



department for
**culture, media
and sport**

TOTE COMMERCIAL FREEDOMS

DCMS Consultation on extension of pool betting to other sports under Section 1(a) (ii) of the Horserace Totalisator and Betting Levy Boards Act 1972.

March 2010

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Section 1: Introduction	4
Section 2: Proposals for consultation	6
Section 3: Consultation questions	12
Annex A: Impact assessment.....	13
Annex B: BRE Code of Practice on Consultations	25

Section 1: Introduction

Policy background

1.1 The Tote is a body that was created in the 1920's by statute to operate pool betting on horseracing. It has the exclusive power in Great Britain to take pool bets on British horseracing and authorise others within Great Britain to do so. It also has the power to take pool bets on horseracing emanating from any other country. Additionally, it may accept bets non-exclusively on any other event with the approval of the Secretary of State.

1.2 It has developed its operations since its inception into those of a recognised bookmaker. It was given additional statutory powers in the 1970's and later 1990's to do so - allowing it powers to open licensed betting offices first and then to take fixed odds bets on any event (excluding the outcome of the National Lottery).

1.3 It is operated largely independently of Government control albeit by a Board that is appointed by Government and within its statutory framework.

1.4 To ensure it remains competitive and presents the best value to the taxpayer on its eventual investment the Tote needs to compete in the betting and gaming market on as wide a platform as possible.

Proposal

1.5 The Tote believes that it would add considerable scope to its pool betting business if it were allowed to take pool bets on other sports beyond horseracing. Accordingly, the Tote has submitted a formal request for authorisation from the Secretary of State for Culture, Media and Sport to extend its pool betting activities to any other sport, excluding dog racing (for which there are exclusive rights under the Gambling Act 2005 until 2012).

1.6 This process requires an Order under section 1 of the Horserace Totalisator and Betting Levy Boards Act 1972.

1.7 The Tote has the means to take pool bets to market through its 'Tote Direct' system which makes Tote pool bets available for purchase in 98% of all British betting shops and through 85% of UK on-line betting operators. Therefore, the mechanisms are already in place which will enable the Tote to develop the pools betting market and provide a suite of new bets on non-horseracing sports (such as football, tennis, snooker, darts etc).

1.8 Fixed margin (nil risk) pool products are also increasingly popular throughout the betting industry. The Tote believes that sustainable pools on all sports will be a boon to the industry generally at a time of reducing incomes from betting.

1.9 The Government's view is that, where appropriate, it should support the Tote in its endeavour to build its business and has encouraged it to suggest ways to extend its commercial freedoms. Extending pool betting to other sports is one such way.

1.10 The current proposal does not currently include other events, beyond sports, of the type currently gambled upon such as X-factor, Strictly Come Dancing etc. However, the consultation document welcomes views on whether the Secretary of State's approval should be widened to include all events (excluding the outcome of the National Lottery).

Consultation

1.11 This document outlines the policy we are proposing to adopt in respect of this proposal at the end of this formal consultation and invites comments on them. We will publish a response document following this consultation which will be based on the comments we receive.

1.12 The Department welcomes comments on these proposals. The paper will be of particular interest to:

- Bookmaking operators
- Pools betting operators
- Lotteries, including the National Lottery
- Sports governing bodies and other sports organisations
- Organisations or individuals concerned with tackling problem gambling

1.13 The closing date for responses is Friday 18 June 2010. Please send your comments in writing or by e-mail to:

Simon Richardson

Gambling Sector Team

Sport and Leisure Directorate

Department for Culture, Media and Sport

2-4 Cockspur Street

London

SW1Y 5DH

gambling.consultations@culture.gsi.gov.uk

1.14 A summary of responses will be published after the consultation closing date. All information in responses, including personal information, may be subject to publication or disclosure under the Freedom of Information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Section 2: Proposals for consultation

Proposal: To allow the Tote to offer pool betting on sports other than horse racing and dog racing.

Pool betting

2.1 Pool betting on sports other than horse and dog racing is an unsophisticated market in the UK. Providers tend to offer one-off jackpot pools that occupy the same market as the National Lottery or else work on the “Fantasy League” model.

2.2 There is little in the way of match pools or smaller multi-leg exotic bets akin to those offered on horseracing. Pools on lower probability outcomes are not offered simply because a significant number of outlets are required to simulate the liquidity needed to sustain a pool. This would have to transcend betting chains and require sales at all licensed outlets until the format gained popularity.

2.3 The Tote operates in bookmakers in a similar way to the National Lottery in newsagents. Bookmakers are purely a retailer allowing the customer to link into the national pool. The customer completes a pool betting slip, hands it to the operator with their stake, the shop employee then feeds the slip into a machine at the counter which reads it, sends the information to the central Tote operation in Wigan which then confirms back to the shop whether they should accept the bet and finally a receipt is printed. Therefore the pool is created centrally at Wigan and not at the betting shop.

2.4 Similar websites for operators such as Ladbrokes and Betfair have links that mean customers can pool bet with the Tote online.

2.5 Fixed margin (nil risk) pool products are also increasingly popular throughout the betting industry. William Hill and Betfair have recently joined the Tote Direct scheme and promote the pool betting in their marketing to customers. The Tote believes that sustainable pools on all sports will be a boon to the industry generally at a time of reducing incomes from betting.

2.6 Although pool betting can be seen as a competitor to fixed odds betting in a shop, pool betting is attractive to the bookmakers as it is a guaranteed margin – ie a percentage is taken from the total pool before the payout is calculated and distributed. In contrast, with fixed odds betting there is a degree of uncertainty about profits as the bookmaker may lose if the result goes against them.

2.7 The Tote provides the technology (machine and software) but since the bookmaker is the one making the shop facility available to facilitate this they actually take a majority of the profit margin. For instance, if the margin is approximately 13% the bookmakers might take 11% and the Tote about 2%.

2.8 The Tote intends to provide pool betting on other sports that would generate enough interest to provide sufficient liquidity. One important element in generating interest is having the opportunity for rollover wins. A bigger jackpot provides incentive for more punters to join the pool.

Question 1: Do you agree that the Tote should be allowed to operate pool betting on any other sports beyond horseracing and dog racing?

Question 2: If not, would you be content if any extension was limited to certain other sports? (Please specify)

2.9 The current proposal does not currently include other events, beyond sports, of the type currently gambled upon such as X-factor, Strictly Come Dancing etc. However, we would welcome views on whether the Secretary of State's approval should be widened to include all events (excluding the outcome of the National Lottery).

Question 3: Do you believe that the current proposal should be widened to allow the Tote to operate pool betting on any event (excluding the outcome of the National Lottery)?

Regulatory requirements

2.10 The Gambling Act 2005 ("2005 Act") permits operators to provide pool betting on any sports provided that the correct licence is obtained from the Gambling Commission. Accordingly, the current policy is to allow pool betting on any sport.

2.11 Bookmakers intending on providing the facility to offer pool betting on other sports will need to apply for an operator licence. The Tote does not consider that this condition likely to be prohibitive as the fee is only 25% of that for the initial operator licence. A large operator might not consider this prohibitive across the whole of its estate with the large margin they can guarantee from pool betting, thought it will depend on them generating enough custom.

2.12 Underpinning the 2005 Act, and therefore overall gambling policy, are three licensing objectives:

- Protecting children and vulnerable people from being harmed or exploited by gambling;
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime; and
- Ensuring that gambling is conducted in a fair and open way.

2.13 We have considered with the Gambling Commission the impact that the proposal may have on the licensing objectives. The Commission has not raised any objections in terms of regulation and considers that the proposal would not make a significant difference. In relation to protection of children, the 2005 Act provides protection for children from the effects of harmful gambling through a number of specific offences that prevents children and young people under 18 years old from being given access to inappropriate or harmful gambling opportunities, including pool betting. In particular, it is an offence to invite or permit a child or a young person under 18 years old to gamble contrary to the provisions of the Act.

2.14 In addition, section 93 of the 2005 Act imposes certain restrictions on the use of agents for the purposes of pool betting – other than agents acting in relation to football pools. This means that pool bets on sports other than football pools can only be accepted on the behalf of the operating licence holder by people that have a written contract of employment from the licensee or those who themselves hold another pool betting operating licence.

2.15 We therefore believe that there is little additional risk because:

- the current Tote operation and other pool betting operators are existing precedents that act in compliance with the regulatory regime and the licensing objectives;
- the Tote is already a licensed operator and extending its operation to pool betting on other sports will require them to replicate the existing standards and requirements of the Gambling Commission for its new activities;
- pool betting is generally regarded as a soft gambling option whereby the punters play against themselves, with the operator retaining a small operating commission. Many sporting bodies regard the format as one that preserves the integrity of the various sports.
- the new products are not anticipated to add significantly to the prevalence of gambling as a pastime or therefore impact upon the incidence of problem gambling.
- pool betting on other sports will continue to be restricted to individuals aged 18 and over, and can only be carried out by the holders of a pool betting operating licence or those with a written contract of employment from the licensee, except football pools for which the restrictions are different.

Question 4: Do you agree that the proposal would not result in significant additional risk to the licensing objectives?

The existing market

2.16 As explained above the 2005 Act currently permits pool betting on any sport (with the current exceptions of horseracing and greyhound racing which are reserved to specific licensees) and it is open to any person to operate a pool with the correct gambling operator's licence.

2.17 As the proposal would make the Tote subject to the same licensing regime, without concession, it is not considered that the extra powers give the Tote favourable treatment. However, it is important that due consideration is also given to any impact the proposal might have on the market more generally.

2.18 Section 93 of the 2005 Act imposes certain restrictions on the use of agents for the purposes of pool betting – other than agents acting in relation to football pools. As such, every person handling the business of pool betting (other than that on football) requires either a pool betting licence, or a contract of employment with the holder of such a licence. It might be argued, that this provision has made it impractical for businesses to offer pool betting on events other than football, although they are entitled to do so.

2.19 In turn, some might argue that the Tote has a natural advantage in its marketplace in that it has already invested in its existing connections to its competitors' retail outlets which provide the critical mass of outlets (and therefore potential liquidity) required to make the pools attractive & sustainable. To this end, the Tote will be better placed than a start-up competitor to exploit a pool licence.

2.20 However, the proposed Order would not in itself give the Tote a practical advantage since, in the absence of any explicit provisions relating specifically to their use of agents, they are under the same obligations as other providers in terms of who can provide services on their behalf.

2.21 In addition, other operators have the potential to connect to retail betting shops and operate in a similar way to Tote Direct. For example, Sportech plc, which operates the traditional football pools, has agreements in place with Ladbrokes to allow football pools betting through its shops. Therefore, other operators have the wherewithal to invest and take pool betting into the betting shop and other markets meaning in practical terms they should be well placed to compete with the Tote in this regard.

2.22 The accompanying Impact Assessment includes a competition assessment that sets out why we consider that this policy is unlikely to raise competition concerns. In summary we consider that it does not:

- directly or indirectly limit the number or range of suppliers. Instead it will open up new areas for development for the Tote. Although it will increase opportunities to sell a wider range of pool products, which could have effects on competing products, this is unlikely to be significant in view of the underdeveloped status of non-racing pool products currently.
- limit the ability of suppliers to compete as it would remove a current restriction and is generally pro competitive and market opening.
- reduce suppliers' incentives to compete vigorously. Other potential suppliers are possible and existing retail agents can choose to extend current arrangements, as applied to racing pool betting, or not depending on profitability. If very successful there could be an easy life effect compared to fixed odds operations but this exists already in relation to dominant racing pool business, so incremental impact of new regulation seems very limited in incentive terms.

2.23 Accordingly, the proposal would give the Tote the same opportunities as other pool betting operators and the additional powers should expand competition and not have any detrimental effect on the pool betting market.

Question 5: Do you agree that the proposal would not have a significant negative impact on existing operators?

Costs and benefits

2.24 The Impact assessment also sets out initial analysis, based on the limited information currently available, for the costs and benefits of the proposal.

2.25 The main affected groups that could be considered to have key monetised costs falling to them are the Tote itself and the Gambling Commission as regulator of pool betting. However, any costs to the Tote will be only be applicable if it chooses to take up new pool betting opportunities. If so, increased business costs would be offset by additional profits. Likewise, there may be some additional costs to the Gambling Commission in regulatory checking of the Tote operations, but this would be offset by increases in licence fees relative to increased turnover on pool betting.

2.26 Costed benefits are more difficult to quantify as they are dependent on the take-up of the new pools, deduction rates applied and split of sales between commission agents and Tote owned

platforms. However, based on the Tote's estimate of a turnover in the first year of operation of £11m the likely gross profit would be £2.97m. This would then be split between the Tote's profit (before operating costs), commission to bookmakers, and taxation in the following way:

- Bookmaker commissions £1.748m
- Gross profit tax (HMG) £446,000
- Tote gross profit (before operating costs) £777,000

2.27 The proposal should also provide the betting industry with new fixed income options. As described earlier, the Tote has a network of connections to its competitors that allows them to accept bets that are to be placed into its pools in return for a commission payment. This has increased in popularity over the past few years as the pool products deliver a fixed profit at zero risk to the competitors' businesses whereas profit margins for the fixed odds horseracing products have eroded, and risk has increased, with the increased incidence of winning favourites.

2.28 The new powers would allow the Tote to deliver pool betting on all sports (such as football, tennis and golf) through the same network, which should prove to be popular with its competitors for the same reasons.

2.29 In addition, sports that are the subject matter of the pools could also benefit through potential additional voluntary payments to grass-roots bodies and associations from the gross profits made from the pool betting on their various sports, similar to those made to racing, and additional sponsorship money as the Tote recycles profits into marketing investment for further growth.

2.30 DCMS is committed to the principles of better regulation and reducing administrative burdens on businesses. The Department publishes annual simplification plans that set out how it will meet its administrative burden reduction target as well as identifying further measures for simplification. Whilst this proposal is not part of the current simplification plan it can be considered to reduce administrative burdens in line with the better regulation principles. This is because it would remove a current restriction on the activities of the Tote and allow it to undertake pool betting on other sports in the same way that other licensed operators are permitted, whilst maintaining existing public protection.

Question 6: Do you agree with the assumptions in the initial Impact Assessment? If not, please provide any additional information that may be useful in completing a full Impact Assessment.

Government's position

2.31 The Government has considered the impact that the proposal may have on the licensing objectives and believes there is little additional risk because:

- The current Tote operation and other pool betting operators are existing precedents that act in compliance with the regulatory regime and the licensing objectives;
- The Tote is already a licensed operator and extending its operation to pool betting on other sports will require them to replicate the existing standards and requirements of the Gambling Commission for its new activities;
- The Commission has not raised any objections in terms of regulation and do not believe that extending pool betting to other sports will make a significant difference;

- Pool betting is generally regarded as a soft gambling option whereby the punters play against themselves, with the operator retaining a small operating commission. Many sporting bodies regard the format as one that preserves the integrity of the various sports;
- The new products are not anticipated to add significantly to the prevalence of gambling as a pastime or therefore impact upon the incidence of problem gambling;
- Pool betting on other sports will continue to be restricted to individuals aged 18 and over, and can only be carried out by the holders of a pool betting operating licence or those with a written contract of employment from the licensee, except football pools for which the restrictions are different.

2.32 Additionally, the Government does not consider that by accepting the proposals we are giving the Tote any favourable treatment. The extension of the Tote's pool betting business is consistent with the provisions of the Gambling Act which currently permits pool betting on any sport, provided that the appropriate licences are held by the operator.

2.33 Indeed, there are a number of reasons why we support this proposal as follows:

- The Tote would be allowed to compete on a level footing with those in the same business sector, reducing administrative burdens on the sector.
- The Tote benefits by leading the market, receiving new income streams and utilising existing tools, thereby helping to maximise the Tote's profit and revenue and ensure its continued financial viability.
- The market benefits by diversifying betting opportunities and adding competitive forces.
- The industry benefits by receiving new fixed income options.
- Increased value of the Tote as a public asset – which in turn, will be of benefit to the Government and the racing industry when the Tote is sold, with net proceeds being jointly split between the two.
- Other sports benefit through potential additional voluntary payments and additional sponsorship.
- Increased tax receipts.
- Increased benefits delivered to horseracing via direct contributions and through the Horserace Betting Levy by greater investment in the Tote's business as a whole.

2.34 Accordingly, the Government proposes to agree to the Tote's formal request for authorisation from the Secretary of State for Culture, Media and Sport to extend its pool betting activities to any other sport, excluding dog racing (for which there are exclusive rights under the Gambling Act 2005 until 2012).

Question 7: Would any groups or sectors be disproportionately affected by the proposals as presented in the consultation document?

Question 8: Should any groups or sectors be exempted from the proposals?

Question 9: Do you have any other additional comments or suggestions about the proposal?

Section 3: Consultation questions

3.1 You are invited to comment freely on any aspect of this consultation document. However, you may find it useful to refer to the checklist of questions below, which cover the main points on which we would particularly welcome views. Where possible, please:

- Be as specific as possible in your responses;
- Explain, where appropriate, the reasons behind your agreement or disagreement with a proposal;
- Suggest what alternative you would prefer in place of any proposals you may disagree with.

3.2 In summary, the questions asked in the consultation document are:

Question 1: Do you agree that the Tote should be allowed to operate pool betting on any other sports beyond horseracing and dog racing?

Question 2: If not, would you be content if any extension was limited to certain other sports? (Please specify)

Question 3: Do you believe that the current proposal should be widened to allow the Tote to operate pool betting on any event (excluding the outcome of the National Lottery)?

Question 4: Do you agree that the proposal would not result in significant additional risk to the licensing objectives?

Question 5: Do you agree that the proposal would not have a significant negative impact on existing operators?

Question 6: Do you agree with the assumptions in the initial Impact Assessment? If not, please provide any additional information that may be useful in completing a full Impact Assessment.

Question 7: Would any groups or sectors be disproportionately affected by the proposals as presented in the consultation document?

Question 8: Should any groups or sectors be exempted from the proposals?

Question 9: Do you have any other additional comments or suggestions about the proposal?

Annex A: Impact assessment

Summary: Intervention & Options		
Department /Agency: Department for Culture, Media and Sport	Title: Impact Assessment for Tote Pool Betting Regulations 2010	
Stage: Consultation	Version: 1	Date: 17 February 2010
Related Publications:		
Available to view or download at: http://www.		
Contact for enquiries: Simon Richardson, DCMS		Telephone: 020 7211 6420

What is the problem under consideration? Why is government intervention necessary?

The Tote's original powers allow it to accept pool bets on horseracing. Additionally, it may accept bets on any other event with the approval of the Secretary of State.

The Tote believes that it would add considerable scope to its pool betting business if it were allowed to take pool bets on other sports beyond horseracing. Accordingly, the Tote has submitted a formal request for authorisation from the Secretary of State for Culture, Media and Sport to extend its pool betting activities to any other sport, excluding dog racing (for which there are exclusive rights under the Gambling Act 2005 until 2012).

What are the policy objectives and the intended effects?

The first objective is to allow the Tote to compete on a level footing with those in the same business sector (pool betting).

The second objective is to allow the Tote to better utilise its existing assets and thereby increase its business and brand.

The intended effects from these policy objectives are to:

- provide the Tote with potential new income streams.
- provide the betting industry with new fixed income options.
- benefit the market by diversifying betting opportunities and adding competitive forces.
- increase tax receipts.
- increase the value of the Tote as a public asset – which in turn, will be of benefit to HMG and the racing industry when the Tote is sold, with net proceeds being jointly split between the two.
- increase the benefits delivered by the Tote to horseracing via direct contributions and through the Horserace Betting Levy.
- benefit individual sports through potential additional voluntary payments to grass-roots bodies and associations and additional sponsorship money as the Tote recycles profits into marketing investment for further growth.

What policy options have been considered? Please justify any preferred option.

The Government's view is that it should support the Tote in its endeavour to build its business and has encouraged it to suggest ways to extend its commercial freedoms. Extending pool betting to other sports is one such way.

It is not considered that the extra powers give the Tote favourable treatment:

- It is consistent with the provisions of the Gambling Act which currently permits pool betting on any sport (with the current exceptions of horseracing and greyhound racing which are reserved to specific licensees); and
- It is open to any person to operate a pool with the correct gambling operator's licence (the Tote being subject to the same licensing regime without concession).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

DCMS meets with the Tote and Shareholder Executive quarterly to discuss the state of the Tote's business. The costs and benefits of the policy will be monitored as part of that review process.

In addition, the wider impact of the policy will be kept under review on an ongoing basis by DCMS and the Gambling Commission.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 23 February 2010

Summary: Analysis & Evidence

Policy Option: Consult on draft proposals		Description: The proposals will allow the Tote to take pool bets on any other sports beyond horse racing and dog racing.	
COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups':</p> <p>Tote – there will be some internal cost of executing the project, but this should be taken up within the existing pool betting business. As the business builds, this may result in additional staffing requirements, however, this will be offset by additional profits.</p> <p>Gambling Commission – there may be some small additional cost in regulatory checking of the Tote operations, but this would be offset by increases in licence fees relative to increased turnover on pool betting.</p> <p>HMG – Nil</p> <p>Other bookmakers – Nil</p>
	One-off (Transition)	Yrs	
	£ N/A		
	Average Annual Cost (excluding one-off)		
	£ N/A		
		Total Cost (PV)	£N/A
Other key non-monetised costs by 'main affected groups'			
BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The exact scale of key monetised benefits it not currently known and depends on the Key Assumptions/Sensitivities/Risks (see below). However, the Tote has indicated that assuming £11m of turnover in year 1 this would mean a Gross profit of £2.97m that would be split into:</p> <ul style="list-style-type: none"> • Bookmaker commissions £1.748m • Gross profit tax (HMG) £446,000 • Tote gross profit (before operating costs) £777,000
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
		Total Benefit (PV)	£ Not known
Other key non-monetised benefits by 'main affected groups'			
Key Assumptions/Sensitivities/Risks			
The key assumptions are in take-up of the new pools, deduction rates applied and split of sales between commission agents and Tote owned platforms.			
Price Base Year N/A	Time Period Years N/A	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A
What is the geographic coverage of the policy/option?			Great Britain

On what date will the policy be implemented?		October 2010 (tbc)			
Which organisation(s) will enforce the policy?		Tote Gambling Commission			
What is the total annual cost of enforcement for these organisations?		£Not known			
Does enforcement comply with Hampton principles?					
Will implementation go beyond minimum EU requirements?					
What is the value of the proposed offsetting measure per year?		£ n/a			
What is the value of changes in greenhouse gas emissions?		£ n/a			
Will the proposal have a significant impact on competition?		The competition aspects are noted below in the evidence base. It is not envisaged that competition will be reduced as a result of the policy			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?					
Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)			
Increase of £	Decrease of £	Net Impact		£	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

Background to proposal

The Tote is a body that was created in the 1920's by statute to operate pool betting on horseracing. It is operated largely independently of Government control albeit by a Board that is appointed by Government and within its statutory framework.

It has developed its operations since its inception into those of a recognised bookmaker. It was given additional statutory powers in the 1970's and later 90's to do so - allowing it powers to open licensed betting offices first and then to take fixed odds bets on any event (excluding the outcome of the National Lottery).

The Tote's original powers allow it to accept pool bets on horseracing – exclusively for horseracing held in Great Britain and non-exclusively on horseracing emanating from any other country. Additionally, it may accept bets non-exclusively on any other event with the approval of the Secretary of State.

The Tote believes that it would add considerable scope to its pool betting business if it were allowed to take pool bets on other sports beyond horseracing. Accordingly, the Tote has submitted a formal request for authorisation from the Secretary of State for Culture, Media and Sport to extend its pool betting activities to any other sport, excluding dog racing (for which there are exclusive rights under the Gambling Act 2005 until 2012).

The Government's view is that, where appropriate, it should support the Tote in its endeavour to build its business and has encouraged it to suggest ways to extend its commercial freedoms. Extending pool betting to other sports is one such way.

The current proposal does not widen this to include other events, beyond sports, of the type currently gambled upon such as X-factor, Strictly Come Dancing etc. However, the consultation document welcomes views on whether the Secretary of State's approval should be widened to include all events (excluding the outcome of the National Lottery).

Policy objectives

As set out in "Summary: Intervention & Options" there are two main policy objectives (aside from the gambling licensing objectives discussed later).

The first objective is to allow the Tote to compete on a level footing with those in the same business sector (pool betting):

- Any person, once licensed by the Gambling Commission to operate as a pool operator is able to carry on pool betting on any event. This is subject to the two remaining monopolies regarding horse racing and greyhound racing for the time being, but these are planned to come to an end to level the playing field entirely.

- The Tote is hampered by its statutory power that allows for pool betting on horseracing but, in absence of specific powers in relation to any other events, requires approval from the Secretary of State for pool betting on those things that would be instantly allowable of other licensed operators.

The second objective is to allow the Tote to better utilise its existing assets and thereby increase its business and brand. In doing so it should:

- provide the Tote with potential new income streams.
- benefit the market by diversifying betting opportunities and adding competitive forces.
- increase tax receipts.
- increase the value of the Tote as a public asset – which in turn, will be of benefit to HMG and the racing industry when the Tote is sold, with net proceeds being jointly split between the two.
- increase the benefits delivered to horseracing via direct contributions and through the Horserace Betting Levy by greater investment in the Tote's business as a whole.

In addition it should provide the betting industry with new fixed income options. The Tote has a network of connections to its competitors that allows them to accept bets that are to be placed into its pools in return for a commission payment. This has increased in popularity over the past few years as the pool products deliver a fixed profit at zero risk to the competitors' businesses whereas profit margins for the fixed odds horseracing products have eroded, and risk has increased, with the increased incidence of winning favourites.

The new powers would allow the Tote to deliver pool betting on all sports (such as football, tennis and golf) through the same network, which should prove to be popular with its competitors for the same reasons.

Sports that are the subject matter of the pools could also benefit through potential additional voluntary payments to grass-roots bodies and associations and additional sponsorship money as the Tote recycles profits into marketing investment for further growth.

Costs and benefits

As set out in "Summary: Analysis & Evidence" the main affected groups that could be considered to have key monetised costs falling to them are the Tote itself and the Gambling Commission as regulator of pool betting.

However, any costs to the Tote will be only be applicable if it chooses to take up new pool betting opportunities. If so, increased business costs would be offset by additional profits.

Likewise, there may be some additional costs to the Gambling Commission in regulatory checking of the Tote operations, but this would be offset by increases in licence fees relative to increased turnover on pool betting.

Some of the main benefits have already been outlined above but costed benefits are more difficult to quantify as they are dependent on the take-up of the new pools, deduction rates applied and split of sales between commission agents and Tote owned platforms.

Based on the Tote's estimate of a turnover in the first year of operation of £11m the likely gross profit would be £2.97m. This would then be split between the Tote's profit (before operating costs), commission to bookmakers, and taxation in the following way:

- Bookmaker commissions £1.748m
- Gross profit tax (HMG) £446,000
- Tote gross profit (before operating costs) £777,000

Regulation and the licensing objectives

Underpinning the Gambling Act, and therefore overall gambling policy, are three licensing objectives:

- Protecting children and vulnerable people from being harmed or exploited by gambling;
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime; and
- Ensuring that gambling is conducted in a fair and open way.

We have considered with the Gambling Commission the impact that the proposal may have on the licensing objectives. The Commission has not raised any objections in terms of regulation and considers that the proposal would not make a significant difference. In relation to protection of children, the 2005 Act provides protection for children from the effects of harmful gambling through a number of specific offences that prevents children and young people under 18 years old from being given access to inappropriate or harmful gambling opportunities, including pool betting. In particular, it is an offence to invite or permit a child or a young person under 18 years old to gamble contrary to the provisions of the Act.

In addition, section 93 of the 2005 Act imposes certain restrictions on the use of agents for the purposes of pool betting – other than agents acting in relation to football pools. This means that pool bets on sports other than football pools can only be accepted on the behalf of the operating licence holder by people that have a written contract of employment from the licensee or those who themselves hold another pool betting operating licence.

We therefore believe that there is little additional risk because:

- the current Tote operation and other pool betting operators are existing precedents that act in compliance with the regulatory regime and the licensing objectives;
- the Tote is already a licensed operator and extending its operation to pool betting on other sports will require them to replicate the existing standards and requirements of the Gambling Commission for its new activities;
- pool betting is generally regarded as a soft gambling option whereby the punters play against themselves, with the operator retaining a small operating commission. Many sporting bodies regard the format as one that preserves the integrity of the various sports.
- the new products are not anticipated to add significantly to the prevalence of gambling as a pastime or therefore impact upon the incidence of problem gambling.
- pool betting on other sports will continue to be restricted to individuals aged 18 and over, and can only be carried out by the holders of a pool betting operating licence or those with a written contract of employment from the licensee, except football pools for which the restrictions are different.

Market impact

It is not considered that the extra powers give the Tote favourable treatment as:

- it is consistent with the provisions of the Gambling Act which currently permits pool betting on any sport (with the current exceptions of horseracing and greyhound racing which are reserved to specific licensees); and
- it is open to any person to operate a pool with the correct gambling operator's licence (the Tote being subject to the same licensing regime without concession).

However, it is important that due consideration is also given to any impact the proposal might have on the market more generally.

Section 93 of the 2005 Act imposes certain restrictions on the use of agents for the purposes of pool betting – other than agents acting in relation to football pools. As such, every person handling the business of pool betting (other than that on football) requires either a pool betting licence, or a contract of employment with the holder of such a licence. It might be argued, that this provision has made it impractical for businesses to offer pool betting on events other than football, although they are entitled to do so.

In turn, some might argue that the Tote has a natural advantage in its marketplace in that it has already invested in its existing connections to its competitors' retail outlets which provide the critical mass of outlets (and therefore potential liquidity) required to make the pools attractive & sustainable. To this end, the Tote will be better placed than a start-up competitor to exploit a pool licence.

However, the proposed Order would not itself give the Tote a practical advantage since, in the absence of any explicit provisions relating specifically to their use of agents, they are under the same obligations as other providers in terms of who can provide services on their behalf.

In addition, other operators have the potential to connect to retail betting shops and operate in a similar way to Tote Direct. For example, Sportech plc, which operates the traditional football pools, has agreements in place with Ladbrokes to allow football pools betting through its shops. Therefore, other operators have the wherewithal to invest and take pool betting into the betting shop and other markets meaning in practical terms they should be well placed to compete with the Tote in this regard.

Accordingly, the proposal would give the Tote the same opportunities as other pool betting operators and the additional powers should expand competition and not have any detrimental effect on the pool betting market.

Better regulation

DCMS is committed to the principles of better regulation and reducing administrative burdens on businesses. The Department publishes annual simplification plans that set out how it will meet its administrative burden reduction target as well as identifying further measures for simplification. Whilst this proposal is not part of the current simplification plan it can be considered to reduce administrative burdens in line with the better regulation principles. This is because it would remove

a current restriction on the activities of the Tote and allow it to undertake pool betting on other sports in the same way that other licensed operators are permitted, whilst maintaining existing public protection.

Specific Impact Tests

Competition Assessment

The Office of Fair Trading published revised guidelines for departments on the consideration of competition assessments in 2007. The guidelines state that, in relation to competition assessments, the following four key questions should be considered:

1. Does it directly limit number or range of suppliers?

This is likely to be the case if the proposal involves:

- the award of exclusive rights to supply, or
- procurement from a single supplier or restricted group of suppliers, or
- the creation of a form of licensing scheme, or
- a fixed limit (quota) on the number of suppliers.

DCMS position: No. It will actually open up new areas for development for the Tote.

2. Does it indirectly limit the number or range of suppliers?

This is likely to be the case if the proposal significantly raises the costs:

- of new suppliers relative to existing suppliers,
- of some existing suppliers relative to others, or
- of entering or exiting an affected market.

DCMS position: No. It will increase opportunities to sell a wider range of pool products which could have effects on competing products. However, this is unlikely to be significant in view of the underdeveloped status of non-racing pool products currently.

3. Does it limit the ability of suppliers to compete?

This is likely to be the case if the proposal:

- controls or substantially influences the price(s) a supplier may charge, or the characteristics of the product(s) supplied, for example by setting minimum quality standards
- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or

- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

DCMS position: No. This removes a current restriction and is generally pro competitive and market opening.

4. Does it reduce suppliers' incentives to compete vigorously?

This may be the case where a proposal:

- exempts suppliers from general competition law,
- introduces or amends intellectual property regime,
- requires or encourages the exchange between suppliers, or publication, of information on prices, costs, sales or outputs, or
- increases the costs to customers of switching between suppliers.

DCMS position: No. Other potential suppliers are possible and existing retail agents can choose to extend current arrangements, as applied to racing pool betting, or not depending on profitability. If very successful there could be an easy life effect compared to fixed odds operations but this exists already in relation to dominant racing pool business, so incremental impact of new regulation seems very limited in incentive terms.

We therefore consider that this policy is unlikely to raise competition concerns.

Small Firms

The vast majority of small independent bookmakers are connected to the "Tote Direct" network (i.e. connections of Tote pools to licensed betting offices), meaning that they will be able to benefit from the policy in the same way as the larger bookmakers with the added benefit that no risk product is arguably more beneficial to the smaller bookmakers who bear greater risk of business failure due to poor results on fixed odds betting through their inability to 'smooth' losses over multiple outlets.

Legal Aid

No impact.

Sustainable Development

No impact.

Carbon Assessment

No impact.

Other Environment

No impact.

Health Impact Assessment

One of the principal objectives of the Gambling Act 2005 is the protection of children and the other vulnerable persons from being harmed or exploited by gambling, and the Government takes the risks associated with all forms of gambling very seriously.

The proposed measure is unlikely to have a significant health impact, either on the whole population, a major sub group of the population, or in terms of severity of impact as the majority of income generated by the policy is likely to be transferred from other areas of gambling (i.e. migration from fixed-odds to pool format betting).

Race Equality

No impact.

Disability Equality

No impact.

Gender Equality

No impact.

Human Rights

No impact.

Rural Proofing

Bookmakers in rural areas would be able to benefit from the policy on an equal basis to their urban counterparts and potentially more so, accounting for the rationale expounded in 'small firms' above, as the small firms are more prevalent in towns than in cities.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	✓	
Small Firms Impact Test	✓	
Legal Aid	✓	
Sustainable Development	✓	
Carbon Assessment	✓	
Other Environment	✓	
Health Impact Assessment	✓	
Race Equality	✓	
Disability Equality	✓	
Gender Equality	✓	
Human Rights	✓	
Rural Proofing	✓	

ALL RESULTS IN EVIDENCE BASE SECTION. (No annexes)

Annex B: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

For enquiries about the consultation (handling) process only please contact DCMS Public Engagement and Recognition Unit (PERU) at the above address or email enquiries@culture.gsi.gov.uk, heading your communication "Consultation on extension of pool betting to other sports under Section 1(a) (ii) of the Horserace Totalisator and Betting Levy Boards Act 1972."