EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (HORSERACE TOTALISATOR BOARD) ORDER 2007

2007 No.

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order makes provision with respect to the Horserace Totalisator Board ("the Tote"). The Order saves provisions of the Betting, Gaming and Lotteries Act 1963 which relate to the Tote and in particular which confer exclusive rights on the Tote in relation to pool betting on horse races. The provisions are to be repealed by the Gambling Act 2005. The Order also modifies provisions of the Gambling Act 2005 in their application to pool betting on horse races provided by the Tote and persons acting with the authority of the Tote.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Gambling Act 2005 ("the 2005 Act") establishes a new system of regulation of all gambling in Great Britain, other than the National Lottery and spread betting. As part of this process the existing legislation relating to gambling, including the Betting, Gaming and Lotteries Act 1963 ("the 1963 Act"), is to be repealed.

4.2 The 2005 Act introduces a unified regulator for gambling in Great Britain, the Gambling Commission ("the Commission"), and a new licensing regime for most forms of commercial gambling. Generally the 2005 Act requires facilities for commercial gambling to be provided under the authority of an operating licence issued by the Gambling Commission. It is an offence under section 33 of the 2005 Act to provide facilities for gambling unless the person holds an operating licence authorising the activity, or acts in the course of the business of such an operating licence holder. Similarly, where premises are used to provide facilities for gambling, an offence is committed unless a premises licence has effect authorising the use of the premises for the particular gambling activity. By virtue of section 163 of the 2005 Act a person can only be granted a premises licence if they also hold an operating licence authorising the activity.

4.3 This Order is concerned with ensuring that the Tote is able to continue to operate on its current basis on and after 1 September 2007 when betting will be regulated under the Gambling Act 2005. The Order ensures that, despite the repeal of the 1963 Act by the 2005 Act, the following provisions of the 1963 Act continue to have effect until the Tote is dissolved under Part 1 of the Horserace Betting and Olympic Lottery Act 2004. The provisions are section 12 of the 1963 Act which establishes the Tote; section 14

which confers exclusive rights on the Tote with respect to pool betting on horse races; and section 15 which confers further functions on the Tote.

4.4 The Order also modifies section 33 of the 2005 Act to ensure that the Tote, and others acting under the authority of the Tote, are able to provide facilities for horse race pool betting under the exclusive right conferred on the Tote by section 14 of the 1963 Act without requiring an operating licence to authorise the activity. This mirrors the position under the 1963 Act under which a bookmaker's permit is not required to authorise such activity. A consequential amendment is made to section 163 of the 2005 Act to enable the Tote to obtain a betting premises licence without holding a betting operating licence. A further modification is made to section 33 to ensure that a person commits an offence under that section if they infringe the exclusive right conferred on the Tote by section 14 of the 1963 Act. This reflects the position under the existing legislation where a person infringing the exclusive right of the Tote is liable to commit an offence under section 4 of the 1963 Act.

4.5 Sections 336 to 338 of the 2005 Act enable the Gambling Commission in certain circumstances to void bets accepted by or through the holder of a betting operating licence. The Order modifies these provisions to ensure that those provisions also apply where bets are entered into with the Tote, or a person acting with the authority of the Tote, in pursuance of its right under section 14 of the 1963 Act.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for the Department for Culture, Media and Sport, Mr Richard Caborn, has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Horserace Totalisator Board) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Tote is a statutory corporation established by the Government to provide pool betting services on horse racing. This order is necessary in order to enable the Tote to continue its current operations on the basis of the existing legislative framework once the new system of regulation under the 2005 Act comes into force. Legislative provision has been made in the Horserace Betting and Olympic Lottery Act 2004 to enable the Secretary of State to sell the Tote. There are powers in the Horserace Betting and Olympic Lottery Act 2004 to create a successor company to receive the assets and liabilities of the Tote, shares in which would then be sold to a third party. The Secretary of State also has powers under that Act to direct the Gambling Commission to grant an exclusive 7-year licence to the successor company to carry on pool betting on horse races on approved horse racecourses. As the sale of the Tote and the grant of an exclusive licence will not have been achieved by 1 September 2007, this order is necessary to give effect to the 1963 Act arrangements for pool betting on horse races and to allow its lawful continuation. There has been no consultation on the making of this order as it preserves rather than changes the existing position.

8. Impact

8.1 The Order will have no impact on industry or the voluntary sector and there is therefore no Regulatory Impact Assessment attached to this memorandum.

9. Contact

Tony Dyer at the Department of Culture, Media and Sport (tel: 020 7211 6498 or e-mail: tony.dyer@culture.gsi.gov.uk) can answer any queries regarding the instrument.