympic Lottery Bill: regulatory impact assessment*, December 2003, p11

event, the Tote itself will be security for this loan (rather as with a home mortgage). The regulatory impact assessment summarises the probable effects of such an arrangement:

> The envisaged sale to a Racing Trust is likely to provide a lower level of proceeds than other possible options, such as a trade sale to the highest bidder. The value of the Tote is likely to be lower for the Trust as it would not benefit from synergies that may be available to other purchasers. […] To the extent that the sale will be financed by debt held by the Tote, future contributions to racing will be reduced by the amount of interest paid on that debt. However, ownership by the trust will ensure a continuation of the beneficial relationship between the Tote and racing.[45]

6. Benefits of change for the Tote: the Government case

In the regulatory impact assessment published to accompany the new Bill, the Government presents a cost-benefit analysis of its proposals for change. The document offers three options. "Option 1" is the status quo; "option 2" is the sale of the Tote and its operation as a private company with a time-limited exclusive licence for pool betting on British horseracing; "option 3" is the same as option 2 but with a time-limited non-exclusive licence for pool betting. The costs and benefits of options 2 and 3 are summarised in tabular form, and this is reproduced overleaf:[46]

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45 Ibid, p9
46 Ibid, pp21-2

	Option 2 *(with an exclusive licence)*	**Option 3** *(without an exclusive licence)*
Benefits	1) Improved certainty and commercial performance of the Tote 2) The Tote gain improved access to private finance 3) Potentially higher Tote contributions to Racing 4) Sale proceeds to the Government	1) Improved commercial performance of the Tote and rationalising operations 2) Opportunities for racecourse owners to provide pool betting products 3) Opportunities for bookmakers to provide pool betting products and gains from loss of competition from the Tote at some race meetings 4) Sale proceeds to the Government 5) Increased competition in horse-race betting 6) Increased data and AV rights funding for racing from the rival pool operators 7) The Tote gain improved access to private finance 8) Increased employment by new pool betting operators (corollary of cost 3)
Costs	1) Cost to the Tote of the sale price 2) Transaction costs for both the Tote and Government 3) Opportunity cost for potential pool betting operators 4) Potential higher regulatory burdens for Tote and Government from more complex licence conditions	1) Cost to the Tote of the sale price 2) Transaction costs for both the Tote and Government 3) Tote cuts employment due to loss of market share 4) Lower Tote contributions to Racing 5) Possible loss of pool betting at some race meetings/racecourses

While conceding that sale with a non-exclusive licence would have benefits for various business sectors, most notably bookmaking, the Government case is that the Tote is not "just one more betting company"; it has a unique relationship to horseracing, to which the Tote contributes considerably more than a normal bookmaker would through standard levy payments. Hence the Government's advocacy of a (time-limited) exclusive option.[47] According to a press report, immediate abolition of the Tote's monopoly would result in lower prizes to punters but it could enable racecourses such as Cheltenham to launch their

[47] Dept for Culture, Media and Sport, *Horserace Betting and Olympic Lottery Bill: regulatory impact assessment*, December 2003, pp22-3

own pool service. According to an article in the Observer, the three largest bookmakers – Ladbrokes, William Hill and Corals – are all "desperate" to break into pool betting. However, the Tote is said to believe that in a few years, if its monopoly were ended, the "big three" would combine to create a new monopoly.[48]

7. Break-up *versus* integrity

One feature of the legislation is that it provides for the Tote to be sold as a single entity. Some in the industry have questioned why the Government is not prepared to break up the Tote's business into its constituent parts,[49] although much of the racing industry seems in favour of preserving the Tote's integrity and has represented this view forcibly to Government.[50] The business has been provisionally but not yet officially valued – a formal valuation will be put on it at the time of sale, after the passage of the Bill – so limited credence can be given to the widely fluctuating estimates of the value of the 435 high street betting shops which have appeared in the press. A press report in March suggested that venture capital and betting firms would be keen to buy up the shops, which, according to the article, are estimated to be worth £300m. Betting firms have argued that the Tote should pay a market price for the shops if they are transferred to a trust. The Treasury, according to this report, is aware that breaking up the business could yield much higher income than transfer to a trust. However, it would also mean breaking Labour's pledge in its last election manifesto to transfer to a trust for the good of the sport[51].

The option of splitting up the Tote was considered by the Tote Review in 1999. The Review Group did not think this would benefit either racing or the Tote itself:

> The effect of this option would be to reduce the Tote to a pool betting operation, mainly on-course but supported by its Tote Direct operation […], plus perhaps part of the existing telephone credit betting operation. In time, Tote Direct could well decline because the Tote would have no off-course shops to drive it and other bookmakers would have less commercial incentive to support it. Overall the Tote's scope for expansion would be severely limited and it would in effect revert to its original role as simply an on-course pool betting operator with a consequent effect on its financial contribution to Racing and doubts as to its commercial viability.[52]

8. Competition considerations

There has been much debate about whether the Tote's monopoly position is justifiable. In early 2003, the Office of Fair Trading (OFT) "gave the Government pro-competitive

[48] "OFT ruling will throw Tote into chaos", *Observer*, 9 March 2003, Business p2
[49] "Rival bookies cut out of £200m Tote sale", *Observer*, 23 November 2003
[50] "Tote profits grow as Treasury plots sale", *Times Online*, 24 November 2003
[51] "OFT ruling will throw Tote into chaos", *Observer*, 9 March 2003, Business p2.
[52] Home Office, *Tote review: report of the Steering Group*, 1999, p6

advice about the future of the Tote".[53] This advice was confidential. In a recent speech in York, Robin Cook commented that the OFT "wanted the new Racing Trust to be exposed to competition from day one". He went on to say that he found it "odd" that the OFT had not investigated the three biggest bookmakers, whose collective actions in buying information from the racing industry also merited scrutiny, in his view.[54]

As part of its wider investigation into the racing industry, the Office of Fair Trading has also made a separate ruling against the British Horseracing Board (BHB) and the Jockey Club, finding against these bodies on three counts:

1. that they limit the freedom of racecourses to organise their racing,
2. that they fix the amounts that racecourses must offer owners, and
3. that they monopolise the supply of race and runners data.[55]

These findings are much contested by the racing industry[56] and may be subject to review by the National Audit Office.[57] Although these rulings by the OFT have no immediate bearing on the Bill, the *Racing Post* speculates that, if the dispute between the BHB and the OFT ends up in the European courts, it could jeopardise the Government's timetable for handover.[58]

A Home Office press release in March 2000 commented that "the sale of the Tote will be subject to state aid clearance with the European Commission".[59] The Government notified the Commission of its intentions and has received provisional clearance. There will need to be another submission once the sale price is known; this is expected to happen next summer, if the Bill has received Royal Assent by then.[60]

9. Parliamentary debate

The House of Lords debated the Tote in July 1999 in the light of the Steering Group report. Viscount Astor, introducing the debate, was highly critical of the Steering Group, which he described as producing "a report by Government, written for the benefit of Government, by government officials and with a conclusion that I believe is detrimental to the racing industry."[61] He offered his own proposal:

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53 Office of Fair Trading, *Annual report 2002-3*, p8

54 "'We've beaten the OFT once and we can do it again': Cook hails victory on Tote exclusivity but warns of greater battles to come in Gimcrack speech", *Racing Post*, 10 December 2003, pp1,6

55 Office of Fair Trading, *The British Horseracing Board and the Jockey Club: a summary of the OFT's case*, April 2003, p1

56 "OFT could kill off racing", *Daily Telegraph*, 26 August 2003

57 "NAO asked to review inquiry into horseracing", *Times Online*, 10 December 2003

58 "No guarantees for racing in Tote bill", *Racing Post*, 4 December 2003, p6

59 Home Office press notice 041/2000, *Racing set to take the reins as Government announces Tote and Levy Board decision*, 2 March 2000

60 Personal communication, DCMS, 18 December 2003

61 HL Deb 26 July 1999 vol 604 c1369

> What I believe the Government should consider is that, in a manner similar to the National Lottery, management of the Tote should be put out under licence from the BHB to competitive tender. The licence period could be five, seven or 10 years. The bidder that offered to invest most and guarantee the largest return to racing over the licence period would win the licence. Racing would win, betting duty would be paid, levy payments would be paid and tax would be paid. The taxpayer would be protected and, most importantly, in recognition of having the monopoly of the pool, the Treasury could receive a share, just as it does from the National Lottery.[62]

Viscount Falkland also dissented from the report's recommendations:

> My advice to the Government would be to take the Tote away from the bookmakers, sell off the shops and then create an environment in which the Tote can operate in the way it was originally intended; that is, as a beneficiary to racing, to the small punter and to the family racegoer.[63]

Lord Sandberg, who argued for transfer to a trust, felt that the Tote "should not merely be thrown on the market."[64]

In the Commons, the Tote was the subject of a Westminster Hall debate in January 2000. In general there was cross-party support for the idea of transferring the Tote to a racing trust. Members participating were mostly those with racecourses in their constituencies. For example, Lewis Moonie, in common with several other speakers, saw sale to a trust as the only viable option:

> The Tote, as a pool betting system, is a natural monopoly. I do not see how such a monopoly could be fully transferred to the private sector. That would be wrong and challengeable in law. It could not be defended under European Union competition law unless a trust were set up to organise it. I do not think that the Government have a prayer of getting rid of it. They should recognise that such a natural monopoly would be best dealt with by a trust that is set up to serve racing. We should bear it in mind that to serve racing was the raison d'etre of the Tote when it was set up, and that primary purpose should continue.[65]

Llin Golding was concerned that the trust's composition might be determined by a "cosy agreement" and called for a "proper debate" before proceeding further.[66] Several members were anxious that taxpayers should be safeguarded in any sell-off. Richard Page raised the possibility of a windfall gain for the Treasury:

62 HL Deb 26 July 1999 vol 604 c1371
63 HL Deb 26 July 1999 vol 604 c1381
64 HL Deb 26 July 1999 vol 604 c1373
65 HC Deb 19 January 2000 vol 342 c212WH
66 HC Deb 19 January 2000 vol 342 c202-3WH

> I see no moral right for the Government to take a single penny. The Tote should pay the transfer costs; it would be wrong for them to fall on the taxpayer. The cost of changing its status into a trust is a legitimate cost for the Tote.[67]

Neil Turner argued that any "windfall" should go to "the general public for the public good".[68] John Greenway, the then Conservative front bench culture spokesman, suggested that the Tote could better develop its commercial potential if it was not in the public sector, but at the same time found a total sell-off unacceptable. He said that he was "unconvinced" by any options other than transfer to a trust.[69]

In their "Alternative Queen's Speech 2003", the Liberal Democrats pledged to support a Bill which would "effectively end state involvement in the horse racing industry by selling of the Tote and conceding responsibility to the British Horseracing Board".[70]

C. The Horserace Betting Levy

1. The Levy and the Board

The Levy is a statutorily based means of transferring money from bookmakers and punters to the racing industry. In 1960 bookmakers and the racing industry reached a compromise: bookmakers gave their blessing to a statutory levy on the basis that the industry would not oppose the legalisation of off-course betting. A previous scheme under which bookmakers' contributions had been voluntary was evaded by many bookmakers.[71] Originally the Levy was primarily a charge on bookmakers' profits. Successive annual schemes (the Levy is renegotiated annually) have increasingly provided also for a levy on the turnover of off-course bets (cash and credit).[72] The Levy is not set on the basis of a certain proportion of bookmakers' turnover, but as a cash sum. Once the cash sum has been determined, a scheme is devised which should raise that sum. The forecast yield of the last completed scheme, the 41st, covering 2002-3, was £72m. The Tote is also required by statute to make an annual contribution to the Levy, which amounted to £5.4m in 2002-3.[73]

The Levy is administered by the Horserace Betting Levy Board (HBLB), a statutory body created by the *Betting, Gaming and Lotteries Act 1963.* The Board's duties are to assess and collect monetary contributions from bookmakers and the Tote and apply them for designated purposes:

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67 HC Deb 19 January 2000 vol 342 c201WH

68 HC Deb 19 January 2000 vol 342 c207WH

69 HC Deb 19 January 2000 vol 342 c213-5WH

70 http://www.libdems.org.uk/documents/policies/Manifestos/aqs2003.rtf

71 Home Affairs Committee, *Levy on horserace betting*, 12 May 1991, HC 146-I 1990-91, vi

72 Horserace Betting Levy Board, *Prior options study for the Government's 1999 quinquennial review of the Levy Board*, 2000, p5

73 Horserace Betting Levy Board, *Annual report 2002-3*, p32

- The improvement of breeds of horses;
- The advancement or encouragement of veterinary science or veterinary education;
- The improvement of horseracing.[74]

The Levy is negotiated annually between the Bookmakers' Committee (made up of industry representatives)[75] and the Levy Board. If the scheme is acceptable to a majority of the Board, or the two sides can agree on an amended version, then it is accepted. In the absence of agreement, the Secretary of State determines the Levy. Of the two most recent schemes, the 41st (2002-3) was determined by the Culture Secretary, whereas the 42nd (2003-4) was agreed between the Board and the Bookmakers' Committee.[76]

Since 1972 the Board has also had the responsibility, formerly exercised by the Tote, for issuing certificates of approval to horse racecourses.[77] It is also responsible for the National Joint Pitch Rules that govern the operation of bookmakers on racecourses.[78]

The Home Affairs Select Committee examined the Levy in 1991. While recommending that the current system stay in place for the moment, the Committee urged the then Government to consider its long-term replacement.[79] In its response, the Government accepted that it "would be preferable if payments from bookmakers to racing could be made without the need for a statutory framework".[80] In his statement of March 2000 the Home Secretary announced the Government's intention to abolish the Levy Board. Commenting on the publication of the quinquennial review of the HBLB, Mr Straw said:

> The Report concludes that the Levy Board is an efficient body which carries out its statutory functions well, but that most of those functions no longer need to be carried out in the public sector. In particular, the arrangements under which racing receives income from bookmaking should become a matter for settlement between the parties on a commercial basis.
>
> The Report recommends that the Government, in co-operation with the Levy Board and the industries involved, should take forward detailed consideration of all of the associated issues including the Board's important role in the provision of integrity services and its regulatory functions.

74 Section 24 of the 1963 Act

75 The Committee is made up of the Betting Office Licensees Association, the British Betting Office Association, the National Association of Bookmakers, Coral, Ladbrokes and William Hill.

76 Horserace Betting Levy Board, *Annual report 2002-3*, p32

77 *Horserace Totalisator and Betting Levy Boards Act 1972*, section 5(1)

78 Administered by the National Joint Pitch Council. See Horserace Betting Levy Board, *Annual report 2002-3*, p9

79 Home Affairs Committee, *Levy on horserace betting*, 12 May 1991, HC 146-I 1990-91, lv

80 *Levy on horserace betting: the Government reply to the Fourth Report from the Home Affairs Committee session 1990-1 HC 146*, July 1991, Cm 1583, p2

> The Government agree with these conclusions, and propose to bring forward, once again at the appropriate time and when Parliamentary time allows, legislative proposals for the abolition of the Levy Board. We shall now be discussing with the Board, the British Horseracing Board and other representatives of the racing and bookmaking industries, the steps needed to put alternative arrangements in place. As part of this process I shall be asking the British Horseracing Board, as racing's governing body, to prepare a realistic plan which shows how racing will be run as a national sport without a statutory levy.[81]

The British Horseracing Board published its report on future funding in October 2000. It identified a number of weaknesses in the present Levy system:

- It allows the betting industry rather than the racing industry to establish a price for the product;
- It allows the betting industry to negotiate as a monopoly distributor;
- It delivers control of the acceptance or rejection of the betting industry's offer to the three Government-appointed members of the Levy Board, leaving Racing with no control over the pricing of its product;
- It does not permit Racing to capture a share of offshore betting.[82]

The report reached the following conclusions:

> The structure for the future funding of British Racing is based on the combining of all of British Racing's rights into a rights package for sale to bookmakers and media companies.
>
> Combining rights will enable British Racing to develop a sufficient, dependable and sustainable income stream; to enforce and cross-enforce the use of its rights package; to work together with the betting industry more efficiently and cost-effectively; and to operate as a more united industry with a clearer strategy.
>
> Rights will be combined under a 10-year agreement between the British Horseracing Board (BHB) and the Racecourse Association (RCA).
>
> BHB will take the lead in negotiating with UK and Irish-based bookmakers for all betting rights and with all bookmakers for internet rights that do not include pictures; RCA will take the lead in negotiating media rights and other deals through a Newco.
>
> Income generated from all deals will be fully disclosed to each party and aggregated for the purposes of division.
>
> Current income levels will be distributed on the basis currently applied by the Levy Board and racecourses.

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81 HC Deb 2 March 2000 vol 345 c372W

82 British Horseracing Board, *The future funding plan for British racing*, October 2000, p4

> Incremental income will be divided 40% to the prize fund, 40% to racecourses and 20% to BHB. BHB, other than in exceptional circumstances, will allocate not less than 30% of its share to prize money, appearance money, owners' premiums or breeders' prizes.
>
> BHB will be recognised as the central funding successor to the Levy Board with the maintenance of integrity and security as its key financial priority. The expertise of current Levy Board staff will be utilised where appropriate and cost-effective.
>
> Existing structures and mechanisms by which industry funding is directed will be maintained. These include Basic Daily Rates, the Merit Table, Minimum Values, Fixture Fees, Fixture Incentives and the Capital Fund.
>
> The Capital Fund, subject to Government confirmation, will be transferred to BHB. BHB will then transfer it to a Trust for the duration of the agreement between the BHB and RCA to be administered by three Trustees. The Fund will be set initially at £50 million and be available to racecourses and other organisations which are currently HBLB beneficiaries for capital improvements.
>
> British Racing's agreed new commercial mechanism and funding structure will enable Racing to better control its own destiny and to better work together in a climate of shared responsibility, aggregated income and pre-determined revenue allocation. It will also enable the racing and betting industries to negotiate more effectively with each other.
>
> British Racing can expect to generate, in the short-term, not less than £140 million per year from betting and media deals compared to less than £90 million at present. This would represent an increase of around £50 million per year to Racing.
>
> It is intended that the new commercial mechanism will operate from the expiry of the current RCA/SIS[83] agreement on 30 April 2002. It is hoped to agree transitional arrangements for the move from statutory levy to commercial contracts by October 2001.[84]

In April 2002 the BHB reached agreement with the leading bookmakers on terms for the sale to them of racing's pre-race data, as the commercial replacement for the levy system.[85]

[83] "SIS" = Satellite Information Services (Holdings) Ltd
[84] British Horseracing Board, *The future funding plan for British racing*, October 2000, pp2-3
[85] Horserace Betting Levy Board, *Annual report 2002-3*, p6

Since receiving the British Horseracing Board's funding plan, the Government has stated that it accepts the BHB's commitment to become the "successor central funding body for racing".[86]

2. Benefits of abolishing the Levy Board: the Government case

Once again, the regulatory impact assessment accompanying the new Bill has a useful summary of the case for the Government's preferred option:[87]

	Status quo	**Abolition**
Benefits	1) Lower payments for smaller bookmakers **(approx £7.1m per annum)** 2) Income for Levy Board staff through employment **(approx £0.925 per annum)** Total estimated benefits: **£8m**	1) Saving on Levy Board administration **(approx £3.2 million per annum)** 2) Saving in avoiding costs of levy determination **(approx £50,000 per annum)** 3) Additional VAT receipts **(estimate £16.4m)** Total estimated benefits: **£19.6m**
Costs	1) Levy Board administration **(approx £3.2m)** 2) Costs of levy determination **(estimate £50,000)** Total estimated costs: **£3.2m**	1) Reduction in quality and quantity of horseracing, and risk of racecourse closure (estimate at Para 33), **or:** Reduction in the profitability of betting on horseracing and risk of closure of betting shops (estimate at Para 36) 2) Additional VAT for bookmakers **(estimate £16.4m)** 3) Costs of commercial negotiations Total estimated costs: **Minimum of £16.4m**

While conceding that the full benefits of abolition are "necessarily uncertain", the Government still holds that it is difficult to see any "persuasive rationale" to justify its retaining a statutory responsibility for, "in effect, setting an annual fee for the use by one industry of another industry's product".[88]

[86] Home Office, *A consultation paper on the proposed abolition of the Horserace Betting Levy Board and the licensing of racecourse betting and pool betting on horseracing*, November 2000, para 3.1.2

[87] Dept for Culture, Media and Sport, *Horserace Betting and Olympic Lottery Bill: regulatory impact assessment*, December 2003, pp32-3

[88] Ibid, p33

D. The Bill: key points of Parts 1 and 2

The Bill is essentially a piece of enabling legislation. As the following paragraphs show, it does not specify the duration of licences or details of new ownership.

The Culture Secretary, Tessa Jowell, has stated that she believes the provisions of the Bill to be compatible with the European Convention on Human Rights.[89] The Explanatory Notes provide more detail.[90]. Parts 1 and 2 of the Bill apply to England, Wales and Scotland only.

Since the Tote itself is owned by no one, it follows that, before it can be sold, the Tote must be taken into public ownership. The Bill therefore makes provision (**Clause 2**) for transferring the Tote's property, rights and liabilities to a company wholly owned by the Crown. **Clause 5** then provides for shares in this "successor company" to be issued to the Secretary of State or her nominated representative.

Clause 8 allows the Secretary of State to require the Gaming Board to issue to the successor company an exclusive licence to operate pool betting on horseracing for a period that she specifies. (The seven-year period is not specified in the Bill.) The exclusive licence may only be granted once (**Clause 8 subsection 3**). There is no mention of the Racing Trust in the Bill, which therefore leaves open the door to other sale options should the Trust fail to put forward a viable bid. **Clause 10** allows for pool betting when there is no exclusive licence; under the Government's preferred option, this section would only take effect after the expiry of the seven-year exclusive licence.

The regulation of pool betting on horseracing will be governed by a new Schedule (**Schedule 1**) replacing Schedule 1A of the *Betting, Gaming and Lotteries Act 1963.* The Gaming Board of Great Britain takes over from the Department for Culture, Media and Sport the duty of regulating the operation of and supervising the accounts of all pool betting business.

Clause 15 provides for the abolition of the Levy, including the Levy Appeal Tribunals. These tribunals[91] are a means by which a bookmaker may appeal against his liability for the Levy.

Clause 16 provides for the transfer of the Levy Board's property, rights and liabilities according to a scheme to be approved by the Secretary of State at a time of her choosing. Section 16(6) specifies that the purposes for which the Levy Board was first set up must be preserved, i.e. horse breeding, veterinary science and education and horseracing. There

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[89] Statement made under section 19(1)(a) of the *Human Rights Act 1998* (on front page of Bill)

[90] Dept for Culture, Media and Sport, *Horserace Betting and Olympic Lottery Bill: explanatory notes*, 2003, pp3-5; 11-12

[91] Established under section 29 of the *Betting, Gaming and Lotteries Act 1963*

is no deadline in the Bill for the dissolution of the Board. The Board is currently conducting its planning around the levy system ceasing in March 2005, with the Board following suit six months later.[92]

Certification of race courses, previously a function of the Levy Board, will pass to the Gaming Board for Great Britain (**Section 17** and **Schedule 4**).

A detailed clause-by-clause explanation of the Bill can be found in the Explanatory Notes, published by the Department for Culture, Media and Sport.[93]

E. Reaction to Parts 1 and 2 of the Bill

The British Horseracing Board has welcomed the Bill. Its communications manager, Alan Delmonte, told BBC News:

> We are delighted that Government has recently reaffirmed its intention to sell the Tote to a racing trust. […] We believe that the sale to a trust on appropriate terms is in the best interests of both the Tote and racing, to which the Tote is a key contributor.[94]

However, according to the same news report, Warwick Bartlett, chairman of the Association of British Bookmakers, is critical:

> The Government looks like choosing the worst possible of all options - the Tote should be sold at market price and in a way that allows competition. […] There has been a lot of talk about it being gifted at a price below market value, which is unfair on the taxpayer who will in effect be subsidising the sale. […] There is no reason why other bookmakers should not be allowed to bid for it. […] But the Tote does have a lot of support among the racing industry, which wants to get its hands on it. […] They think it is going to be a new Klondike for them, but it has to be run efficiently, and that will take a lot of hard work. […] If any bookmaker wants to operate pooled-betting then they should be free to do so.

In their submission to the Home Office consultation on the Levy and Tote launched in November 2000, the Bookmakers' Committee made a number of criticisms of the proposals then current and argued for the retention of the Levy Board and sale of the Tote by flotation or auction:

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92 The September deadline is given by Richard Caborn, Minister for Sport, in Dept for Culture, Media and Sport press notice 137/03, *Horserace Betting and Olympic Lottery Bill published*, 3 December 2003

93 DCMS, *Horserace Betting and Olympic Lottery Bill: explanatory notes*, EN-8, http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmbills/008/en/04008x--.htm

94 "Tote sale will be end of era", *BBC News Online*, 25 November 2003, http://news.bbc.co.uk/1/hi/business/3232952.stm

1.3 Adoption of the proposal to transfer the responsibilities of the HBLB to the British Horseracing Board (BHB) would put the BHB in a dominant and potentially anti-competitive position. Judged on past performance, the disparate internal nature of the organisation itself, and the absence of any consultation with Betting, the Committee has no confidence that the BHB would deploy such powers in the mutual interest of Racing and Betting.

1.4 The Committee anticipates that the award of monopoly powers to the BHB would lead to protracted and unproductive litigation, which the Committee believes the Government will wish to avoid because of the damage this could do to the continuity of funding for Racing and, more generally, to two activities (Betting and Racing) that are much admired throughout the world.

1.5 Betting is prepared to continue to make a fair and reasonable contribution to Racing through an equitable mechanism. In contrast, the BHB appears to view the abolition of the HBLB as an opportunity to reverse what it has referred to as "chronic underfunding", a description the Committee totally rejects.

1.6 The Committee considers that the Levy system is a robust, equitable and independent method of raising funds for Racing that is worth preserving. It has ensured stability within Betting and Racing and has played a part in enabling the UK to be recognised as a potential centre for global betting.

1.7 Whilst it is acknowledged that the Government wishes to abolish the Levy, the Committee considers that it should continue, albeit without the Home Secretary acting as the final arbiter. However, if the Government is determined to proceed with abolition, the Committee would stress the importance of preserving the strengths of the current system.

1.8 In the absence of a robust and equitable alternative, replacement of the Levy by a commercial mechanism could not only lead to abuse by a dominant supplier, but would provide no guarantee that the funds raised would be expended in the best interests of Racing as a whole. For example, there could be conflict between racecourses and racehorse owners over prize money allocations and there would be no obligation on the BHB or the Racecourse Association (RCA) to maintain present levels of expenditure on the integrity services.

1.9 In the absence of the Bookmakers' Committee, none of the bodies currently representing Betting has the authority to negotiate on behalf of all bookmakers, or to require compliance, should any agreement ever be reached. In addition, and unlike the Levy, payments made under a commercial mechanism would be subject to Value Added Tax (VAT). It is, therefore, vital that an organisation capable of addressing these problems and of delivering a solution that is fair to both Betting and Racing supersedes the HBLB and the Committee if the Government does decide to disband these bodies.

1.10 Following the Chancellor's welcome decision to replace General Betting Duty with a Gross Profit Tax, it is Betting's intention to abolish the deduction. If Betting is to compete in the global market, it is essential that the deduction be eliminated. However, Racing's proposals would, if implemented, apply pressure in the opposite direction. Given such a scenario, the Committee considers that it would be imprudent to allocate to the BHB any significant influence over the future competitiveness of Betting.

1.11 Sale of the Tote to Racing would distort competition in the market for bookmaking services. It would create a clear and irreconcilable conflict of interest and could be found to be inconsistent with European Union rules on State aid. Accordingly, the Tote should be disposed of through a flotation or auction process and, following a period of transition, pool betting should be opened up to competition.

1.12 The Committee notes that, subject to the advice of the Gambling Review Body, the Home Office intends to appoint a statutory on-course betting regulator. If this appointment is made, the regulator's role should not include commercial matters such as starting prices, nor administration of the betting ring, which should revert to bookmakers and the racecourses.[95]

95 http://www.bboa.co.uk/reports/bc_consultation.htm

II The Olympic Lottery

A. Introduction

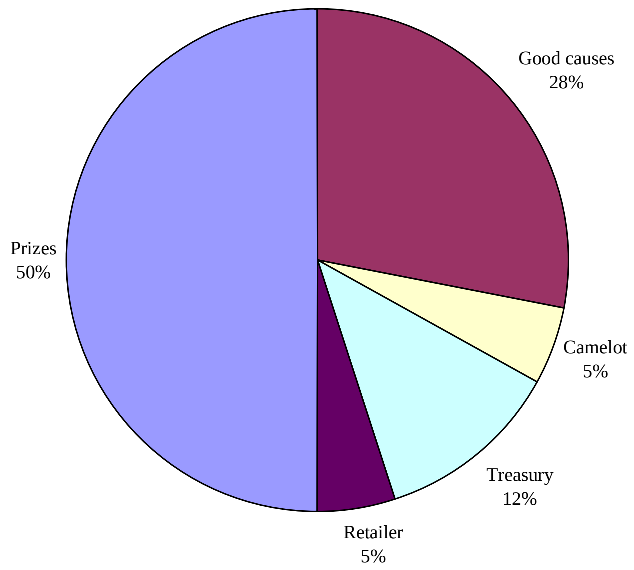
Part 3 of the Bill sets out the framework for new Olympic Lottery games to help provide financial support for the staging of the 2012 Olympic Games, should London win its bid to host these. Part 3 provides for:

- The licensing of Olympic Lottery games;
- Timing – the Olympic Lottery may only be promoted if London is selected to host the 2012 Olympics in July 2005;
- A new Olympic Lottery Distribution Fund, separate from the main lottery distribution fund;
- Payments from the new Fund;
- Possible payments into the new Fund from the main Fund, under an order which would only be made in "exceptional circumstances";
- A new Olympic Lottery Distributor.

B. The National Lottery

The National Lottery was established under the *National Lottery etc Act 1993*, and began life on 14 November 1994. Since then, the distribution of the proceeds has been as follows:

Distribution of lottery proceeds



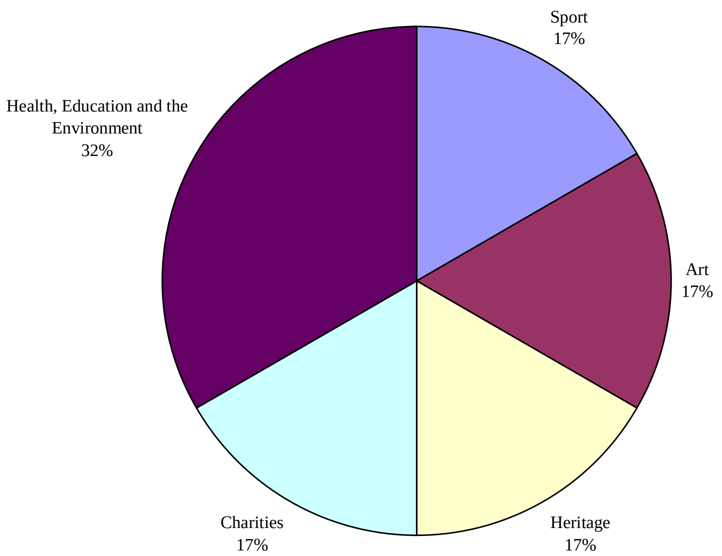
Over £12 billion has been raised to date for the good causes.[96]

1. Distribution of funds

Originally there were five good causes: arts, sport, heritage, charities and the celebration of the millennium. A sixth good cause – covering health, education and the environment through the New Opportunities Fund – was set up under the *National Lottery Act 1998* and started inviting applications for grants in January 1999.

The money in the National Lottery Distribution Fund (apart from that required for certain expenses) is allocated as follows:[97]

Distribution amongst good causes



The responsibility for distributing proceeds from the Lottery rests with 15 independent distributing bodies. These are:

- The four national Arts Councils
- The four national Sports Councils
- UK Sport
- the Heritage Lottery Fund
- the Community Fund
- the Millennium Commission
- the New Opportunities Fund
- Film Council
- Scottish Screen

Forthcoming legislation is expected to make some changes to these arrangements. Following a review of lottery funding, the Government has announced that the two biggest distributors,

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96 DCMS, http://www.culture.gov.uk/national_lottery/default.htm

97 Section 22(3) of the *National Lottery Act 1998* (as amended)

the Community Fund and the New Opportunities Fund, will merge.[98] Together they will form a new body by April 2005 to distribute half of all lottery money. This will require primary legislation, but the provisions are not included in this Bill. They may be introduced as part of the *Gambling Bill*, currently in draft form.[99] Also, the Millennium Commission is due to be wound up by April 2006,[100] and the new distributor will take over any remaining residual responsibilities and its share of income arising from the sale of the Millennium Dome.

The appendix to this Research Paper reproduces a useful diagram showing the flow of funds and the key responsibilities of those involved with the National Lottery.

2. Licensing issues

The *National Lottery Act 1993* envisages that the operation of the National Lottery will be in the hands of private sector companies. It provides for two types of licences:

- One licence to run the whole Lottery, providing the technical, retail and marketing infrastructures (section 5); and
- Licences to run and promote the individual games (section 6)

The National Lottery Commission (NLC) grants these licences, and regulates the licence holders. But section 6 licences may only be held with the agreement of the section 5 licence holder. Camelot won the first "section 5" licence for a seven year term in 1994, and then in 2001 won the second. It is due to end in January 2009. Camelot also holds all of the "section 6" licences itself. During the first licence period Vernons Pools were granted one of these to operate one game, but since then Camelot has held them all.

Alongside the review of funding, mentioned above, the Government has also been conducting a review of lottery licensing. It has decided to allow for more than one section 5 licence holder, and to allow other companies to hold section 6 licences without the agreement of the section 5 holders.[101] These changes will also need primary legislation.[102]

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98 DCMS, *National Lottery Funding Decision Document*, July 2003, paragraph 3.15 http://www.culture.gov.uk/NR/rdonlyres/eabddwv4tut2chtjsrozewziz566eedhunce5eqyfgvrhorazco6xzc37ezr5px7ymxfagrok53zl6vmqhirwcondeb/natlotfunding.pdf

99 The Decision Document states that "The Government proposes to deliver these changes alongside the proposed changes to gambling indicated in *A safe bet for success*". Two parts of the draft *Gambling Bill* have been published, which do not include lottery provisions, but a third is expected in 2004.

100 Ibid, paragraph 3.15

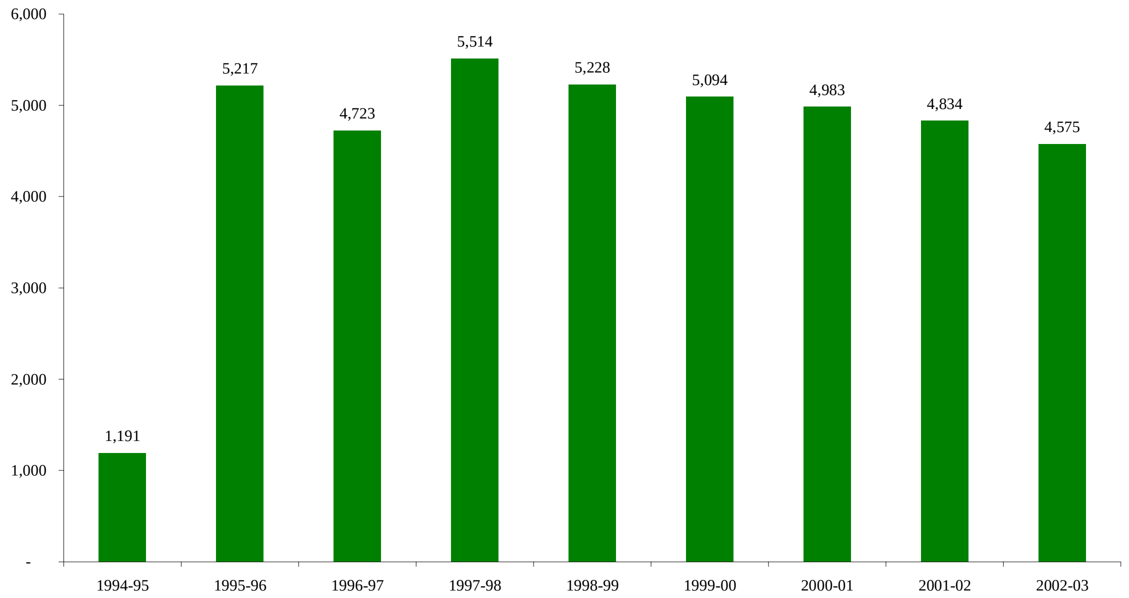
101 DCMS, *National Lottery Licensing and Regulation Decision Document*, July 2003, paragraph 4.3. http://www.culture.gov.uk/global/publications/archive_2003/nat_lice_+decision_doc.htm?properties=archive%5F2003%2C%2Fnational%5Flottery%2FQuickLinks%2Fpublications%2Fdefault%2C&month=

102 Again, the changes may be introduced as new clauses to the draft *Gambling Bill.*

3. Lottery ticket sales

Many of the concerns about the new Olympic Lottery, discussed in section IIE of this paper below, need to be seen in the context of falling ticket sales in recent years.

National Lottery Ticket Sales, £m



Camelot states that sales for the last three quarters have stabilised at around £85m per week.[103]

However, the overall fall in sales in recent years has reduced income to the National Lottery Distribution Fund, which funds good causes. This is shown on the chart opposite. The total income from lottery activities received by the fund includes unclaimed prizes, prize target shortfall, interest, and income generated by ancillary activities.[104]

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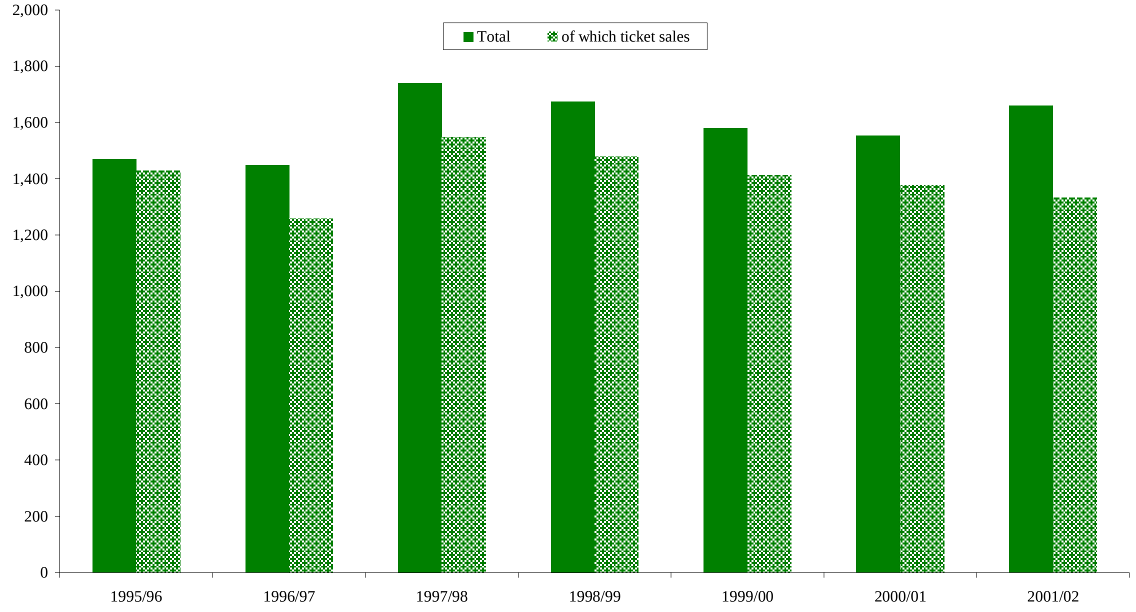
103 Camelot, *Financial Results 2003*, November 2003 http://www.camelotgroup.co.uk/media/x_pressdetails.jsp?file=%2Fxml%2Freleases%2Ffinresult%2F2003%2FCamelot_quarterly_sales_figures251103.xml

104 *National Lottery Distribution Fund Account 2001-02*, HC573, August 2003,and previous editions.

NLDF Income from Lottery Activities, £m



There are various possible explanations for the fall of ticket sales. "Lottery fatigue" is one. In its most recent annual report, Camelot points to a worldwide trend of decline in lottery sales, which it intends to counter through enhanced marketing and new games:[105]

> (…) Camelot recognises that the pattern of play is changing. Sales for the main Lotto game are gently declining: a trend which is in line with the experiences of mature lotteries around the world.
>
> We have responded with a robust strategy for growth, based on proven experience from other lotteries. We have enhanced marketing and point of- sale support for Lotto and are further developing our non-Lotto product portfolio by introducing a series of imaginative new games.

Some press reports have argued that people are no longer buying tickets because they have finally come to understand the odds.[106] Other commentators blame game design.[107] One way of countering this trend is to introduce new games, and this has been part of Camelot's strategy. Autumn 2003 saw the launch of a daily game, and an internet game, and 2004 will see games on interactive television and mobiles, together with new scratchcard games.[108]

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105 Camelot, *Annual Report and Financial Statement 2003*, http://www.camelotgroup.co.uk/downloads/Camelot_annual_report_2003.pdf

106 See for example, "It could be you, said Camelot. But people have now worked out that it won't be", *Telegraph*, 24 May 2003

107 See for example Professor Ian Walker, Warwick University, specialist advisor to the Culture Media and Sport Select Committee http://www2.warwick.ac.uk/fac/soc/economics/staff/faculty/walker/faqs.pdf

108 Camelot Briefing Note *Strategy for growth*, 28 May 2003:

Another consideration, although it is not clear how this relates to ticket sales, is people's attitudes to the "good causes" to which 28% of lottery income goes. The Government has identified lack of information and distrust about the distribution of good causes money as a problem,[109] and is trying to address it through the distribution of blue plaques with the crossed fingers logo and the words "Awarded National Lottery Funding".[110]

Some have linked the fall in sales to some controversial lottery decisions in recent years. For example, in 1998 and 2002, the Community Fund made grants to the National Coalition of Anti-Deportation Campaigns, an organisation which provides help and advice to people appealing against deportation. This received hostile media coverage and was criticised in a report by the National Audit Office in April 2003.[111]

In its 2002 consultation document on licensing, the Government made clear its attitude to "lottery fatigue":[112]

> The Government does not accept that what has been termed "lottery fatigue" – a gradual but remorseless decline in public interest and sales – is inevitable or irreversible. Certainly such a decline has been common in the case of lotteries around the world. It is indisputable that the chances of winning a major prize are very low, so that the people who play may find it increasingly hard, as time goes on, to sustain their hopes. This suggests that the arrangements for providing the Lottery after the end of the second licence period will need to place considerable weight on the ability of the operator and regulator – whoever they are – to engage players' interest and enthusiasm, using the full range of media available for running games and selling chances. Innovation and flair will be needed to maintain mass appeal.

C. London's bid for the 2012 Olympic Games[113]

The International Olympic Committee (IOC) is an independent, international, non-governmental and non profit organisation. It decides who will host the games every four

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http://www.camelotgroup.co.uk/media/press2.jsp?hp=1&y=2003&s=finresult&article=Camelot_briefing_note_280503

109 DCMS, *National Lottery Funding Decision Document*, July 2003, paragraph 1.22

110 DCMS Press Release 131/03, "Tessa Jowell Launches National Lottery Blue Plaques" 18 November 2003 http://www.culture.gov.uk/global/press_notices/archive_2003/dcms131_03.htm?month=November&properties=archive%5F2003%2C%2Fglobal%2Fpress%5Fnotices%2Farchive%5F2003%2F%2C

111 National Audit Office, *Community Fund: Review of grants made to the National Coalition of Anti-Deportation Campaigns* Report by the Comptroller and Auditor General HC 519 *Session 2002-2003, 2 April 2003* *http://www.nao.gov.uk/publications/nao_reports/02-03/0203519es.pdf*

112 DCMS, *Review of Lottery Licensing and Regulation, Consultation Document*, Dep 02/1738, July 2002 http://www.culture.gov.uk/NR/rdonlyres/ekb7g7cfqspz74gjaz7ccozi3qsscewfsce4spqmbdvol3skw4uuuh4xa2do2snx5trvnthfg4zbb3saqz5xghyrwjh/reviewlotterylicensingdocument.pdf

113 Useful background, which this section draws upon, can be found in the Culture, Media and Sport Committee's report, *A London Olympic Bid for 2012*, HC 268 2002-03, 21 January 2003: http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcumeds/268/26802.htm

years. The Olympic and Paralympic games are held in the same city. Athens is due to host the next games in August 2004, and Beijing in August 2008. The Olympics have been held in the UK twice, in London in 1908 and 1948. Birmingham bid unsuccessfully for the 1992 Games, and Manchester bid unsuccessfully for both the 1996 and the 2000 Games.

In 1995, the National Olympic Committee of the British Olympic Association decided that the next bid would be from London. The 1997 Labour Manifesto stated that a Labour government would "work to bring the Olympics and other major international sporting events to Britain."[114]

The timetable up to the IOC's decision in July 2005 is as follows:[115]

15 January 2004	Applicant city's IOC Questionnaire submitted
May/June 2004	Selection of Candidate Cities by IOC
15 November 2004	Deadline for submission of full bid
February –March 2005	IOC Evaluation Commission visits Candidate Cities
May 2005	Evaluation Commission report to IOC
July 2005	Election of Host City for 2012 by IOC

1. The Government's Assessment Process

The Government conducted an assessment of the viability of the London bid from late 2001. This focused on four key areas: affordability; deliverability legacy (in other words, will the facilities and other benefits have long term value); and winnability.

In January 2002, the Government, the Mayor of London and the British Olympic Association commissioned a study by planning and engineering consultants Arup in association with property developers Insignia Richard Ellis into the costs and benefits of bidding for and staging the Olympics and Paralympics in London. The resulting report has never been published in full, although a copy was provided to the Culture Media and Sport Committee for its Inquiry into the London Olympic Bid.[116] But a 12 page summary was deposited in the House of Commons Library in November 2002[117], and is available from the BOA website.[118] The report was an outline proposal for a 'specimen' Olympic Games. The brief stipulated an Olympic Village, main stadium, and other facilities in the Lower Lee Valley, East London.

114 Labour Party, *New Labour because Britain deserves better*, 1997 http://www.psr.keele.ac.uk/area/uk/man/lab97.htm

115 Source; Arup, *London Olympics 2012 Costs and Benefits Summary*, p10, 21 May 2002 http://www.olympics.org.uk/Library/boa_pdf/EXECUTIVE%20SUMMARYOct4th.pdf.

116 Culture, Media and Sport Committee, *A London Olympic Bid for 2012*, HC 268 2002-03, 21 January 2003 http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcumeds/268/26802.htm

117 Dep 02/2202, 21 May 2002

118 http://www.olympics.org.uk/Library/boa_pdf/EXECUTIVE%20SUMMARYOct4th.pdf

Quantifiable benefits identified by Arup included:

- regeneration of East London, with the creation of around 3,000 jobs
- £70 million from the fiscal impacts of growth in the economy attributable to the Games
- Income generated by the growth in tourism, creating a surplus over additional expenditure of between £280 million and £507 million

In addition, Arup listed a range of unquantifiable benefits and legacies, including national prestige, future uses of the sporting and other facilities, cultural diversity and social cohesion, and attracting inward investment.

The report also discussed likely costs. The Government used these estimates to develop a funding package designed to cover potential risks and contingencies. This is discussed in section IID of this Research Paper below.

2. The Culture Media and Sport Committee Report

The Culture Media and Sport Committee brought out the report of its inquiry into the London Olympic Bid in January 2003, a week before the Cabinet were due to discuss the issue. The Committee was "confident that the Government had undertaken more and better appraisal than previous bidders in order to tackle the vagaries of estimating the costs for a huge and complicated project nine and half years away from final delivery".[119]

However, the Committee complained about the lack of transparency resulting from the refusal to publish the Arup report in full, describing the published summary as "an anaemic 12 page summary of a 250 page document containing only impenetrable, estimated, aggregate costs".[120] It was also concerned about possible duplication of functions of the Wembley stadium. Decisions about Wembley were taken before the BOA had committed to a London 2012 bid, and before the establishment of the Greater London Assembly, who were concerned that the Olympic bid be linked to regeneration of East London.[121] The Committee concluded:

> It is clearly desirable in principle that London should host an Olympic and Paralympic Games. But it should not do so at any price.[122]

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[119] Culture, Media and Sport Committee, *A London Olympic Bid for 2012*, HC 268 2002-03, 21 January 2003, p5

[120] ibid

[121] These issues are discussed in Memoranda submitted to the Culture Media and Sport Committee by UK Sport and the British Olympic Association, Culture, Media and Sport Committee, *A London Olympic Bid for 2012*, HC 268 2002-03, 21 January 2003, Ev 69-73 and Ev 86-89

[122] Culture, Media and Sport Committee, *A London Olympic Bid for 2012*, HC 268 2002-03, 21 January 2003, paragraph 39

The Government response was published in June 2003. It explained its decision not to publish the full Arup report as follows:[123]

> (T)he Government's view is that the full report includes commercially confidential information, and other material that might be of assistance to other applicant cities. The Government would also wish to emphasise that Arup's remit was to produce a specimen proposal for the Games, and that the detailed arrangements for staging them will now need to be developed by the organisation to be set up by the three main stakeholders, Government, the Mayor of London and the BOA, to manage the bid.

The response to the questions on the role of the Wembley stadium was as follows:

> The construction of the new national stadium at Wembley is progressing well. As the Committee has suggested, the new stadium will be capable, inter alia, of adaptation to stage major athletics events. Those responsible for assembling the bid will be expected to determine the extent to which Wembley National Stadium is used for staging Olympic events.

The response went on to give further details of how the costs would be met, and included the text of a Memorandum of Understanding between the Government and the Mayor of London. These issues are discussed in section IID of this Research Paper below.

3. Public opinion

In December 2002, the DCMS commissioned ICM research to conduct a survey of public opinion on a potential London bid. Some of the key findings were as follows:[124]

- Four in five (81%) say that a bid should be made. Support is consistent across the regions, with Scottish and Northern Irish adults among the most supportive. Londoners' themselves want the Games to be held in their city, with 82% backing a bid.

- Paradoxically, 56% of people agree (30% strongly, 26% slightly) the money would be better spent on grassroots sports facilities (but not on non-sporting projects). 51% agree (27% strongly, 24% slightly) that London will receive the majority of the investment, for example in terms

[123] DCMS, *Olympics: Government response to 'A London Olympic bid for 2012' (HC 268) Report of the Culture, Media and Sport Select Committee Session 2002-2003*, Cm 5867, June 2003, http://www.culture.gov.uk/NR/rdonlyres/ezywinmeztnlirwxkpb66tfbonr6oxcgqheqxhcknvenozjjapyzwl4vxkty3yx73wtjkbktbfbovpzm2pcnapa4s4c/OlympicsCm5867.pdf

[124] ICM, *London Olympic Bid December 2002/January 2003* *http://www.culture.gov.uk/NR/rdonlyres/ejrzme7tsk66dzsdykvdlde6lgqkoea53iukbzg6jxzjbhgcn6j3u2jgvm6glv4nxvdr7h4dpe47bktc2utv4mvot6b/Olympicresearchresults.pdf*

of sporting investment, from which the rest of the UK will fail to receive any benefit.

- When prompted with cost implications, the level of support for a London bid falls to 73%.

4. The announcement and parliamentary debate

On 15 May 2003, the Secretary of State for Culture, Media and Sport, Tessa Jowell, confirmed what had been widely predicted by announcing that the Government had decided to support the bid for the 2012 Games:[125]

> The bid will be a huge stimulus for elite sport. Lottery investment in our athletes helped us to our best medal haul for decades at Sydney. A London bid will allow us to build on that and to raise standards and aspirations even higher. But our Olympic bid will also rest on our growing commitment to grassroots sport. It will be central to our efforts to increase physical activity, and identify, nurture and develop talent in our young and up-and-coming athletes.
>
> We want to harness the power of sport to inspire people and to address some of the key issues that our nation faces—health, social inclusion, educational motivation and fighting crime. We want to spread the benefits all around the country—promoting tourism and business for the whole of the UK, staging a four-year cultural festival, investing in community sports facilities to offer to the visiting teams to prepare and train here, holding football competitions as part of the games, and staging some other events outside London.

Ms Jowell went on to discuss the Government's four tests, explaining that lottery funding was to have a key role in the financing of the Games.

> I believe, on the basis of rigorous scrutiny, that a London bid passes those tests on every count. I would like to take the House briefly through each one. First, the cost. We estimate the cost of bidding will be about £17 million. Business, the London development agency and the Government will bear that cost. If we win the bid, the cost of the Olympics should be borne, at least in part, by those who will benefit most. I have therefore agreed with the Mayor of London a funding package of £2.375 billion, which includes a 50 per cent. contingency. Of that, £875 million will be borne by London through a £20 increase in council tax for band D properties and a contribution of £250 million from the London development agency. But the biggest contribution comes from the lottery. Contributions from the existing sport lottery and a new Olympic lottery game would raise an estimated £1.5 billion. We will review the package in 2005 in the light of what by then will be firmer and more detailed estimates of the costs of staging the games.

125 HC Deb 15 May 2003 cc477-8

> The next test is whether we can win. Other confirmed bidders to date include New York, Leipzig, Madrid and Havana. No doubt others will emerge in the coming weeks. It is a strong field, but London has many advantages over the other cities, and our bid will be the equal of any. The third test is whether a bid could really be delivered. As the jointly commissioned Arup report shows, we can deliver a high quality and competitive bid based around an Olympic zone in the Lee valley.
>
> The last test is the legacy. The games will bring great benefits to London. The economy and tourism will benefit. The lower Lee valley will benefit from new facilities and regeneration. So the work starts now. I am perfectly realistic about the work involved and the risks that lie ahead. I know that public opinion will ebb and flow in favour of the project. We will set up a dedicated organisation to develop and market the bid, with the very best people from both the public and private sectors, and with strong leadership. The bid team will act at arm's length from the Government, but we will pull out all the stops to bring the Olympic games to London.

In the debate which followed, there was cross-party support for the decision to bid for the Olympics, although a number of concerns were raised, including the lack of financial transparency, the burden on London council tax payers, and potential transport problems. The then Shadow Secretary of State for Culture, Media & Sport, John Whittingdale, supported both the bid and the principle of using lottery funding. However, amongst a number of concerns, he raised the question of the potential for diversion of lottery funds from other good causes:[126]

> We shall want to study in detail the proposals for how the costs of the games will be met, but we support the principle of using the national lottery to meet at least a part of those costs. The Secretary of State will be aware, however, that the lottery is badly tarnished and its income is falling. It thus becomes all the more important that she act quickly to restore public trust. Will she tell us what estimate she has made of how much of the money from the lottery will be taken from the amount that would otherwise have gone to the original good causes? Will the Government consider reducing that impact by giving up the share of the proceeds from a special Olympics game that they would otherwise take in tax?

Nick Harvey, then Liberal Democrat spokesman on Culture, Media and Sport, also welcomed the announcement, but went on to raise a number of questions, including about the impact on good causes:[127]

> On funding, what assessment has the Secretary of State made of the impact on the other lottery good causes if there is a new game for the Olympics? May we be

[126] HC Deb 15 May 2003 cc477-9
[127] HC Deb 15 May 2003 c482

> reassured that, if the lottery does not yield the anticipated sums or if the costs overrun, the Government will be fully behind the bid in a financial sense as well?

D. Funding issues

1. Funding of the bid

The Government estimates that the cost of bidding will be about £17 million.[128] The Government has never intended that this should be met through lottery funding. Instead, the DCMS is to share this cost with the London Development Agency (LDA)[129] and, hopefully, with the private sector, up to a total limit of £30 million. This was made clear in the Memorandum of Understanding between the Government and the Mayor of London:[130]

> 5. DCMS and the London Development Agency propose to contribute to the costs of the bid organisation and associated planning in equal shares to July 2005 to a combined limit of £30m. DCMS's contribution will not begin until 2004-05.
>
> 6. There is an offer of private sector subsidy of approximately half the bid campaign costs by the London Business Board. The Government and the Mayor intend this to reduce equally the costs falling on DCMS and the London Development Agency.

A bidding organisation, London 2012,[131] has been set up to run the bid, chaired by Barbara Cassani.[132]

2. Funding of the Games themselves

Arup originally estimated the costs of a London Olympics at £3.6 billion with expected revenues of £2.5 billion. This implied a net public subsidy of £1.1 billion.[133] However,

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[128] Ibid c477

[129] The London Development Agency is one of nine Regional Development Agencies in England. It promotes development and regeneration for the Capital. Established in July 2000, it works for the Mayor of London and in partnerships with businesses and other organisations. Funding comes from central government but the money is routed through the Mayor.

[130] DCMS, *Olympics: Government response to 'A London Olympic bid for 2012' (HC 268) Report of the Culture, Media and Sport Select committee Session 2002-2003*, Cm 5867, June 2003, http://www.culture.gov.uk/NR/rdonlyres/ezywinmeztnlirwxkpb66tfbonr6oxcgqheqxhcknvenozjjapyzwl4vxkty3yx73wtjkbktbfbovpzm2pcnapa4s4c/OlympicsCm5867.pdf

[131] http://www.london2012.org.uk/english/default.htm

[132] DCMS Press Release 65/2003, "Barbara Cassani to lead London 2012 Olympic Bid" 18 June 2003 http://www.culture.gov.uk/global/press_notices/archive_2003/dcms65_2003.htm

[133] Forecast outturn at 2002 prices. DCMS, *Horserace Betting and Olympic Lottery Bill Regulatory Impact Assessment*, December 2003, p34 http://www.culture.gov.uk/global/publications/archive_2003/horseracingbill_ria.htm

this was for a "specimen Games", and London 2012 is "working with all the stakeholders in the bid to produce a fully costed plan for staging the Games."[134]

In order to cover risks and contingencies, the Government is providing for public subsidy for the Games of over double this amount - £2.375 billion. This breaks down as follows:[135]

National Lottery	£1.5 billion
Council Tax	£0.625 billion
LDA	£0.250 billion
Total	**£2.375 billion**

Londoners already pay a precept on their Council Tax for the Greater London Assembly. The Council Tax contribution would be met through an increase in this precept - an extra £20 for Band D properties - which would not begin before 2006-07. LDA funding comes from central government but the money is routed through the Mayor. The Memorandum of Understanding states that, while it is not possible completely to earmark particular strands of funding to particular spending, "the broad intention is that Lottery funding should be primarily directed to sports investment, Olympic facilities and event staging and that money raised from the Olympic precept should address the capital requirements of the Games including transport infrastructure."[136]

In its response to the Culture, Media and Sport Committee report, the Government said that it anticipated that significantly less than £2.375 billion would actually be needed:[137]

> The Government wishes to emphasise that this is not the budget for the Games. The anticipated allocation of public funds to the budget will be significantly lower than this, but before reaching a decision to support a London bid the Government was determined that there should be sufficient funding in place to cater for all reasonably foreseeable eventualities in staging them. The probability based risk assessment we have undertaken on Games' costs and revenues provides further reassurance that £2.375 billion represents an acceptable level of provision for potential contingencies. Any residual risk that this level would be exceeded can be reduced through strong management intervention during both the bidding and staging periods.

However, the Government went on to say that, in the "unlikely event" of the Games needing more than £2.375 in public funds, this extra burden would be shared between the Mayor of London, through the Council Tax precept, and additional lottery funding:[138]

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134 DCMS, *Departmental Minute dated 2 December 2003 reporting contingent liabilities in the event of London winning the bid for the 2012 Olympic and Paralympic Games,*

135 DCMS, *Olympics: Government response to 'A London Olympic bid for 2012' (HC 268) Report of the Culture, Media and Sport Select committee Session 2002-2003*, Cm 5867, June 2003, p2

136 Ibid, p8

137 Ibid, p2

> In the unlikely event that further public subsidy is required, the Government expects its responsibility as the ultimate guarantor of Olympic funding to be discharged in a sharing arrangement with the Mayor of London and through seeking additional National Lottery funding. These expectations will be reviewed in 2005 once work on planning and costs has been completed and the outcome of the bid is known.

E. Diversion of lottery money from good causes

£1.5 billion, then, is to come from Lottery funding between 2005 and 2012. Some of this is to be "top sliced" from existing Lottery sports distributors, to meet the costs of "elite sport and associated sports investment".[139] Some will be from the new Olympic Lottery games. Then, if further funds are required, the remaining contribution "could be derived by changing the shares of Lottery income passing to existing distributors beyond 2009 when the current agreement on percentages to good causes is due to come to an end."[140] Thus, the anticipated funding package will break down as follows:

Lottery funds for the Olympics

Established Lottery sports distributors	£340m
New Olympic Lottery Game	£750m
Possible changes to existing 'good causes' shares, between 2009 and 2012	£0 to £410m
Total Lottery Funding	**up to £1.5bn**

In addition, it is clear that part of the £750 million to be generated by the new Olympic Lottery games between 2005 and 2012 will be diverted from other good causes, as people choose to play the new games rather than existing ones. This effect is sometimes referred to as "cannibalisation". In its June 2003 response to the Culture, Media and Sport Committee report, the Government estimated that around 50% of the £750 million - or £55 million a year over the seven years - "might represent money diverted from existing good causes".[141] It went on:

> This diversion would represent some £55m per year – about 4% of annual income to good causes from the lottery. These calculations are based on prudent assumptions about the likely impact of the Olympic Lottery Games, provided by Camelot, and have been reviewed by the National Lottery Commission.

[138] ibid

[139] DCMS, *Olympics: Government response to 'A London Olympic bid for 2012' (HC 268) Report of the Culture, Media and Sport Select committee Session 2002-2003*, Cm 5867, June 2003, p3

[140] ibid

[141] ibid

If the percentage shares to lottery distributors were to be revised following the possible 2009 review, "this would represent a further reduction of up to 7% for the other good causes."[142]

By the time the DCMS published its Regulatory Impact Assessment on the Bill in December 2003, the estimate that 50% of the £750 million would be diverted from good causes had been revised upwards to 59%, although the document stated that further research was needed:[143]

> It is envisaged that new Olympic Lottery games would be part of a wider strategy for growth, which could have the effect of revitalising the Lottery as a whole. The operator will need to undertake further research against their plans, which are being developed to realise a revenue stream for the Olympic Lottery Distribution Fund to underpin these assumptions. The operator's most recent assessment suggests that 41% of the revenue or £308 million will be realised through new sales over the period 2005 - 2012.

The Committee is currently conducting an inquiry into National Lottery reforms generally, but as part of this they are looking into how realistic the Government's estimates of the impact of the Olympic Lottery on good causes might be.[144]

F. The new Olympic Lottery Game

Further details of the new Game were announced by Tessa Jowell in a speech to the Lottery Monitor conference on 3 July 2003:[145]

> The new Olympic Lottery Fund will for the first time produce an hypothecated funding stream for one purpose – in this case an Olympic Games which would create the kind of legacy for a city and for the country that we have seen in Barcelona, in Sydney and in Seoul if the Games are staged in the UK. That all depends on winning our bid to get the Games staged in 2012.

A decision document on National Lottery funding published on the same day made it clear that legislation would be needed, and that the Government might consider future hypothecation of lottery games if it proves successful: [146]

> A fifth new area of priority will be an Olympic Fund. At the core of this new initiative will be legislation for new Lottery games and a dedicated stream of

142 ibid
143 DCMS, *Horserace Betting and Olympic Lottery Bill Regulatory Impact Assessment*, December 2003, p38 http://www.culture.gov.uk/global/publications/archive_2003/horseracingbill_ria.htm
144 Culture, Media and Sport Committee Press Release, 9 December 2003 http://www.parliament.uk/parliamentary_committees/culture__media_and_sport/cms_031209.cfm
145 http://www.culture.gov.uk/global/press_notices/archive_2003/dcmslotteryspeech_03.htm
146 DCMS, *National Lottery Funding Decision Document*, 3 July 2003 : http://www.culture.gov.uk/global/publications/archive_2003/nat_lott_funding.htm

> funding for staging a spectacular and successful Olympic Games and an exciting programme of cultural, heritage and grassroots sporting investment around it. This will be the first time that a Lottery game has been specifically linked to one particular good cause and we will use this experience to test the approach and whether it would work in other circumstances.

In the press release which accompanied the Bill, Ms Jowell is quoted as follows:

> “I'm pleased we've been able to introduce this important piece of legislation so early in the parliamentary session. Should we win the right to host the Olympics, the Bill paves the way to introduce an Olympic Lottery straight away. By making this possible we are showing our commitment to do everything possible to bring the Olympics to London in 2012.
>
> "We hope that a dedicated Olympic Lottery could raise up to £750m to help fund the 2012 Games, which would bring benefits across the UK including regeneration and increased investment. It also has the potential, as part of a wider strategy for growth, to help re-invigorate the entire Lottery."

G. Reactions

At the time of writing, not many organisations had commented on the Bill itself. However, a number commented on the principles behind the new Olympic Lottery, either around the time of the Government’s announcement of 15 May 2003, or later in response to the Government’s decision document on lottery funding.[147]

The National Council for Voluntary Organisations is concerned about the diversion of funds, and calls for an end to the 12% lottery tax to allow more funding to go to good causes:[148]

> The National Council for Voluntary Organisations (NCVO) has responded to news of the Olympic lottery bill, which paves the way for 1.5bn of lottery money to go to the Olympics, with calls to end the 12% lottery tax on every ticket. So far the Government has made no attempt to explain how it will protect the funding of voluntary and community organisations that depend on lottery funding.
>
> ‘The lottery funding of voluntary and community organisations doing vital work throughout the UK could decline sharply with the diversion of £1.5bn lottery revenue to the Olympics,’ said Stuart Etherington, Chief Executive of NCVO. ‘NCVO is calling on Government to minimise the damage caused to good causes by this plan by diverting the 12% tax on every National Lottery ticket worth £549 million per year to the good causes and lottery players.’

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147 Ibid

148 NCVO Press Release, “NCVO calls on Government to replace good causes’ lottery money going to Olympics”, 5 December 2003

> Mr Etherington continued: 'The Olympics lottery fund sets a worrying new precedent for future decisions about the distribution of Lottery funding. We continue to hold by the principle that Lottery funds should be distributed by an independently appointed bodies which have the freedom to take final decisions on both funding priorities and specific projects after consultation.'

Following the publication of the funding decision paper in July 2003, the Association of Chief Executives of Voluntary Organisations (Acevo) was reported as also having concerns:[149]

> Stephen Bubb, head of the Association of Chief Executives of Voluntary Organisations (Acevo) commented: 'The lottery does need a new buzz, and imaginative programmes such as a youth fund and micro grants might provide it.
> 'We know, however, that the Olympic lottery will blow a hole in the money going to good causes. The impact will be 4% from 2004 and up to 12% from 2009.' He said the government had to think carefully about the impact of spreading the remaining resources more thinly.

The Directory for Social Change, an organisation which gives support and advice to the voluntary sector, was quoted as follows shortly after Tessa Jowell's announcement in May 2003:[150]

> Luke Fitzherbert of the Directory for Social Change said the move was "an absolute straight raid" on good cause funding. "It's disappointing but not surprising that all the other good causes are going to have to pay for the Olympics - if we get them. It would have been nice if this had been made clear when Tessa Jowell originally announced proposals for how the games would be funded."

In response to the July 2003 funding document, the Chief Executive of Sport England, one of the distributing bodies, was concerned that sporting benefits should be spread throughout the country:[151]

> "While we fully support the formation of an Olympic Lottery Fund, it is important that grass roots sport right across the country is a major beneficiary of this fund. After all, there will be little point hosting the 2012 Olympics if we don't have inspirational and inviting facilities, coaches and volunteers in place for the general public."

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149 Lottery to pilot smaller grants to more groups", NewStart magazine, at http://www.newstartmag.co.uk/news508.html

150 http://society.guardian.co.uk/lottery/story/0,8150,959937,00.html, 20 May 2003

151 Sport England Press release "Sport England Response to Tessa Jowell's Lottery proposals," 3 July 2003, http://www.sportengland.org/press_releases/lottery-response.htm

H. The Bill – key points of Part 3

A detailed account of the Bill's provisions can be found in the Explanatory Notes.[152] These state that Part 3 does not engage rights under the European Convention of Human Rights.[153] This Part extends to the whole of the United Kingdom.

The main provision for licensing Olympic Lotteries is in **Clause 21**. This provides that a licence to promote lotteries (a section 6 licence, explained in section II(B)2 of this paper, above) may designate a lottery as an Olympic Lottery.

Clause 22 provides that an Olympic Lottery may only be promoted if London is selected to host the 2012 Olympics. As set out above, the IOC is due to make this decision in July 2005. This provision is necessary to make sure that the bid conforms to IOC requirements.

The IOC owns the rights to the Olympic symbols, motto, flag and anthem, and has rules governing the use of these during the process of applying to host the games.[154] Camelot had originally announced in May 2003 that it hoped to introduce Olympic Lottery games earlier than July 2005, with a scratchcard game and an interactive internet game starting in spring 2004, and a daily "loose change" game from autumn 2004.[155] However, the IOC gave advice to the DCMS through the British Olympic Association that it would not be permissible to raise money for staging the 2012 Olympics through something called an "Olympic Lottery" unless and until the IOC selects London to host the Games. [156]

Clause 23 sets out that there will be an Olympic Lottery Distribution Fund (OLDF), separate from the main National Lottery Distribution Fund (NLDF). **Clause 25** allows the Secretary of State to make an order enabling her to make payments from the NLDF to the OLDF. An article on the *Guardian* website describes this as follows:

> The bill also contains a clause that would allow the culture secretary to raid the national lottery distribution fund, which receives the 28p "good cause" money for every £1 spent on the lottery, to bail out the Olympic distributor in "exceptional circumstances". [157]

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[152] Bill 8-EN, http://pubs1.tso.parliament.uk/pa/cm200304/cmbills/008/en/04008x--.htm
[153] paragraph 74
[154] IOC, *Candidature Acceptance Procedure: Games of the XXX Olympiad 2012*, 20 February 2003, http://multimedia.olympic.org/pdf/en_report_711.pdf . See for example, article 4, p11.
[155] Camelot press release, "Camelot reveals strategy for growth", 19 May 2003, http://www.camelotgroup.co.uk/media/press2.jsp?y=2003&s=general&article=camelot_reveals_strategy
[156] Personal communication: BOA and DCMS, 19 December 2003
[157] http://society.guardian.co.uk/lottery/story/0,8150,1099679,00.html

Such an order would have to be approved by both Houses of Parliament under the affirmative procedure.[158] The *Explanatory Notes* explain the circumstances in which this would happen:[159]

> 86. An order under this clause 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.

Clause 26 sets out the kind of payments which can be made from the OLDF, and clause 27 deals with investment of money from the Fund by the National Debt Commissioners,[160] while clause 8 covers the winding up of the Fund by order.

Clause 29 and schedule 9 establish a body corporate to be known as the Olympic Lottery Distributor. The *Regulatory Impact Assessment* explains that the Government considered whether an existing distributor should carry out the Olympic Distribution role, but rejected this for a number of reasons. Existing distributors would have their own objectives and priorities, and it was felt that the new distributor should be "as lean and focused as possible, and free from historical baggage", with minimal bureaucracy.[161] **Clause 32** would allow for the dissolution of the OLD by order.

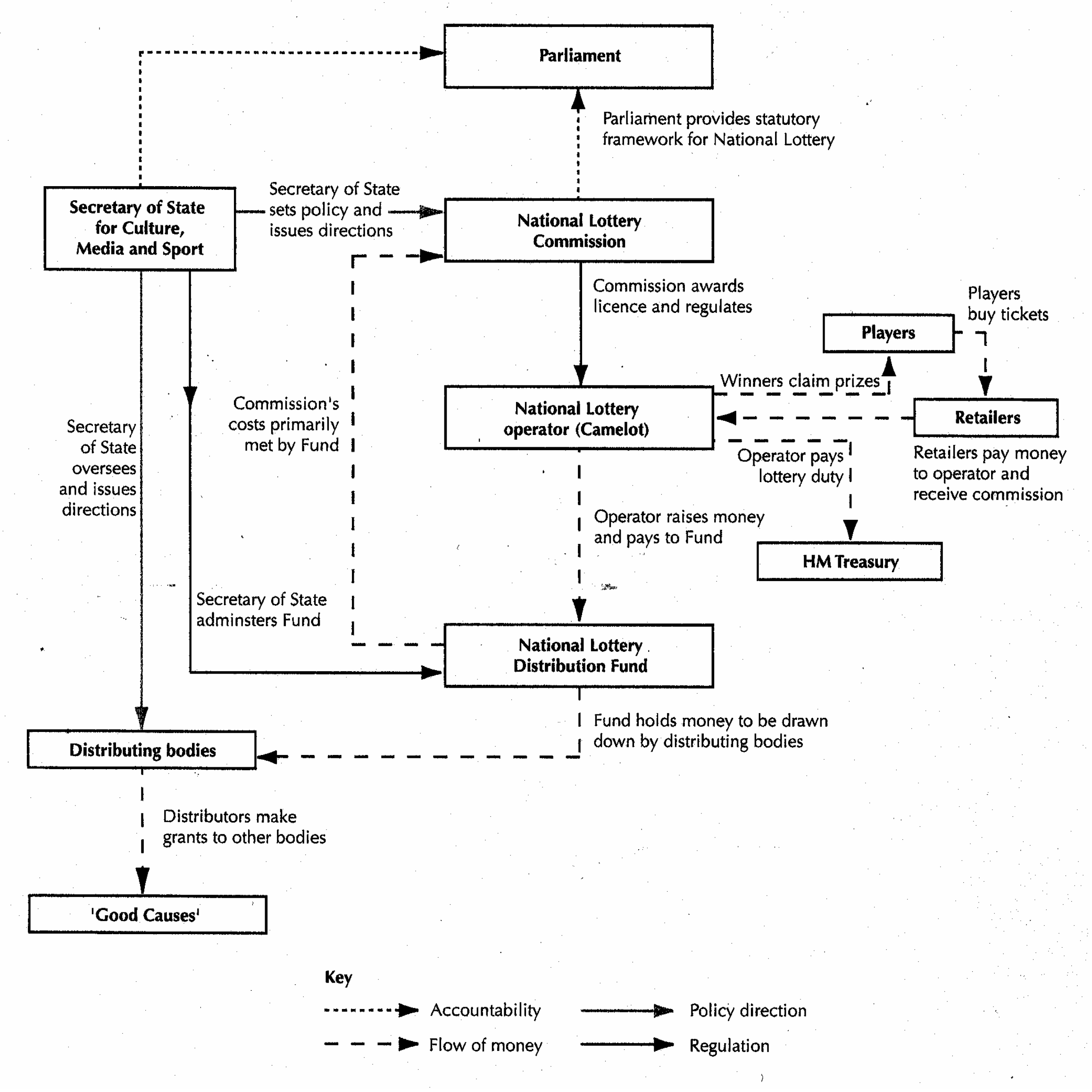
Clause 35 would allow for the Secretary of State to make such provision "as he thinks necessary or expedient" in consequence of a change in the arrangements made by the International Olympic Committee in relation to the Olympic Games. An order to do this may amend either Part 3 of this Bill (once it has become an Act) or any other Act of Parliament. The Explanatory Notes explain this as follows:[162]

> 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 clause 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

158 Details of this procedure are given in Library Fact Sheet 7, *Statutory Instruments*, at http://www.parliament.uk/documents/upload/L07.pdf
159 Bill 8-EN
160 Information on the Commissioners and their role is given at http://www.crnd.gov.uk/crndcommissioners.htm
161 DCMS, *Horserace Betting and Olympic Lottery Bill Regulatory Impact Assessment*, December 2003, pp36-7
162 Bill 8-EN, paragraph 111

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 clause 36(4).

Appendix - National Lottery – funds and responsibilities[163]



163 This chart is reproduced from the National Audit Office's report, *Awarding the new licence to run the National Lottery*, HC 803 2001-02, 10 May 2002, p 12