

House of Commons
Committee of Public Accounts

**AWARDING THE NEW
LICENCE TO RUN THE
NATIONAL LOTTERY**

Sixty-fifth Report of Session 2001–02

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*Report, together with
Proceedings of the Committee,
Minutes of Evidence and an Appendix*

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Committee of Public Accounts

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Footnotes

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SIXTY-FIFTH REPORT

The Committee of Public Accounts has agreed to the following Report:

AWARDING THE NEW LICENCE TO RUN THE NATIONAL LOTTERY

INTRODUCTION AND LIST OF CONCLUSIONS AND RECOMMENDATIONS

1. The United Kingdom National Lottery was launched in November 1994. The National Lottery etc Act 1993 (the 1993 Act) provides for the National Lottery to be operated by private sector organisations, with the objective of raising money for Good Causes: the arts; charities; film; health, education and the environment; heritage; the millennium; and sport. The first licence to run the National Lottery to 30 September 2001 was awarded to Camelot Group plc (Camelot). The second licence, which runs to 31 January 2009, was also awarded to Camelot.

Figure 1: Key facts and figures about the National Lottery

The National Lottery has been played by some 80% of the adult population in the United Kingdom and is regularly played by around 65%.

By the end of the first licence in September 2001:

- the public had spent almost £32 billion on the Lottery;
- players had won almost £16.5 billion;
- some £10.6 billion had been raised for the Good Causes; and
- the Government had received over £4 billion in lottery duty.

2. Responsibility for running the competition for the second licence rested with the National Lottery Commission (the Commission). The Commission replaced the Director General of the National Lottery as the Lottery regulator in April 1999. The Commission is required to exercise its functions in the manner it considers most likely to ensure that the Lottery is run with all due propriety and that the interests of participants are protected. Subject to these requirements, the Commission is required to secure the greatest possible return to the Good Causes. The Secretary of State for Culture, Media and Sport sets the general policy framework for the National Lottery and appoints the five National Lottery Commissioners. The Commissioners alone are responsible for the award of the licence to run the National Lottery.

3. On the basis of a Report from the Comptroller and Auditor General we examined the Department for Culture, Media and Sport (the Department) and the Commission on the extent of competition for the second licence, on achieving due propriety and protecting participants, and on the return to Good Causes.

4. Our main conclusions are as follows:

- There is a real risk that there will be no effective competition for future licences to run the National Lottery. There were only two bids for the second licence, compared with eight bids for the first, and the incumbent operator, who has an inherent competitive advantage, will have held the licence for 14 years by the time the next licence is due to be awarded.

- The Commission needs contingency plans for circumstances where there is no suitable candidate willing or able to run the Lottery; where it is necessary to terminate an operator's licence; or where the operator ceases business or withdraws. The Commission, as regulator of the National Lottery, would then be better placed to take robust action, if required, against the incumbent operator.
- The National Lottery operator contributes a proportion of ticket sales to the Good Causes, but is not required to guarantee any specific or minimum contribution. If the operator fails to achieve the sales forecasts it made when bidding for the licence, as has happened since the new licence was awarded, the Good Causes suffer. For future licences, the Department should aim to achieve a more equitable sharing of risk between the operator and the Good Causes.

5. Our further conclusions and recommendations are:

- (i) As the Commission was unable to give The People's Lottery complete information about the location of lottery retailers, The People's Lottery did not have all the information it wanted when preparing its bid which put it at a disadvantage compared with Camelot, the incumbent operator. The Commission assured us that in future competitions it should be able to provide rival bidders with full details of the lottery retail network.
- (ii) The Commission is considering whether to contribute to bidders' costs in future. Such a move would need to be based on a full understanding of the costs of bidding and whether financial help would lead to additional and stronger bids, and ultimately more money for the Good Causes. The Commission would also need to satisfy itself that bidders controlled their costs, used the money for the purpose intended and were not paid simply to correct deficient bids.
- (iii) Just four months after giving the Commission personal assurances about proper corporate behaviour, GTech secretly corrected a lottery software fault that resulted in underpayments to some prizewinners. The key individuals were removed from the company, but as Camelot still uses GTech's gaming software the Commission should monitor closely Camelot's compliance with its undertaking to improve its arrangements for managing suppliers and control over software development.
- (iv) The Department assured us that the Comptroller and Auditor General would soon have access to the information used by the Commission to carry out its vetting of bodies involved in running the National Lottery. But making the necessary arrangements has taken too long. It is four years since the Comptroller and Auditor General sought access, and without it he has been unable to provide full assurance to Parliament on whether the Commission has fulfilled its statutory duty to ensure that the Lottery is run with due propriety.
- (v) The Commission's decision to award the second licence to the incumbent operator was influenced by the risks involved in transferring to a new operator. If potential competitors are not to be deterred from bidding in future, the Commission needs to make clear that it will be receptive to new and innovative approaches to running the National Lottery.
- (vi) Bidders' sales forecasts are central to the Commission's assessment of the likely return to Good Causes, but there is no clear incentive for bidders to be realistic in their forecasts. While the Commission considered the forecasts in both bids for the second licence to be unrealistic, neither bid was ruled out on those grounds.

- (vii) The Commission is considering giving bidders its own estimate of likely sales in future. In doing so, it would need to preserve the principle that bidders are responsible for the forecasts in their bids and, therefore, for any effect on their own businesses of under or over achievement.

THE EXTENT OF COMPETITION

6. Although a number of organisations expressed interest in competing for the second licence to run the National Lottery only two compliant bids were received, those from Camelot and The People's Lottery, compared with eight bids for the first licence. The subsequent processes did not go as planned (Figure 2).

- The Commission rejected both bids. In the case of Camelot, the Commission was not satisfied that the Lottery would be run with all due propriety. In the case of The People's Lottery, the Commission was not satisfied that the bid adequately protected the interests of participants.
- The Commission decided to negotiate with The People's Lottery alone to try to achieve an acceptable bid, but Camelot sought a judicial review of the Commission's decision on the grounds of non-consultation, unfair exclusion contrary to the principles of fairness and natural justice, and failure to provide reasons. The judge quashed the Commission's decision.
- Having received revised bids from The People's Lottery and Camelot, the Commission awarded the licence to Camelot. As the award had been delayed Camelot was also granted an interim licence for the period 30 September 2001 (the end of the first licence) to 27 January 2002 (the start of the second licence).¹

Figure 2: Major events leading to the award of the next licence to run the National Lottery

2000					
June	July	August	September	October	December
<p>The Commission originally intends to announce the preferred bidder by 30 June.</p> <p>The Commission announces that it has decided to extend the timetable to allow both bidders to improve their proposals.</p>	<p>The Chairman/ Chief Executive Officer and Chief Operating Officer of GTech resign.</p>	<p>The Commission announces that it has rejected both bids and that it intends to negotiate with The People's Lottery alone.</p> <p>Camelot seeks a judicial review of the Commission's decision to negotiate with only The People's Lottery.</p>	<p>The High Court overturns the Commission's decision to negotiate solely with The People's Lottery and orders the Commission to readmit Camelot into the competition.</p>	<p>The Chair of the Commission, resigns on the grounds that it is in the public interest that the work of the Commission should proceed without any unnecessary distraction. A new Commissioner is appointed and elected Chair.</p>	<p>The Commission announces that, by a majority of four to one, the Commissioners have chosen Camelot as the preferred bidder for the new licence.</p> <p>The dissenting Commissioner resigns.</p>

¹ C&AG's Report, *Awarding the new licence to run the National Lottery* (HC 803, Session 2001–02), paras 7–9, 3.2

7. There were constraints that may have deterred potential bidders. Camelot, as the incumbent operator, had the advantage of its established lottery infrastructure and knowledge of the retail network. The Commission sought to provide information about the location of lottery retailers but was constrained by limitations in the terms of the first licence. In the event The People's Lottery considered the data provided to be of little use since it was incomplete and unrepresentative. The Commission has now taken steps to require the incumbent operator to transfer to the Commission, upon its request, data about the lottery retail network so that in future it will be able to provide rival bidders with fuller information. There will also be arrangements for an incoming operator to purchase terminals from the incumbent operator for an agreed valuation.²

8. As there were relatively few suppliers capable of providing technology services for large on-line lotteries such as the National Lottery, the Commission is also looking at whether changes in technology might make the number of suppliers less of a constraint in future.³

9. In addition, mounting a bid was an expensive business. Based on experience of the competition for the first licence, the Commission believed that the direct costs of bidders were likely to be between £3 million and £4 million. The Commission had not helped bidders with their costs, as it had been seeking to start the competition quickly and it would have been necessary to devise a scheme with appropriate controls and which ensured that only serious bidders were supported. But as the cost of supporting three or four bidders would have been low relative to the returns to Good Causes, which had been nearly £11 billion over the period of the first licence, the Commission is now looking into the possibility of giving financial support to bidders for the next licence.⁴

10. In June 2002 the Department issued a consultation document which set out ideas for generating competition in future. But if there was only one bidder on a future occasion the Commission would seek to negotiate the best possible return for the Good Causes, drawing on other regulatory models, particularly for utilities. For example, the operator's returns might be based on capital employed or a form of profit control.⁵

ACHIEVING DUE PROPRIETY AND PROTECTING THE PARTICIPANTS

11. The Commission has a statutory duty to protect the interests of every participant in the National Lottery, and initially rejected the bid from The People's Lottery because of concerns about the security of funds due to players if the operator went into administration or ceased to operate. The Commission had wanted funds held within separately controlled trusts to which neither The People's Lottery nor its creditors would have access. On reviewing The People's Lottery's revised bid the Commission concluded that on balance it was good enough to remain in the competition, and that its remaining concerns could be addressed during the later stages of the evaluation.⁶

12. In rejecting Camelot's bid the Commission had not been satisfied that the Lottery would be run with all due propriety, given the actions of Camelot's key supplier, GTech. A former GTech employee had alerted the Commission to the secret correction of a defect in the National Lottery software, which had caused duplicate transactions to be recorded. As a result Camelot collected money from retailers for 'phantom' tickets and some prizewinners were underpaid. GTech's failure to disclose the fault and its correction to Camelot, or to the Commission, was in breach of established software control procedures.

² Qq 70, 96,128; C&AG's Report, paras 11, 2.9, 2.21, 2.24 –2.26

³ Qq 8–9; C&AG's Report, para 2.14

⁴ Qq 8–9, 40–41; C&AG's Report, para 2.11

⁵ Qq 10–11

⁶ Qq 84–85; C&AG's Report, paras 1.7, 3.25 (1st bullet point)

Just four months before the cover-up of the software fault GTech senior executives had given personal assurances to the Lottery regulator that GTech would introduce and rigorously apply a code of conduct to reinforce proper corporate behaviour.⁷

13. The Commission had allowed Camelot to continue its operations under the first licence, which had more than a year to run, because GTech and Camelot had taken action, including removing all the individuals who had been involved in the cover-up. GTech undertook to improve its arrangements for monitoring ethical conduct and corporate governance. GTech also planned to arrange independent reviews of its software development processes and make these available to Camelot and the Commission. For its part, Camelot proposed to extend the scope of its reviews of GTech's performance, to improve its arrangements for managing suppliers and control over software development, and to incorporate its commitments, and those of GTech, into contracts to ensure they were delivered.⁸

14. In view of GTech's role in the Camelot bid and uncertainty about how GTech might behave in future, the Commission was not satisfied that the Lottery would be run with all due propriety over the coming seven year period of the new licence. On reviewing Camelot's revised bid, following the judicial review, the Commission concluded that while it had not been possible for Camelot to sever all links with GTech (Camelot continued to use GTech's gaming software) the revised bid addressed the Commission's previous concerns, met the statutory criteria and should continue in the competition.⁹

15. Before announcing its rejection of both initial bids, officials of the Commission and the Department for Culture, Media and Sport had considered possible steps to avoid a break in the operation of the National Lottery, including the Commission itself running the Lottery, and the possibility of the Government setting up a body to run the Lottery. The Commission had considered it unlikely that either of these options could be implemented in time, and concluded that, notwithstanding its concerns about due propriety, the most feasible course of action would be to negotiate an interim licence with Camelot.¹⁰

16. The Commission assured us that while making every effort, consistent with its statutory responsibilities, to avoid the loss of income that would result from suspending the Lottery, it had not been prepared to compromise on its statutory duties just to keep the Lottery going. The Commission was now looking to put in place contingency plans for the future, although they would not necessarily mean that if the operator was suddenly removed there could be a new Lottery in place straight away.¹¹

THE COMPTROLLER AND AUDITOR GENERAL'S ACCESS

17. In 1998 the Committee drew attention to the need for the Comptroller and Auditor General to have access to documents provided to the Commission so that Commission could satisfy itself that applicants to run the Lottery were fit and proper. Exchanges between members of the Committee, Treasury Ministers and the Secretary of State for Culture, Media and Sport culminated in the Government agreeing to activate provisions in relevant legislation to give the Comptroller and Auditor General access. But when the Committee held its hearing in May 2002 the Comptroller and Auditor General still did not have the access he required. The Department acknowledged that the process had taken a

⁷ C&AG's Report, paras 2, 3.6–3.7, 3.9

⁸ C&AG's Report, paras 3.12–3.13

⁹ Qq 75, 78; C&AG's Report, paras 3.12–3.13

¹⁰ C&AG's Report, para 3.18

¹¹ Qq 39, 161

long time, with action in relation to the Criminal Justice Act 1987 and the Companies Acts 1985 and 1989 still outstanding, but the process was almost complete.¹²

MAXIMISING THE RETURN TO GOOD CAUSES

18. The Commission analysed the revised bids from The People's Lottery and Camelot to assess which was more likely to provide the greater return to Good Causes. The licence was awarded to Camelot because although The People's Lottery offered higher returns to the Good Causes at the same level of sales, this advantage had been outweighed by two considerations: first, the Commission had concluded that Camelot was likely to generate more sales and as a result would contribute more to Good Causes than The People's Lottery over the period of the licence; second, the accumulation of risks surrounding the bid from The People's Lottery, particularly in the early stages, was uncomfortably high in comparison with those related to Camelot's bid. For example, the Commission had been concerned about the risks of combining a major change in the main game with the early introduction of many new games, and the risk that The People's Lottery had underestimated costs, particularly at lower levels of sales.¹³

19. An important factor in determining the likely return to Good Causes is the forecast level of sales. Both bidders forecast significantly increased sales right from the start of the second licence. The Commission had been sceptical about these forecasts and in its view sales were more likely to be in line with previous performance. Figures published by the Commission showed that in the year to 31 March 2002 ticket sales fell, in line with the previous trend (Figure 3), although the Commission expected the re-launch of the Lottery in May 2002, and the introduction of new games, to address the gradual decline in sales.¹⁴

20. Although the licence was awarded to the bidder likely to provide the highest return to Good Causes, bidders were not required to guarantee the actual sum. They were required instead to say what proportion of the sales proceeds, less the cost of prizes and lottery duty, they would commit to the Good Causes. The Commission considered that holding the operator to a certain sum would amount to an auction, and that the sums of money involved were so high that this would be a barrier to bidders. If they had to pay a fixed amount to get the licence they would have to raise money from the market, which would increase the operator's costs and reduce the return to the Good Causes. Or if they were allowed to take the amount out of ongoing sales, but performed badly, they might not be commercially viable. If too much risk was passed to the bidders they would have an incentive to offer a low return to Good Causes to protect themselves; conversely, if they over-performed they could take a windfall profit.¹⁵

21. For future competitions, the Commission was considering making clear at the outset of the competition process what it thought was a realistic level of sales. Bidders would be asked to demonstrate how they could achieve that level, although they would be encouraged to identify where they could do better.¹⁶

¹² Qq 18–19, 22

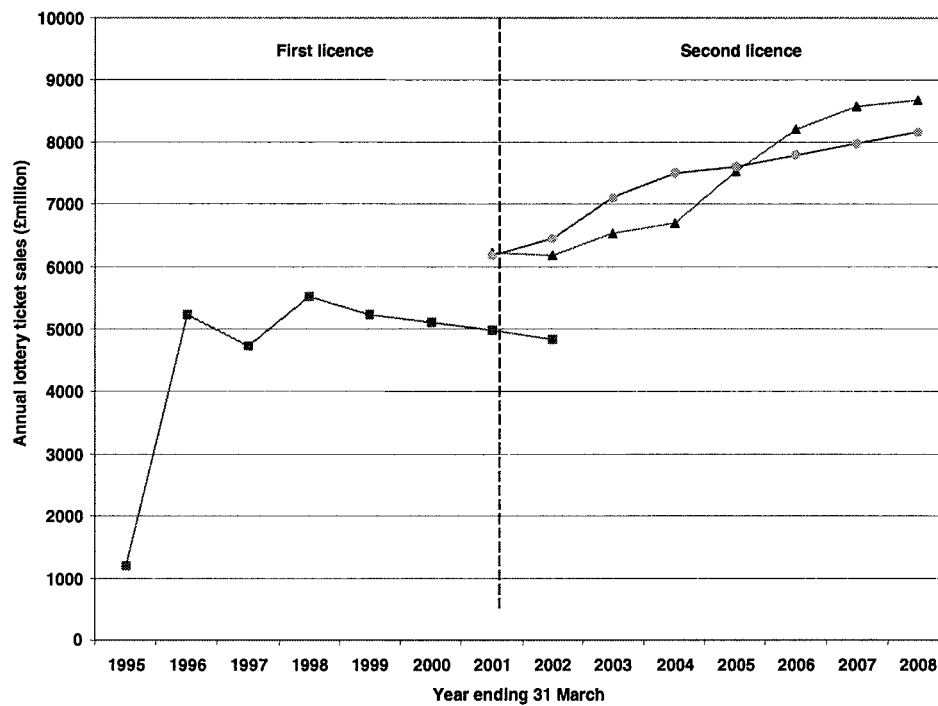
¹³ C&AG's report, paras 3.26, 3.28, 3.37, 3.40

¹⁴ Qq 31, 34, 109; C&AG's Report, para 4.15

¹⁵ Qq 1–2, 119

¹⁶ Qq 118, 127

Figure 3: National Lottery ticket sales



- Actual sales - totalling £31,949 million during the first licence period
- ▲ Camelot bid - £51,155 million
- ◆ The People's Lottery bid - £51,579 million

Sales in the year ending 31 March 1995 reflect the start-up of the National Lottery in November 1994. Forecasts for 2001 and 2008 are equivalent annual figures since the licence was due to begin and end half way through the financial year.

Source: *National Audit Office and National Lottery Commission data*

MINUTES OF PROCEEDINGS OF
THE COMMITTEE OF PUBLIC ACCOUNTS

SESSION 2001-02

WEDNESDAY 22 MAY 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Rt Hon Frank Field
Mr Barry Gardiner
Mr Brian Jenkins
Mr Nigel Jones

Mr George Osborne
Mr David Rendel
Mr Gerry Steinberg
Jon Trickett
Mr Alan Williams

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Brian Glicksman, Treasury Officer of Accounts, was further examined.

The Committee deliberated.

* * * * *

The Comptroller and Auditor General's Report on Awarding the new licence to run the National Lottery (HC 803), was considered.

Ms Sue Street, Permanent Secretary, Department for Culture, Media and Sport, was further examined; and Mr Mark Harris, Chief Executive, National Lottery Commission, was examined (HC 881-i).

A division of the House being called, the Chairman suspended the meeting for ten minutes.

The Committee resumed.

The witnesses were further examined.

The witnesses withdrew.

The Committee further deliberated.

* * * * *

[Adjourned until Wednesday 12 June at Four o'clock.

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MONDAY 4 NOVEMBER 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon	Mr George Osborne
Mr Ian Davidson	Mr David Rendel
Angela Eagle	Mr Gerry Steinberg
Mr Frank Field	Jon Trickett
Mr George Howarth	Mr Alan Williams
Mr Brian Jenkins	

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Brian Glicksman, Treasury Officer of Accounts, was further examined.

* * * * *

Draft Report (Awarding the new licence to run the National Lottery), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Paragraph 5 postponed.

Paragraphs 6 to 21 read and agreed to.

Postponed paragraph 5 read and agreed to.

Resolved, That the Report be the Sixty-fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

* * * * *

[Adjourned until Wednesday 6 November at Four o'clock.

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REPORTS BY THE COMMITTEE OF PUBLIC ACCOUNTS
SESSION 2001–02

		<i>Publication Date</i>
1	Managing Risk in Government Departments (HC 336)	23/11/01
	Government Reply (Cm 5393)	14/02/02
2	Improving Construction Performance (HC 337)	05/12/01
	Government Reply (Cm 5393)	14/02/02
3	The Cancellation of the Benefits Payment Card Project (HC 358)	06/12/01
	Government Reply (Cm 5393)	14/02/02
4	The Renegotiation of the PFI-type Deal for the Royal Armouries Museum in Leeds (HC 359)	12/12/01
	Government Reply (Cm 5450)	28/02/02
5	Ministry of Defence: Major Projects Report 2000 (HC 368)	28/11/01
	Government Reply (Cm 5450)	28/02/02
6	Ministry of Defence: Major Projects Report 2000—The Role of the Equipment Capability Customer (HC 369)	28/11/01
	Government Reply (Cm 5450)	28/02/02
7	Sale of Part of the UK Gold Reserves (HC 396)	19/12/01
	Government Reply (Cm 5470)	14/03/02
8	Office of Water Services (OFWAT): Leakage and Water Efficiency (HC 397)	04/01/02
	Government Reply (Cm 5470)	14/03/02
9	Tackling Obesity in England (HC 421)	16/01/02
	Government Reply (Cm 5477)	20/03/02
10	The Acquisition of German Parcel (HC 422)	11/01/02
	Government Reply (Cm 5477)	20/03/02
11	Office of Gas and Electricity Markets: Giving Domestic Customers a Choice of Electricity Supplier (HC 446)	17/01/02
	Government Reply (Cm 5481)	09/05/02
12	The Radiocommunications Agency's Joint Venture with CMG (HC 447)	23/01/02
	Government Reply (Cm 5470)	14/03/02
13	Regulating Housing Associations' Management of Financial Risk (HC 470) ..	09/01/02
	Government Reply (Cm 5470)	14/03/02
	Government Reply (Cm 5600) (Addendum)	03/10/02

14	The Millennium Dome (HC 516)	01/02/02
	Government Reply (Cm 5487)	25/04/02
15	How English Further Education Colleges can Improve Student Performance (HC 528)	07/02/02
	Government Reply (Cm 5487)	25/04/02
16	Access to the Victoria and Albert Museum (HC 559)	14/02/02
	Government Reply (Cm 5487)	25/04/02
17	Ministry of Defence: Maximising the Benefits of Defence Equipment Co-operation (HC 586)	15/02/02
	Government Reply (Cm 5487)	25/04/02
18	Inland Flood Defence (HC 587)	01/03/02
	Government Reply (Cm 5512)	23/05/02
19	Ship Surveys and Inspections (HC 608)	15/03/02
	Government Reply (Cm 5512)	23/05/02
20	Educating and Training the Future Health Professional Workforce for England (HC 609)	08/03/02
	Government Reply (Cm 5512)	23/05/02
21	Better Value for Money from Professional Services (HC 309)	14/03/02
	Government Reply (Cm 5512)	23/05/02
22	The Channel Tunnel Rail Link (HC 630)	21/03/02
	Government Reply (Cm 5512)	23/05/02
23	Report on Inland Revenue Appropriation Account (HC 631)	22/03/02
	Government Reply (Cm 5524)	20/06/02
24	Ministry of Defence: The Risk of Fraud in Property Management (HC 647) ..	20/03/02
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25	Excess Votes 2000–2001 (HC 648)	07/03/02
26	Better Regulation: Making Good Use of Regulatory Impact Assessments (HC 682)	12/04/02
	Government Reply (Cm 5524)	20/06/02
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29	Non-competitive Procurement in the Ministry of Defence (HC 370)	19/04/02
	Government Reply (Cm 5524)	20/06/02
30	The Auction of Radio Spectrum for the Third Generation of Mobile Telephones (HC 436)	26/04/02
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	Government Reply (Cm 5549)	16/07/02
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	Government Reply (Cm 5549)	16/07/02
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	Government Reply (Cm 5549)	16/07/02
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	Government Reply (Cm 5549)	16/07/02
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	Government Reply (Cm 5600)	03/10/02
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39	Giving Confidently: The Role of the Charity Commission in Regulating Charities (HC 412)	03/07/02
	Government Reply (Cm 5600)	03/10/02
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	Government Reply (Cm 5600)	03/10/02
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42	Managing the Relationship to Secure a Professional Partnership in PFI Projects (HC 460)	11/07/02
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43	The Use of Funding Competitions in PFI Projects: The Treasury Building (HC 398)	17/07/02
	Government Reply (Cm 5676)	28/11/02

44	The Misuse and Smuggling of Hydrocarbon Oils (HC 649)	18/07/02
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45	Inpatient and Outpatient Waiting in the NHS (HC 376)	18/09/02
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	Government Reply (Cm 5676)	28/11/02
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