



Department
for Culture
Media & Sport

Horserace Betting Right

A consultation on potential structure and operation

February 2015

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.

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Ministerial Foreword

By Helen Grant MP, Minister for Sports and Tourism.



Last year's Autumn Statement included a commitment to consult on a racing right early in 2015. This consultation, on the potential structure and operation of a Horserace Betting Right, fulfills that commitment and completes a suite of three linked consultation documents on the Horserace Betting Levy and its potential replacement.

My main aim in reviewing options for the future of the Levy has been to ensure that we end up with a modern, viable levy system which is fair and extends to all bookmakers equally. I remain open-minded as to whether the best way of achieving this is through Levy reform or replacement but I now want to explore in more detail than was possible in the second consultation what a Horserace Betting Right might look like. Then we will be in a position to compare Levy reform or replacement against the criteria I have previously set of being fair, enforceable, sustainable, legally sound and removing Government from ongoing involvement in the affairs of betting and racing.

This is a complex topic impacting on two significant industries. I want to ensure that decisions that are yet to be taken on next steps are based on as full evidence as possible, and that those with an interest have had every opportunity to comment.

My aim is to arrive at an outcome that benefits both industries, the wider economy and consumers.

A handwritten signature in black ink, which appears to read 'Helen'.

Chapter 1: Introduction

Policy summary

- 1.1 During 2014/15, the Government has been seeking a way to ensure that all betting providers who benefit from bets on British horseracing by British customers contribute to funding the sport of horseracing as a betting product.
- 1.2 This is the third of three interlinked consultations exploring two options for achieving this objective - either by reforming and extending the Horserace Betting Levy to offshore remote operators or by replacing the Levy with new arrangements underpinned by statute.
- 1.3 While we were able to consult in some detail on what a reformed Levy could look like in the second consultation, this was not true of a Levy replacement. We therefore now need to consult on a more detailed model - a Horserace Betting Right - in order to be able to compare options that have been worked up and consulted on at the same level of detail. Our intention to publish a third consultation was announced in the Autumn Statement on 3rd December 2014.
- 1.4 This consultation is about betting and horseracing. The Government has no plans to extend either a reformed Levy or its replacement to all sports or other activity on which bets are accepted.
- 1.5 The Government is ultimately seeking a solution that will meet the following criteria:
 - Fair;
 - Sustainable;

- Enforceable;
- Legally sound; and
- Removing the Government as far as is possible from ongoing involvement in the affairs of betting and racing.

Scope of consultation

- 1.6 This is a public consultation which covers Great Britain (England, Scotland and Wales: Northern Ireland has its own levy arrangements). We particularly seek views from those within the horseracing and betting industries, including offshore remote betting operators taking bets on British horseracing who are required to take out licences from the Gambling Commission under the *Gambling (Licensing and Advertising) Act 2014*.
- 1.7 The consultation may also be of interest to others that benefit directly or indirectly from funding provided currently through the Horserace Betting Levy, such as racecourses, breeding groups, veterinary groups, owners, trainers, stable staff and jockeys; as well as all betting operators – irrespective of location - that take bets on British horseracing from customers based in Great Britain.
- 1.8 It may also be of interest to those in other gambling business sectors, race-goers, customers of betting operators, and others with an interest in racing and gambling. We welcome views from anybody and all responses will be appropriately considered.
- 1.9 The consultation period will run for 5 weeks from 5th February to 12th March 2015.
- 1.10 Please respond before the closing date. There is a summary of the questions in Chapter 6. Please send responses to levy.consultations@culture.gov.uk. Responses sent to any other inbox will not be taken into consideration. If you do

not have access to email, please respond to:

James Perkins
Horserace Betting Right Consultation
Gambling, Lottery and Licensing team
4th Floor, 100 Parliament Street,
London SW1A 2BQ

- 1.11 This consultation is intended to be an entirely written exercise but we reserve the right to follow up any responses to seek further information. Please contact James Perkins on 020 7211 6920 if you require any other format e.g. Braille, Large Font or Audio.
- 1.12 For enquiries about the handling of this consultation please contact the DCMS Correspondence Team at the above address or e-mail at enquiries@culture.gov.uk heading your communication “Horserace Betting Right consultation”.
- 1.13 Copies of responses may be published after the consultation closing date on the Department’s website:
www.gov.uk/government/organisations/department-for-culture-media-sport
- 1.14 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (“FOIA”), the Data Protection Act 1998 (“DPA”) and the Environmental Information Regulations 2004).
- 1.15 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request

for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

1.16 The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

1.17 The consultation follows the Government's Consultation Principles 2013 which is available at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

Next Steps

1.18 We will continue to engage with stakeholders during and after the consultation period.

1.19 We will announce a preferred option as between Levy reform or replacement once the third consultation is complete and the responses have been analysed.

1.20 Replacing the levy with a different statutory framework would require primary legislation.

Chapter 2: Levy consultations

Introduction

- 2.1 This consultation is the third in a series of linked consultations during 2014/15 on reforming or replacing the Horserace Betting Levy - a complex policy area. Government will publish a full response to all three consultations once a final decision has been made on the way forward. This chapter provides background to the third consultation by explaining how the consultations are linked and why a third is now necessary.

Levy extension

- 2.2 The *Gambling (Licensing and Advertising) Act 2014* conferred a power on the Secretary of State to extend the current Levy arrangements to offshore remote betting operators by way of secondary legislation. The Government subsequently ran an 8 week technical consultation from 26th June to 21st August 2014 on implementing extension and can be found here:
<https://www.gov.uk/government/consultations/extending-the-horserace-betting-levy-a-consultation-on-implementation>.

Levy reform or replacement

- 2.3 The Chancellor announced in the 2014 Budget that the Levy extension consultation would be followed by a second consultation on wider Levy reform or replacement by a new statutory framework. The second consultation ran for 10 weeks from 27th August to 5th November 2014 and can be found here:
<https://www.gov.uk/government/consultations/modernising-the-horserace-betting-levy-a-consultation-on-reform-or-replacement>.
- 2.4 The section on Levy reform proposed a number of detailed potential changes beyond and in addition to extension proposals, engaging and generating a number

of ideas from both betting and racing respondents. The section on a replacement statutory framework was less detailed. This meant that respondents frequently stated that they needed to see more detail in order to be able to comment fully.

Horserace Betting Right

- 2.5 While we were able to consult in some detail on what a reformed Levy could look like in the second consultation, this was not true of a Levy replacement. We therefore now need to consult on a more detailed model - a Horserace Betting Right - in order to be able to compare options that have been worked up and consulted on at the same level of detail. Our intention to publish a third consultation was announced in the Autumn Statement on 3rd December 2014. The fact that this consultation only covers a Horserace Betting Right does not mean that a decision has already been taken to implement such a model but simply reflects the fact that it needs further discussion.

Consultations response

- 2.6 The three Levy consultations are interlinked and build on each other. Consequently, Government will be publishing a full response to all three at the same time after a final decision has been taken on the way forward. This decision will rest on an assessment of both Levy reform and replacement by a Horserace Betting Right against the criteria set out below:

Criterion	Description
Fair	<p>The system should:</p> <ul style="list-style-type: none"> • create level playing fields – between large and small betting operators; between land-based and offshore betting operators; between large and small racecourses; between racecourses and horsemen. We do not want to incentivise anti-competitive behaviours. • facilitate genuine negotiation between betting and racing on quantum and expenditure.
Sustainable	<p>The system should be:</p> <ul style="list-style-type: none"> • future-proofed so that it can adapt to developments in the betting and racing industries, and provide certainty to enable both betting and racing to plan ahead. • robust, transparent (as far as is possible in a commercial environment), efficient, and proportionate.
Enforceable	The system should offer effective enforcement mechanisms available to all parties to prevent any party breaching their obligations.
Legally sound	The system should comply with UK and EU law.
Remove Government	We are consulting on two statutory options for a system, so the Government would have to be involved to the extent that it passed the legislation. But beyond that, the Government wants to be as far as possible removed from any direct involvement in activities that take place under the legislation.

Chapter 3: Policy objectives

- 3.1 Horseracing is the nation's biggest spectator sport after football - racecourses attract around 6 million attendances a year - and it has an international reputation for excellence, welfare and integrity. But as well as being firmly part of the nation's sporting and cultural heritage, racing is an important industry contributing £3.45bn a year to the economy and supporting 85,000 full time jobs - for employees of all backgrounds¹. The 60 racecourses across England, Wales and Scotland are predominantly in rural areas but also on the fringes of major cities and are major social and economic hubs on both race and non-race days.
- 3.2 The history of horseracing is also the history of betting. The two industries have a unique interdependency going back over 200 years and it is no accident that today's Rules of Racing (e.g. in respect of handicapping and integrity) and the Fixture List (organised to achieve an optimum spread both in terms of volume and timing) reflect a mutual interest in the sport being attractive to as many betting customers as possible.
- 3.3 This mutual interest explains why there was a Horserace Betting Levy in the first place. The principle of transferring funding to racing from the proceeds of betting under statutory arrangements was first established in 1928 when the Tote was created as a non-profit making enterprise with surpluses distributed for the benefit of racing. When off-course cash betting was legalised in 1961 both the betting and racing industries sought the introduction of the Horserace Betting Levy as a mechanism for transferring funding from betting to racing in a broad sense under a similar principle.
- 3.4 This principle has never applied to other sports. Bespoke arrangements reflecting the unique and interdependent relationship between betting and racing are in line with international precedents within other horseracing jurisdictions. Bespoke

¹ Source: *Economic Impact of British Racing*, Deloitte, 2013

arrangements for horseracing can be seen as necessary because racing is not, in reality, a single industry but a jigsaw of interdependent interests which frequently have different and sometimes conflicting objectives. These interests must combine to deliver a sport popular as a spectacle and as a betting medium. It is arguable that conflicting objectives are best reconciled within the context of a statutory framework. If a Horserace Betting Right was to be introduced this would be a replacement for the Levy - a racing-specific solution to a racing-specific problem - not a precedent-setter for other sports.

- 3.5 Government remains of the view that there is a continuing need for a statutory framework to underpin arrangements enabling a flow of funding from betting back into the sport to support both industries' mutual interest in an attractive betting product. This mutual interest embraces, but is not limited to, regulation, integrity, veterinary science, education and equine welfare and training and education - all activities that benefit betting and racing as a whole but would not necessarily be funded through existing funding streams outside the Levy.
- 3.6 Attempts to replace the Horserace Betting Levy in the past have been unsuccessful, but the *status quo* no longer remains an option. This is principally because the Levy does not cover remote operators who have located their remote operations offshore, but also because the Levy is over 50 years old and is, in some respects, out of step with modern betting practices. The system is now manifestly unfair with a substantially increased proportion of betting now with offshore remote operators who benefit from racing's efforts to make the sport attractive to betting customers without making a financial contribution to those efforts.
- 3.7 Consequently we have been seeking a way to ensure that all betting operators contribute, whether through a reformed and extended Levy or through new arrangements underpinned by statute. While the existing voluntary contributions made by five betting operators are very welcome, they do not address the principle that there should be a level playing field for all operators - with no free-riders, nor do voluntary contributions provide the certainty necessary for long-term investment

by racing.

- 3.8 We have not been persuaded by arguments that increasing contributions to racing from the betting industry through media rights payments and sponsorship mean that there is no need for an income stream derived from the betting product. Sponsorship and media rights each constitute a payment for an identifiable and distinct commercial benefit accruing to each betting operator individually. Sponsorship fees reflect the promotional value to the sponsoring betting operator's business generally from the exposure generated from the association. The price paid for media rights reflects the value of those rights. In neither case does the price paid reflect the total value of British horseracing to bookmakers as a betting product. And, arguably, the quality of the racing product is what enhances the value of sponsorship and media rights. Furthermore, while certain stakeholders in racing receive income from media rights and sponsorship, the fees generated do not fund racing in a broad sense.

Chapter 4: Horserace Betting Right

Summary

- 4.1 This chapter considers how a Horserace Betting Right might be constructed and how it might operate.

Structure

- A right to authorise the taking of bets on British Horseracing would be created.
- It would, consequently, be unlawful for a betting provider to offer a betting service on British racing to customers in Great Britain without gaining an authorisation.
- A racing authority would establish authorisation schemes setting out terms and conditions and authorisation fees.
- A tribunal would handle dispute resolution and make binding determinations on issues of disagreement between the racing authority and betting providers.
- Authorisation fees would be used for defined purposes.

Operation

- The racing authority would draw up and publish authorisation schemes.
- Betting operators falling within the scope of the legislation would be required to obtain an authorisation from the racing authority before taking bets on

British horseracing.

- Robust enforcement mechanisms would be central to any Horserace Betting Right's success.
- The racing authority would demonstrate that it had collected and used authorisation fees appropriately.

A right to take bets on British Horseracing - scope and rights owner

- 4.2 A right would be established by means of primary legislation. It would impact on all operators licensed by the Gambling Commission who would be required to obtain an authorisation from the racing authority in order to offer bets on British horseracing.
- 4.3 It is possible to argue that a Horserace Betting Right should align completely with the new point of consumption regime, which would mean that a betting operator would only need an authorisation from the racing authority if it was both licensed by the Gambling Commission and offering bets on British horseracing to British customers. A counter-argument is that a betting operator licensed by the Gambling Commission will benefit from bets placed on British racing from customers outside Great Britain and that an authorisation should cover these bets too. However, these are points of detail that would be considered during any pre-legislative process.
- 4.4 The legislation would define the right, and include other necessary definitions. The definition of relevant betting operators would ensure that while betting exchanges licensed by the Gambling Commission would require authorisation their customers would not need to be authorised. This would mirror the existing Levy arrangements.
- 4.5 The right would need to be vested in a legal entity within racing and there are two ways this could be achieved in the legislation:

- The right could be vested in a “racing authority” named in statute and created before Royal Assent. In this situation, the Secretary of State would be given a power to substitute another body for the racing authority by Order.
- The Secretary of State could be given a power by the legislation to designate an entity as a racing authority after Royal Assent, by statutory instrument.

4.6 Whichever legislative approach was adopted it would be up to British Racing to create the racing authority, consulting as it deemed appropriate.

4.7 Alternatively, the right could be vested in racecourses. In this scenario, the relevant section of the legislation could be akin to s.116 of the Copyright Designs and Patents Act 1988 and could simply define the characteristics of an entity or entities that could hold the right on behalf of racecourses and grant authorisations. This would remove the need for designation and redesignation of named bodies by the Secretary of State. However, it would be less clear that authorisation income would be being used for the good of racing as a whole and vesting the right in racecourses is not currently being proposed.

Q1: Should a Horserace Betting Right be vested in racecourses or a single racing authority and why?

4.8 There would be no provision in statute for an equivalent to the racing authority for the betting industry as a whole. This is because:

- A Horserace Betting Right would be modelled on collective licensing systems such as those used in the music industry. This would mean that betting operators would be free to challenge any authorisation scheme established by the racing authority individually and, if successful, other operators covered by the same scheme could benefit from any changes made to that scheme by the tribunal. Equally, operators would be free to join together to challenge schemes if they wished.

- We think that betting operators would be free to act collectively through their trade associations, or other bodies, with the appropriate mandates, if they wished to do so.

Q2: Do you agree that there is no need for Government to mandate a single collective body for betting operators in the legislation? If not, please explain why you think such a body would be needed.

Authorisation schemes

- 4.9 The racing authority would have powers under the legislation to set the terms and conditions of authorisation (including length); to set, and differentiate between, categories of betting provider; and to charge different authorisation fees for the different categories of betting operator.
- 4.10 We envisage that there would be built-in incentives for the racing authority to establish schemes, set terms and conditions and set authorisation rates that were fair, reasonable and non-discriminatory in order to ensure compliance with national and EU law.

Aims and defined purposes

- 4.11 The reason for creating a right in the first place would underpin the design of the new system and the content of the legislation bringing it into effect. This would mean being clear what activities contribute to the betting and racing industries' mutual interest in an attractive betting product and defining (more precisely than is currently the case with the Levy) the activities on which funds raised through a Horserace Betting Right could be spent. These activities could include:
- Compiling the fixture list
 - Regulation and integrity
 - Prize money and related incentives

- Veterinary research and education
- Equine and participant welfare
- Industry recruitment, training and education

Q3: What activities do you think could be funded from a Horserace Betting Right?

4.12 These activities could feature in the legislation, either as a stand alone section or within the sections about the racing authority.

Form and content of Authorisation Schemes

4.13 The Horserace Betting Levy currently takes into account the position of different sizes and types of betting provider. It would be a matter for the racing authority to determine how authorisation schemes would work and whether current Levy categories, rates and conditions would be broadly replicated. There is an operating precedent in the data licensing scheme which was run by the former British Horseracing Board Enterprises from April 2002 to late 2004.

Q4: We would be interested to receive observations on the 2002-2004 data licensing scheme. Could a Horserace Betting Right operate in the same way with broadly the same terms and conditions?

4.14 The racing authority could operate in a similar fashion to the Performing Rights Society (PRS) by being open to consultation. Although there is no statutory requirement on the PRS to consult they state publicly that “wherever possible we consult and agree our tariffs with trade associations and representative bodies”². We envisage that initial authorisation schemes would be drawn up by the racing authority before full commencement of any legislation and that betting operators would be consulted.

² Source: PRS website

4.15 We envisage that terms and conditions would be a matter for private negotiation between the racing authority and betting operators, probably at the point at which the first schemes were developed and again during subsequent revisions, and consequently would not be set out in legislation. These terms and conditions could include, but not be limited to:

- Audit - the racing authority could seek to replicate at least the current arrangements whereby the betting provider is required to provide a certificate from an approved auditor verifying that the fees paid were in accordance with the terms and conditions of the authorisation scheme.
- Information - the racing authority could seek to have access to at least the same amount of data as the Horserace Betting Levy Board currently.
- Payment arrangements - could cover the basis on which payments would be made, including whether or not they should be based on gross profits, turnover or a combination of the two.

Tribunal

4.16 Disputes could arise between the racing authority and betting operators about aspects of the authorisation schemes. Traditional methods of commercial arbitration, including expert determination may be inappropriate in this situation: their focus is on determining liability and dealing with the consequences of breaches of obligations.

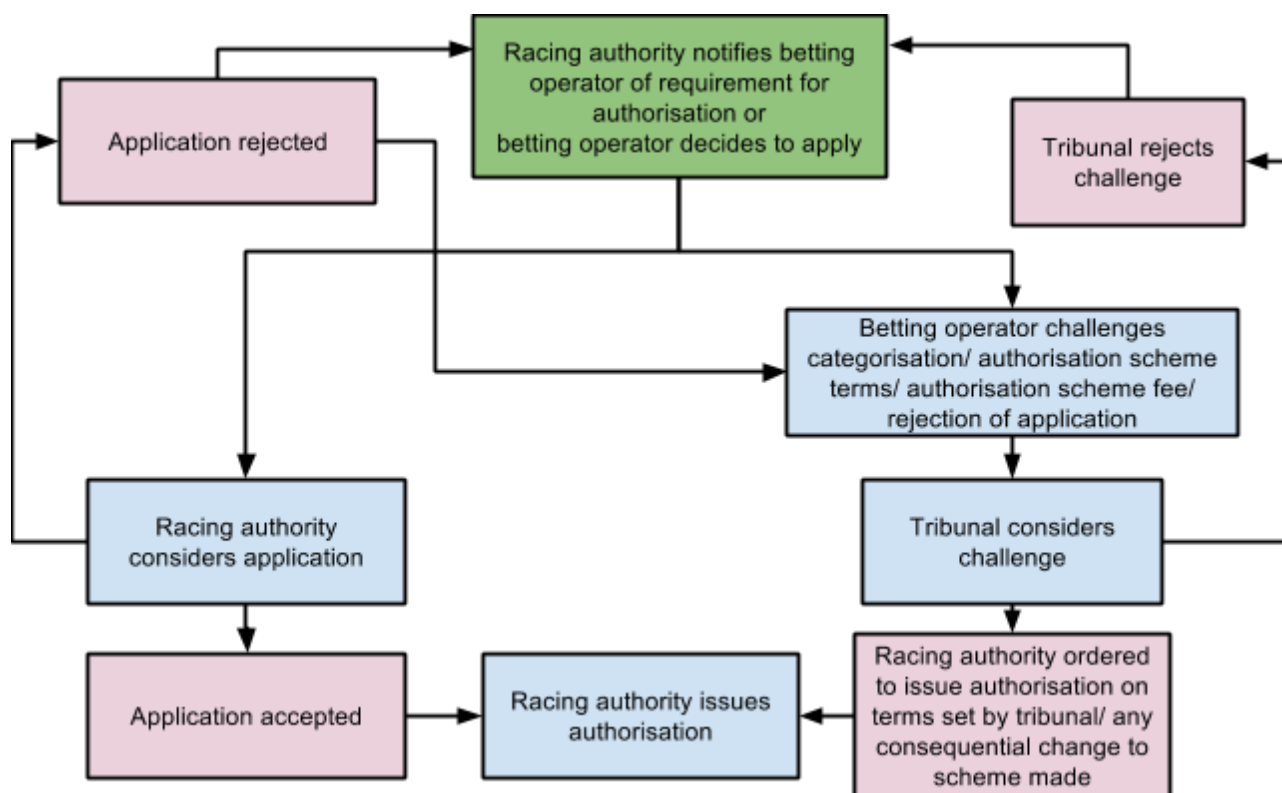
4.17 Consequently it is envisaged that a new right of appeal to the unified tribunal system could be created in primary legislation. Secondary legislation could set out the criteria by which the tribunal would make decisions, having regard to the aims and defined purposes for which the right had been established. It could also set out the grounds for appeal and could establish the parameters for determination and resolution. The tribunal could be empowered to consider a range of matters

including the rate payable by betting providers, and could impose terms on the parties before it, including in relation to financial matters.

Q5: Do you agree that disputes should be handled by a tribunal? Are there any other ways that disputes could be handled?

Obtaining an authorisation

4.18 A potential process for obtaining an authorisation to take bets on British Horseracing is set out in the diagram below.



Q6: Does the process as set out in the diagram raise any issues that have not been covered in this consultation document? If so, what are they and how would you address them?

Enforcement

- 4.19 Robust enforcement mechanisms would be central to the success of a Horserace Betting Right.
- 4.20 It would be unlawful to take bets on British horseracing from British customers without an authorisation from the racing authority. Consequently, the racing authority would have recourse through the courts to pursue those who took bets in breach of the legislation either to prevent the taking of unauthorised bets or to recover the relevant amount payable in respect of that betting activity. However, we accept that there could be potential difficulties pursuing civil claims in respect of operators based outside Great Britain.
- 4.21 We are therefore seeking views on whether and how additional enforcement mechanisms can be incorporated into the system, in particular to address concerns over extraterritorial redress. Options include, but are not necessarily limited to:
- Including in the legislation provisions akin to those in the *Gambling Act 2005 (Horserace Betting Levy) Order 2007*. This order requires the Gambling Commission to review an operator's licence under section 116(2)(c) of the *Gambling Act 2005* if notified by the Levy Board that the licence holder is a Levy defaulter. The Gambling Commission must revoke the operating licence if non-payment is proven and the Levy Board confirms that it wants the sanction to apply.
 - Introduce a new licence condition making it a requirement of a bookmaker's (or other relevant operator's) operating licence from the Gambling Commission that, if it provides a betting service in relation to British Racing, it has the proper authorisation in place from the racing authority.
- Q7: Is it necessary to provide for enforcement mechanisms additional to civil action through the courts? If so, how could enforcement be strengthened?**

- 4.22 Whatever additional mechanisms might be introduced we would want to ensure that the Gambling Commission's administrative involvement in enforcing the Horserace Betting Right would be kept to the minimum and that responsibility for policing the system rested with the racing authority.

Transparency

- 4.23 The racing authority's annual accounts would provide evidence that the fees received were being used only for the pre-defined purposes.

Q8: Are there any other mechanisms that could ensure that the racing authority acted transparently?

Chapter 5: Fit with assessment criteria

Introduction

- 5.1 This Chapter assesses the system described in Chapter 4 against the five criteria described in paragraph 2.6. We are not at this stage comparing a Horserace Betting Right with a reformed Levy against the criteria: that will be for the Government's response to all three consultations.

Fair

(The system should: create level playing fields – between large and small betting operators; between land-based and offshore betting operators; between large and small racecourses; between racecourses and horsemen. It should facilitate genuine negotiation between betting and racing on quantum and expenditure and should not incentivise anti-competitive behaviour.)

- 5.2 A Horserace Betting Right would arguably be fair for the following reasons:

- It would ensure that all betting operators benefitting from betting on British racing by British customers contribute to maintaining the quality of that product thereby eliminating any free-riding and creating the level playing field which currently does not exist.
- It would be clear exactly what this particular funding stream was for and what activities it would be funding.
- Racing would be incentivised to behave reasonably and to continue to make use of already existing channels for consulting with stakeholders (e.g. over the fixture list). It would be in the racing authority's interests to consult widely and appropriately when setting up the first licensing schemes and during any revisions - as is the case with music industry licensing schemes overseen by the Performing Rights Society.

- The racing authority would have the power to draw up authorisation schemes which took account of the different betting operators' differences in terms of size and business model and it would be in their interests to do so in order not to be anti-competitive by disadvantaging small businesses.
- There would be a tribunal to resolve disputes quickly and fairly in accordance with law.

Sustainable

(The system should be: future-proofed so that it can adapt to developments in the betting and racing industries, and provide certainty to enable both betting and racing to plan ahead; and robust, transparent (as far as is possible in a commercial environment), efficient, and proportionate.)

- 5.3 A Horserace Betting Right could offer a new system future-proofed from the outset, based on a new premise that better reflects the modern betting and racing industries as well as their long history. The racing authority would have considerable flexibility in designing authorisation schemes that could take account of new business models and would be able to offer multi-year schemes (with force majeure safeguards) which would help with long-term planning.
- 5.4 There is no inherent reason why a Horserace Betting Right should be any more mired in disputes than licensing in the music industry. Both racing and betting are mature industries and a tribunal would deal with legitimate disputes. Concerns about disputes at set-up should not preclude considering a system that could work in the long term.
- 5.5 The racing authority would be incentivised to make the best possible use of income from the Horserace Betting Right. A Horserace Betting Right would effectively place responsibility for long-term sustainability on racing: it would be up to the racing authority to make it work.
- 5.6 There would inevitably be set-up costs connected with establishing the racing authority (borne by racing) and any tribunal. Set against that the Levy Board

would be abolished and certain functions absorbed by the racing authority, which could be expected to lead to economies over the longer term. There is no obvious reason why the racing authority's operating costs should be more than those of the Levy Board (£2.2m in 2013/14³) and it would be established in such a way as to be as tax-efficient as possible. We would explore with HMRC whether authorisation fees would constitute revenue (so being liable to tax) and whether or not the racing authority was carrying on a trade so would be liable to corporation tax.

- 5.7 Payments made for goods and services attract VAT unless it can be demonstrated that they do not attract VAT, or they fall within an existing VAT exemption. While VAT is ultimately a matter for HMRC we believe that payments made under any of the authorisation schemes would be unlikely to attract VAT, principally because there would be no direct link between the fees paid and the authorisation to take bets on British horseracing from British customers. This is because sums raised would be used for the benefit of the horseracing industry as a whole, as a betting product, and not provide any direct benefit to the payer of the fee individually.

Enforceable

(The system should offer effective enforcement mechanisms available to all parties to prevent any party breaching their obligations.)

- 5.8 We recognise that enforcement is a key issue and that is why we have asked questions about potential enforcement mechanisms. A Horserace Betting Right would affect only those betting operators licensed by the Gambling Commission so it would be known who they were. The issue of unlicensed operators is one for the gambling regime as a whole and outside the scope of this consultation.
- 5.9 We also recognise that the potential scale of enforcement is an unknown quantity given that the point of consumption licensing regime has only recently commenced. But the Levy Board enforces the Levy system now so it is not as if there is no working precedent that the racing authority could build on.
- 5.10 Extraterritorial enforcement in respect of overseas operators raises a number of

³ Source: HBLB Annual Report 2013/14

issues. This is why we are considering options to introduce regulatory as well as legal consequences in the case of non-compliance with the system.

Legally sound

(The system should comply with UK and EU law.)

- 5.11 Introducing a Horserace Betting Right may engage EU law, including provisions relating to the free movement of services and competition law. We think that a Horserace Betting Right as outlined above is capable of being designed in such a way that is fair and proportionate; and compatible with the UK's obligations under those provisions of EU law.

Remove Government

(We are consulting on two statutory options for a system, so the Government would have to be involved to the extent that it passed the legislation. But beyond that, the Government wants to be as far as possible removed from any direct involvement in activities that take place under the legislation.)

- 5.12 We do not underestimate the challenges that could arise from replacing the Levy with a Horserace Betting Right. However, if a Horserace Betting Right was introduced, Government's involvement in the funding relationship between betting and racing would be at an end once the legislation had been fully commenced, with any remaining disputes a matter for the courts and the tribunal.

Q9: How well would a Horserace Betting Right meet the five assessment criteria set out in paragraph 2.6? We would be interested in your views on how the proposals set out in this consultation compare with options for Levy reform set out in the consultation document dated 27 August 2014.

Impact Assessment

- 5.13 A consultation-stage impact assessment accompanies this consultation. We welcome any observations respondents might wish to make or additional evidence they might wish to contribute. In particular, we welcome any information or observations with regards the following:

- The likely magnitude of the costs associated with any amendment to existing regulations versus the status quo;
- The likely costs to business of having to establish and run new structures (as set out above) - especially with regards to any racing authority;
- The likely impact of any amendment to existing regulations on small firms, in particular the costs of having to negotiate directly with a racing authority.

5.14 Following this consultation, if we choose to reform or replace the Horserace Betting Levy, DCMS will produce an accompanying final-stage impact assessment.

Q10: Are there any observations about the impact assessment and the costs and benefits attached to a Horserace Betting Right that you would like to make or additional evidence you would like to submit?

Chapter 6: Summary of questions

- Q1:** Should a Horserace Betting Right be vested in racecourses or a single racing authority and why?
- Q2:** Do you agree that there is no need for Government to mandate a single collective body for betting operators in the legislation? If not, please explain why you think such a body would be needed.
- Q3:** What activities do you think could be funded from a Horserace Betting Right?
- Q4:** We would be interested to receive observations on the 2002-2004 data licensing scheme. Could a Horserace Betting Right operate in the same way with broadly the same terms and conditions?
- Q5:** Do you agree that disputes should be handled by a tribunal? Are there any other ways that disputes could be handled?
- Q6:** Does the process as set out in the diagram [4.18] raise any issues that have not been covered in this consultation document? If so, what are they and how would you address them?
- Q7:** Is it necessary to provide for enforcement mechanisms additional to civil action through the courts? If so, how could enforcement be strengthened?
- Q8:** Are there any other mechanisms that could ensure that the racing authority acted transparently?
- Q9:** How well would a Horserace Betting Right meet the five assessment criteria set out in paragraph 2.6? We would be interested in your views on how the

proposals set out in this consultation compare with options for Levy reform set out in the consultation document dated 27 August 2014.

Q10: Are there any observations about the impact assessment and the costs and benefits attached to a Horserace Betting Right that you would like to make or additional evidence you would like to submit?