Department for Digital, Culture Media & Sport

Consultation on the use of a Legislative Reform Order to reform the administration of the Horserace Betting Levy

Closure of the Horserace Betting Levy Board and the transfer of functions to other bodies.

December 2017

Contents

1. Chapter One: Introduction

1.1. The Horserace Betting Levy (the Levy) is a statutory Levy on the gross profits derived from bets on British horseracing made by customers in Britain.

1.2. The Horserace Betting Levy Board (the HBLB) is an arm's-length body of Government. The HBLB collects the Levy from betting operators, and distributes the Levy in line with the statutory purposes set out in the Betting Gaming and Lotteries Act 1963 ('the 1963 Act').

1.3. The framework for administering the Levy was originally established by the 1963 Act which set out the purposes to which the Levy should be applied. It also provided for a Bookmakers' Committee to recommend annual Levy Schemes and established Levy appeal tribunals.

1.4. Following a series of consultations[1] on options for modernising the Levy, reforms to the Horserace Betting Levy were approved by Parliament[2] on 29 March 2017 and took effect from 25th April 2017. The reforms implemented the first phase of changes to the Levy, including extending the Levy to offshore bookmakers and betting exchange providers, and changing the basis on which the Levy Scheme was calculated to a fixed rate of bookmakers' profits. The implementation of a fixed rate Levy meant there was no longer a requirement for the Levy Scheme to be set annually, therefore the Bookmakers' Committee was abolished.

1.5. The HBLB remains in place; recognising the demise of the Bookmakers' Committee, the HBLB's membership was amended in April 2017 to replace the chair of the Committee with a representative of the betting industry.

1.6. The aim of the second phase of changes is to reduce financial and administrative burdens on the betting and horseracing industries by reforming the administration of the Levy. The Government proposes to enact these changes by way of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006[3] ('the LRRA'). Subject to the outcome of consultation and

[1] Extending the Horserace Betting Levy - a consultation on implementation, 2014, https://www.gov.uk/government/consultations/extending-the-horserace-betting-levy-a-consultation-on-implementation

[2] The Horserace Betting Levy Regulations 2017, https://www.legislation.gov.uk/ukdsi/2017/9780111155530/contents

[3] Legislative and Regulatory Reform Act 2006, https://www.legislation.gov.uk/ukpga/2006/51/contents

Parliamentary consideration, we currently propose that the changes are implemented from 1 April 2019.

Aim and scope of the consultation

1.7. The purpose of this consultation is to seek views on the Government's proposals to make changes to the administration of the Horserace Betting Levy by means of a LRO under section 1 of the the LRRA. This consultation is being conducted in accordance with section 13 of the LRRA. The consultation covers Great Britain (England, Scotland and Wales), as Northern Ireland has its own levy arrangements.

1.8. A LRO is a Statutory Instrument which can amend primary legislation independently of a Parliamentary Bill. Section 1 of the LRRA provides that a LRO can be used for the purpose of removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation where certain preconditions, set out in section 3(2) of the LRRA, are satisfied. The LRRA defines a burden in four ways, and the Government considers that these proposals for reform of the Levy will remove or reduce burdens under two of these categories:

1. a financial cost - This is defined as *'any financial costs, including administrative costs and policy or 'compliance' costs resulting from understanding and complying with legislation.'*[4]

2. an administrative inconvenience - This covers an *'administrative inconvenience even where it does not result in financial cost. For example, a requirement on an individual to fill in a form may not result in a financial costs, but could be inconvenient for the person.'*[5]

1.9. In accordance with s.13 of the LRRA, we are seeking views from organisations likely to be affected by the proposed changes such as businesses in the racing, veterinary and betting sectors, including betting operators based outside of Great Britain, as well as views from the relevant statutory bodies. We would also welcome views from any other interested parties or individuals, and all responses will be carefully considered. Views are invited on all aspects of the consultation paper.

[4] LRRA 2006, explanatory notes, paragraph 20, http://www.legislation.gov.uk/ukpga/2006/51/notes
[5] LRRA 2006, explanatory notes, paragraph 21, http://www.legislation.gov.uk/ukpga/2006/51/notes

1.10. To assist in the consultation process we have formulated a set of questions, to which we invite responses. The questions are set out at Chapter 5 at the end of this document.

1.11. A summary of the anticipated savings is set out in the accompanying de minimis assessment.

How to make your views known

1.12. The consultation period will run for 8 weeks from 21st December 2017 to 16th February 2018. Please respond before the closing date. Further detail on how to respond to the consultation are set out at Annex A.

1.13. Responses to the consultation should be sent to levy.consultations@culture.gov.uk. If you do not have access to email, please respond to:

Gambling & Lotteries Policy Team
Department for Digital, Culture, Media and Sport
100 Parliament Street
SW1A 2BQ
London

1.14. This consultation is intended to be an entirely written exercise. Please contact James Perkins on 020 7211 6920 if you require any other format e.g. Braille, Large Font or Audio.

1.15. For enquiries about the handling of this consultation please contact the DCMS Correspondence Team at the above address or e-mail using the form at www.culture.gov.uk/contact_us, heading your communication "Horserace Betting Levy Consultation".

1.16. The Government's response to the consultation, including a summary of responses received, will be published on the Department's website: www.gov.uk/culture.

1.17. 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.

1.18. 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.

1.19. 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.

1.20. The consultation follows the Government's Consultation Principles 2013 which is available at: https://www.gov.uk/government/publications/consultation-principles-guidance

2. Chapter Two: Background

2.1. The current Levy framework was established by the Betting, Gaming and Lotteries Act 1963. The Act has been subject to some amendments, most recently in April 2017. It requires the Horserace Betting Levy Board (HBLB) to assess and collect monetary contributions from betting on British horseracing and distribute Levy funds in line with the statutory purposes set out in section 24 of the 1963 Act. These are:

- the improvement of breeds of horses;
- the advancement or encouragement of veterinary science or veterinary education; and
- the improvement of horse racing.

2.2. The HBLB is a non-departmental public body and its sponsoring Government department is the Department for Digital, Culture, Media and Sport (DCMS). The HBLB has a seven-person board, as set out in the 1963 Act. This requires that the Board should comprise of the following seven members:

- a Chair, and two independent members – appointed by the Secretary of State;
- three appointees of racing; and
- one appointee of betting.

First phase of reforms - the Levy system

2.3. The first phase of the Levy reforms was implemented in April 2017.[6] The reforms extended the Levy to offshore bookmakers and betting exchange providers offering bets on British horseracing to customers located in Great Britain. The rate of the Levy was fixed at 10% of gross profits on leviable bets. In addition, an 'exempt amount' of £500,000 was introduced, meaning that betting operators only pay the Levy on profits in excess of that amount.

2.4. The implementation of a fixed-rate Levy replaced the previous system whereby the Levy was agreed annually by the Levy Board on the basis of recommendations made by the Bookmakers' Committee. The new fixed-rate system removed the requirement for the Levy Scheme to be set annually, therefore the Bookmakers' Committee was abolished.

[6] The Horserace Betting Levy Regulations 2017, https://www.legislation.gov.uk/ukdsi/2017/9780111155530/contents

This reduced the HBLB's role to two core functions: collecting the Levy; and distributing Levy funds.

Second phase of reforms - the administration of the Levy

2.5. The aim of the second phase of reforms is to reduce financial and administrative burdens on the betting and horseracing industries by reforming the administration of the Levy, as announced by the Government in March 2016[7] and January 2017[8]. The Government considers that a LRO is the appropriate method to enact these changes, as the aim of the changes is to reduce administrative and financial burdens as set out in section 1 of the LRRA.

2.6. The principal policy objectives of the second phase of reforms are to:

- **reduce administrative inconveniences, both for betting operators and the horseracing industry.** It is envisaged that the legislative reforms will streamline compliance processes for betting operators, thereby reducing administrative burdens. It is also envisaged that the reforms will simplify the process for distributing Levy funds for the benefit of British horseracing, thereby reducing administrative inconveniences for the racing industry;

- **reduce the cost of administering the Levy**. It is envisaged that the legislative reforms will result in a reduction in costs associated with administering the Levy. As the costs of collecting and distributing the Levy are met by Levy funds, this will increase the amount of funding available to be spent for the benefit of British horseracing. This will also be of indirect financial benefit to the betting industry.[9]

State aid

[7] Implementing the replacement for the Horserace Betting Levy, March 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508313/Implementing_the_replacement_for_the_Horserace_Betting_Levy.pdf

[8] Government boost for horseracing in betting levy reform, January 2017 https://www.gov.uk/government/news/government-boost-for-horseracing-in-betting-levy-reform

[9] The common interest between the racing and betting sectors arises from horseracing activities providing benefits to the betting sector by creating betting opportunities. A detailed economic analysis of the common interest between the racing and betting sectors, including common interest cost estimates, is provided in the Frontier Economics report "An economic analysis of the the funding of horseracing" (June 2016). https://www.gov.uk/government/publications/an-economic-analysis-of-the-funding-of-horseracing

2.7. The Government sought State aid approval from the European Commission for this package of reforms, and approval was granted in April 2017.[10]

[10] European Commission, 2017
http://ec.europa.eu/competition/state_aid/cases/267768/267768_1901680_142_2.pdf

3. Chapter Three: Proposals

3.1. The key elements of the Government's proposal to use a LRO to reduce administrative and financial burdens on business relating to the administration of the Horserace Betting Levy are:

1. to transfer responsibility for collection and enforcement of the levy from the HBLB to the Gambling Commission, a non-departmental public body responsible for gambling regulation;

2. to transfer the responsibility for expenditure decisions and the distribution of the Levy to the beneficiaries of Levy funds - the racing industry. Levy funds will be passed to a nominated body which is representative of the British racing industry;

3. as a result of transferring these functions, to close the HBLB and abolish the Horserace Betting Levy Appeal tribunals.

3.2. The Government considers there are a number of opportunities to reduce financial and administrative burdens to businesses affected by the Levy. As set out in the accompanying de minimis assessment, the Government estimates that the reforms will result in a reduction in administration costs for those managing the collection and distribution of the levy. Administrative savings will provide a direct benefit to businesses in the racing industry as more Levy funds will be available for distribution, and an indirect benefit for betting operators where investment in racing enhances opportunities for betting.

3.3. The proposals will also result in the removal of Government from ongoing involvement in relation to Levy spending decisions. At present, Government-appointed members on the HBLB board have a role in making expenditure decisions. Under the proposals, the Government will no longer have an ongoing involvement in this area.

3.4. Maximising the efficiency of arm's length bodies is an important issue for this Government. The proposed administrative reforms support the Government's approach to Public Bodies Reform[11], which advocates looking at how public bodies can be merged or share back-office functions, and build on the objectives of promoting openness, transparency and coherence of the public bodies landscape, reducing costs and improving accountability.

[11] Public Bodies Report 2017, https://www.gov.uk/government/publications/public-bodies-2017-report

Transferring responsibility for collecting the Levy from the HBLB to the Gambling Commission

3.5. Following the first phase of Levy reforms, completed in April 2017, the HBLB's role has reduced to the two key functions of collecting and distributing the Levy. The HBLB is a small organisation with an average headcount of 13 FTE staff over the five years to 2016/17.

3.6. The Gambling Commission is the statutory regulator for gambling in Great Britain and an arm's length body of Government. Transferring the collection of the Levy to an existing arm's length body - which carries out an analogous function in collecting licence fees from bookmakers - provides opportunities for savings from economies of scale.

3.7. The Gambling Commission's costs in administering the Levy will continue to be met from Levy funds, as is the case with the HBLB currently. A reduction in administration costs will maximise the amount of Levy funds that can be spent by the racing industry in support of the core objectives of the Levy. This will also be of indirect financial benefit to businesses in the betting sector.

3.8. Further detail on the envisaged reduction in administration costs is set out in the accompanying de minimis assessment.

3.9. In addition to increasing the amount of funding available to the horseracing industry, it is envisaged that transferring the collection function to the Gambling Commission will also provide opportunities to streamline processes for betting operators, thereby reducing the administrative inconveniences and financial costs for businesses of complying with the Levy. We are therefore seeking views on how the proposed reforms might simplify administrative and compliance processes.

3.10. The Gambling Commission requires new powers in order to take on the function of collecting the Levy. This section sets out details of the legislative proposals.

Information requirements and assessment of Levy due

3.11. Under s.27E of the 1963 Act (as amended), the HBLB may obtain information from betting operators that is considered necessary to properly assess an operator's Levy liability. The HBLB may determine

the manner and form that information must be provided, and the timetable for such information to be provided.

3.12. The Government is of the view that it is appropriate for the Gambling Commission to take on the HBLB's statutory powers to obtain information reasonably required to assess levy liability. We consider that the collection body is best placed to determine what information it reasonably requires, and by when, in order to assess Levy due, and to determine the frequency and form of payments from betting operators.

3.13. As part of these proposals we intend to ensure that powers are in place to tackle the provision of misleading information – similar to Section 342 of the Gambling Act 2005.

Protection of operators' data

3.14. Under s.28A of the 1963 Act[12], as amended by the Horserace Betting Levy Regulations 2017[13], it is a criminal offence for HBLB staff to disclose any declaration by or assessment on any bookmaker for the purposes of the Levy, or any other information concerning that bookmaker.

3.15. The Gambling Commission is required to safeguard information in accordance with their legal duties. Gambling Commission staff adhere to the Cabinet Office's 'Government Security Classification' guidance[14] which sets out handling procedures around commercially sensitive and personal data. This covers all information that the Commission collects, stores, processes, generates or shares to deliver services and conduct business, including information received from or exchanged with external partners.

3.16. The Gambling Commission has robust and established policies and processes in place to protect operators' data. The Commission is an independent body with no representatives appointed by, or on behalf of, the racing or betting sectors. The Government proposes that the Gambling Commission's existing policies and procedures for handling

[12] Betting, Gaming and Lotteries Act, s.28
http://www.legislation.gov.uk/ukpga/1963/2/section/28
[13] The Horserace Betting Levy Regulations 2017
http://www.legislation.gov.uk/uksi/2017/589/pdfs/uksi_20170589_en.pdf
[14] Government Security Classifications 2014,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251480/Government-Security-Classifications-April-2014.pdf

commercially sensitive data and personal data are applied equally to information collected for the purposes of assessing levy due.

3.17. The Government considers that the existing protections in place regarding the processing of data at the Gambling Commission are sufficiently robust to ensure the protection of operators' data. In addition, the governance framework in which racing and betting industry representatives sit together within the HBLB will no longer exist. Therefore the Government does not propose to replicate the s.28A offence.

Levy periods and payments

Current approach

3.18. Under the current legislation Levy liability is calculated with reference to leviable bets taken in the current year.[15] The legislation provides that the HBLB must serve an assessment notice as soon as possible after the end of a levy period, setting out the amount owed for that period, the basis for calculation and when and how the amount must be paid.[16] The legislation also allows the HBLB to require payments on account (POA) to be made in year, and grants the HBLB discretion as to how these payments are calculated, and the frequency of collection. We intend to give the same powers to the Gambling Commission.

3.19. The HBLB's current practice is to adopt a two stage process:

1. Prior to the start of the Levy year the HBLB carries out an assessment to determine an appropriate level of payments on account (POA) for the operator to pay throughout the forthcoming Levy year. The HBLB, sets the POA based on the operator's profits from two year's previous. These advance payments ensure steady cash flow over the Levy year.

2. Following the end of the Levy year, the HBLB carry out a final assessment based on the operator's actual profits for that period. This is compared to the POA made, with the HBLB reimbursing operators that have overpaid, or requesting further payment if there is an outstanding balance due.

3.20. The Government is minded to maintain the existing definition of levy period, whereby the Levy due is based on leviable bets taken in the current year. The HBLB has confirmed that the reforms to the Levy, implemented in April 2017, are working well and the Government is

[15] Betting Gaming and Lotteries Act, 1963, s.29B
[16] Betting Gaming and Lotteries Act, 1963, s.28 (4A)

therefore mindful that further significant changes to Levy payment processes have the potential to be disruptive to businesses. In addition, there is currently limited evidence that an alternative approach would reduce overall burdens on business.

Alternative approach - 'Levy year -1'

3.21. Although the current process for Levy collection appears to be working well, the Government is committed to exploring options to reduce burdens on businesses relating to Levy collection. Applying the Levy to operators on the basis of leviable bets during the previous year ('Levy year -1'), rather than the current year, would remove the need for payments on account as the Levy would be calculated on actual information rather than estimates. Basing the Levy on the previous year would require changes to legislation to redefine "levy period".

3.22. We would need to consider whether to make specific provision for businesses which were in operation for part-years - for example when they start up or wind up, although this will be a relatively rare occurrence, given that only an estimated c.50 operators pay the Levy following the introduction of the £500k exempt amount in April 2017.

3.23. The Government would welcome evidence and views as to whether the Levy year -1 proposal would reduce administrative burdens to business compared to the current approach. The potential benefits of such an approach include potentially reduced administrative burdens for operators by reducing the need for two sets of returns to the collection body and for a reconciliation process at the end of the year.

3.24. Levy year -1 could, potentially, provide increased certainty for operators regarding Levy costs, allowing operators to plan for Levy costs a year in advance, as their profits become known.

3.25. As set out in the de minimis assessment which accompanies this consultation, the Levy year -1 approach could result in a reduction in the cost of administering the Levy. The Gambling Commission has estimated annual administrative savings of c.£158,000 (staff and legal costs) by adopting the Levy year -1 approach compared to the current system. This would result in more Levy funding being available to spend on the Levy's core purposes - providing benefits to businesses affected by the Levy.

3.26. However, the Government is mindful of the potential disadvantages of the Levy year -1 approach. As noted above, the proposal could

increase burdens on operators who have established processes for payment of the Levy based on the current year.

3.27. As a result of this change, in the first year of operation, operators would pay the Levy on the same trading period as the previous year - resulting in an identical Levy yield for consecutive years. For example, basing the Levy on the previous year's betting activity would mean that operators would pay the Levy in 2019/20 on their 2018/19 trading period - having already paid the Levy on this trading period during 2018/19.

3.28. The Government will carefully consider all responses to the consultation to inform a decision on whether the current process whereby Levy is assessed based on leviable bets taken in the current year should be maintained, or whether the Levy year -1 approach should be implemented.

Enforcement

3.29. Under the current arrangements the HBLB focuses on active engagement with operators for non-payment, and has powers[17] to take a civil enforcement route where necessary to recover funds.

3.30. The Government is of the view that this approach will continue to be appropriate in certain circumstances, for example where an operator's licence is surrendered or revoked and where Levy remains due. Therefore the Government proposes that the Gambling Commission should have an equivalent power under the new arrangements.

Gambling Act 2005 (Horserace Betting Levy) Order 2007

3.31. In cases of non-payment, in addition to HBLB's powers to pursue civil recovery, the HBLB may also refer such instances to the Gambling Commission in certain prescribed circumstances. The HBLB has discretion to refer matters of non-payment to the Commission who have powers to revoke an operator's licence.

3.32. The Gambling Act 2005 (Horserace Betting Levy) Order 2007[18] requires the Gambling Commission to conduct a review of an operator's licence when notified by the HBLB that on at least two occasions within the previous five years an operator has been in default of Levy payments for at least three months.

[17] Betting Gaming and Lotteries Act, 1963, s.28 (7)
[18] The Gambling Act 2005 (Horserace Betting Levy) Order 2007 http://www.legislation.gov.uk/uksi/2007/2159/contents/made

3.33. The Gambling Commission must provide the licence holder with an opportunity to make representations before coming to a conclusion. If the default on Levy payments, in accordance with the criteria set out above, is confirmed, and the HBLB confirms they want the operating licence to be revoked, the Gambling Commission must revoke the operating licence.

3.34. A robust and effective enforcement mechanism is essential. However, mandatory revocation of an operating licence is a severe penalty - the effect of which is that an operator can no longer offer any betting products to customers in Britain. This may not be proportionate in all cases where an operator has been in default of payments for a three month period, on two occasions, and on the other hand it may also be the case that in some circumstances enforcement action is appropriate sooner.

3.35. Mirroring the current approach whereby HBLB has discretion as to whether to refer non-payment to the Commission and whether to require the Commission to revoke a licence, the Government proposes that the Gambling Commission should have a power to revoke an operator's licence in cases of non-payment of the Levy. It is proposed that Gambling Commission will have discretion as to whether, and when, to make use of this power, informed by the facts of each case. As a result, the 2007 Order will be repealed.

3.36. The Government is of the view that this strikes an appropriate balance between retaining a strong deterrent against non-payers, while providing a proportionate approach which allows the Commission the discretion to take action based on the facts of each case - as it does in cases involving breaches of the licence conditions.

Appeals

3.37. As part of the process of transferring the responsibility for collection of the Levy, the Government intends to ensure that operators continue to have access to an efficient and effective route of appeal in the event of disputes in relation to Levy payments due.

3.38. The Betting Gaming and Lotteries Act 1963 established two Levy appeal tribunals, one for England and Wales, and one for Scotland. Under the current statutory arrangements, the HBLB sends annual assessment notices to all bookmakers liable to pay the Levy. The 1963 Act makes provision for bookmakers to appeal against their

assessment notice (and hence liability to pay Levy) and for the HBLB to refer their case to one of the Levy appeal tribunals.

3.39. In practice, the HBLB attempts to resolve disputes directly with the bookmakers to avoid the time and cost of a Tribunal hearing. This approach has proved effective, and the last known sitting of a Levy tribunal was in the 1990s.

3.40. The Gambling Commission has confirmed it will adopt a similar approach to dispute resolution, in line with its current processes and procedures.

3.41. The reforms that came into force in April 2017 simplified the Levy process by introducing an exempt amount, below which Levy is not due, in place of the previous system of a number of different thresholds and rebates. The reforms also introduced a fixed Levy rate, which removed the scope for discretion regarding the category applied to operators under annual Levy schemes.

3.42. Since implementation of the reforms, as a result of the £500k threshold, the number of operators required to pay the Levy has fallen to c.50, down from more than 600 under the previous annually-set scheme. This is a significant decrease which considerably reduces the potential for disputes over the amount of Levy due.

3.43. Under the proposed arrangements, it is possible that disputes regarding the Gambling Commission's interpretation of the legislation governing the Levy could arise - for example regarding the correct treatment of a particular type of bet. The Gambling Commission's current approach to disputes in relation to licence fees is to seek to resolve disputes with the operator directly in the first instance - mirroring the HBLB's approach to Levy disputes.

3.44. In addition, operators will continue to have a right of appeal to the First Tier Tribunal (General Regulatory Chamber[19] - GRC) - which is administered by HM Courts and Tribunals Services - against any decision of the Gambling Commission to revoke their licence for non-payment of Levy.

3.45. As a last resort, decisions by the Gambling Commission regarding interpretation of the legislation concerning the Levy are open to challenge by Judicial Review.

[19] First-tier Tribunal (General Regulatory Chamber), https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber

3.46. We consider that the combination of engagement with the Gambling Commission on issues of dispute, the option of Judicial Review, and ability to appeal to the GRC in the event a licence is revoked, provides an appropriate and proportionate remedy. Therefore the Government considers that there is no longer a need to retain the Levy Tribunals.

3.47. The Government proposes abolishing the Horserace Betting Levy Appeal Tribunal for England and Wales and the Horserace Betting Levy Appeal Tribunal for Scotland. Appointments to the Scottish tribunal are made by the Lord President of the Court of Session however overall responsibility for the Scotland tribunal rests with the UK Government.

3.48. The Levy Tribunals are public bodies and these proposals therefore support the Government's approach to Public Bodies Reform and build on the objective of promoting openness, transparency and coherence of the public bodies landscape.

Transfer responsibility for distribution of the Levy from the HBLB to the racing industry

3.49. Following three previous consultations on Levy reform, the Government concluded[20] that there is no longer a case for Government, through the three Government-appointed Board members, to have involvement in annual decisions on Levy expenditure, and that the beneficiary of the Levy - the British horseracing industry - is best-placed to decide on the allocation and distribution of Levy funds.

3.50. In March 2016 the Government announced that the British horseracing industry would assume responsibility for Levy expenditure and distribution through a nominated body that will act on behalf of British racing. The racing industry is working to establish this body, which it refers to as the 'Racing Authority'. The Government anticipates that transferring the distribution function from the HBLB to the racing industry will remove duplication in current processes, such as deciding on funding allocation, or conducting data analysis. We are therefore inviting views from the British horseracing industry in particular on how this body might realise savings and enable more efficient processes for allocating and delivering funding for the benefit of the industry.

[20] Implementing the replacement for the Horserace Betting Levy, March 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508313/Implementing_the_replacement_for_the_Horserace_Betting_Levy.pdf

3.51. Racing appointees of the Levy Board reflect the key participants in the sport - the Racecourse Association, the British Horseracing Authority and the Horsemen's Group. The Government will want to be satisfied that the nominated Racing Authority is representative of the horseracing sector and has the support of the beneficiaries of the levy whose interest it will serve, and looks forward to the industry providing further details of its plans.

3.52. In delivering these reforms the Government is seeking to ensure that an appropriate and proportionate degree of accountability and transparency is in place, consistent with the State aid approval for the reforms. This section of the consultation sets out the detail of the proposals for the following functions of the Racing Authority:

- Levy expenditure
- Transparency requirements

Levy expenditure

3.53. The Government expects the racing industry to work constructively with the betting industry as part of its work to plan Levy expenditure. The nature of the Levy, being a fixed rate of betting operators' profits, is such that it provides an incentive for racing to work constructively with betting to maximise returns from the Levy.

3.54. The April 2017 reforms to the Levy fixed the Levy rate, providing greater certainty to all parties and providing a platform for the two industries to come together to increase the attractiveness of horseracing as a betting product - and maximise the quality of racing at the same time.

3.55. While we are dismantling the tripartite Levy Board, we want to see betting and racing continue to work constructively together on matters relating to levy expenditure. Therefore we intend to require the Racing Authority to consult betting and other relevant stakeholders (such as the wider racing industry) on its strategy for disbursement of Levy funds.

3.56. The Government considers that this strikes an appropriate balance between allowing racing to make decisions on Levy spend and ensuring that the betting industry, as payers of the Levy, have input into this process.

Transparency requirements

3.57. The principles of transparency and openness promote accountability, and will ensure that the Racing Authority's use of Levy funds is clear and open to public scrutiny. We consider that this degree of rigour will support the Racing Authority in its role as decision-maker on spending decisions.

3.58. We intend to require the Racing Authority to publish an annual report and statement of accounts setting out its use of Levy funds, including details of expenditure and administration costs met by the Levy.

3.59. It is proposed that the Racing Authority's accounts will need to be audited independently, and the report to be published. This is analogous to the requirements incumbent on the HBLB.

3.60. The principles of transparency also play an important role in the State aid process. The European Commission's State aid decision[21] included certain conditions that the Racing Authority must meet in order to ensure compliance with State aid rules. These include requirements to:

- lay down transparent criteria for allocating expenditure;
- provide assurances that processes are in place to ensure recipients will not be overcompensated;
- put in place a mechanism to recover misappropriated funds and recover unspent funds; and
- publish the identity of beneficiaries and the amounts they received.

Administrative arrangements

Administration costs

3.61. Currently HBLB's administration costs are met by Levy funds. Under the proposals, the Gambling Commission will similarly recover its administration costs from the Levy collected. Based on estimates provided by the Gambling Commission, we estimate the Commission's annual running costs will be £0.2 million (outlined in the accompanying de minimis assessment). The Gambling Commission will be able to hold reserves from Levy funds to enable it to meet unexpected costs in relation to the collection function, although it is expected that any such reserves would not be large. Mirroring the current arrangements under

[21] European Commission, 2017
http://ec.europa.eu/competition/state_aid/cases/267768/267768_1901680_142_2.pdf

the HBLB, it is envisaged that it will be for the Gambling Commission to determine the frequency of its payments to the Racing Authority.

3.62. The Racing Authority's administration costs will be met from Levy receipts as is the case for the HBLB. We estimate the Racing Authority will incur annual running costs of £0.7 million. There will be a clear incentive for the Racing Authority to ensure its administration of the levy is as efficient as possible and costs minimised, as this will ensure that more Levy funding can be directed to support the racing industry.

Assets and liabilities

3.63. The HBLB's assets and liabilities will transfer to the Racing Authority and the Gambling Commission. While the majority of the assets and liabilities are expected to transfer to the Racing Authority, the Gambling Commission will require some working capital for day one administration ahead of receiving Levy payments. The LRO will include provision for the transfer of HBLB's assets and liabilities.

4. Chapter Four: Using a Legislative Reform Order

4.1. The Government considers that it is appropriate to use an LRO as these proposals will remove or reduce burdens under two of the qualifying categories for using an LRO, as follows:

i) reduce the cost of administering the Levy

4.2. It is envisaged that the legislative reforms will result in a reduction in costs associated with administering the Levy. As the costs of collecting and distributing the Levy are met by Levy funds, this will increase the amount of funding available for the benefit of British horseracing. We are therefore seeking views on how the proposed reforms might simplify administrative processes for the benefit of the horseracing industry, in light of the considerations below.

4.3. An increase in the amount of funding available for the benefit of British horseracing will also be of indirect financial benefit to the betting industry. The common interest between the racing and betting sectors arises from horseracing activities providing benefits to the betting sector by creating and enhancing betting opportunities.[22]

4.4. As an example, competitive horseracing requires sufficiently large 'field sizes' (the number of horses running in a given race) and closely matched horses. This affects the attractiveness of the sport to race-goers (and also to off-course bettors and viewers of televised races in LBOs or at home). The majority of Levy funding is currently used to fund prize money. Prize money encourages owners to participate in the sport and enter their horses into races, affecting both field sizes and the overall number of races that can be put on. Increases in prize money therefore provide benefits to both the betting and racing industries.

4.5. Streamlining and merging the collection and enforcement functions within the remit of Gambling Commission creates opportunities to realise savings through economies of scale, for example regarding Human Resources, IT, finance functions and Board level costs.

4.6. Under these reforms it is expected that the vast majority of the governance and oversight functions will be absorbed within existing

[22] A detailed economic analysis of the common interest between the racing and betting sectors, including common interest cost estimates, is provided in the Frontier Economics report "An economic analysis of the the funding of horseracing" (June 2016). https://www.gov.uk/government/publications/an-economic-analysis-of-the-funding-of-horseracing

roles of the Gambling Commission and the Racing Authority, leading to the costs associated with the governance being significantly reduced.

4.7. The HBLB's administration costs averaged £2.11 million over the five years to 2016/17.[23] This historical spend includes an element of cost associated with the annual setting of the Levy, which ceased in April 2017 when the rate of the Levy was fixed as part of phase 1 of the reforms. The HBLB have estimated they would incur running costs of £1.47 million if they were to continue to administer the Levy.

4.8. The estimated annual recurring costs to administer the Levy to the Gambling Commission and the Racing Authority are £0.9 million pa.[24] **This represents an estimated saving in administration costs of £0.6 million per annum.**

ii) **reduce administrative inconveniences, both for betting operators and the horseracing industry.**

4.9. It is envisaged that the legislative reforms will streamline compliance processes for betting operators, thereby reducing administrative burdens.

4.10. Betting operators are required under the terms of their licence to provide regulatory returns to the Gambling Commission, including in relation to their horseracing business. The returns must include details of the operator's gross profits. Under the current system operators must also provide information separately to the HBLB in order for their Levy liability to be assessed. The proposed legislative reforms therefore create opportunities to eliminate duplication in this and other such processes.

4.11. In addition to the reduced burden as a result of dealing with one rather than two organisations, we consider that the proposed legislative reforms will create further opportunities for the Gambling Commission to reduce administrative and compliance burdens on betting operators. As an example, by cross-referring between information submitted as part of the licensing process, the Gambling Commission could:

- 'rule out' operators who have very low profits on horseracing overall and who would therefore clearly fall below the threshold

[23] This excludes the costs of the Bookmakers' Committee, as this Committee was repealed under phase 1 of the reforms.
[24] See the de minimis assessment for further details.

of bets taken on British horseracing – thereby reducing unnecessary reporting by smaller operators over time;

- if appropriate, amend regulatory returns so as to further rule out operators who have very low profits on bets that are within scope of the Levy.

4.12. We are therefore seeking views from betting operators in particular, as well as from the relevant statutory bodies, on the scope for simplifying compliance processes, in the manner of the above suggested examples, that the proposed reforms could offer, including estimates of potential savings made possible by these changes.

4.13. Transferring responsibility for Levy expenditure to a body representative of the horseracing industry also creates opportunities for more efficient processes for allocating and delivering funds for the benefit of the British horseracing industry. The Government anticipates that transferring the distribution function from the HBLB to the racing industry would remove duplication in current processes, such as deciding on funding allocation, or conducting data analysis. We are therefore also seeking views on the potential for simplifying processes and reducing the administrative burden on businesses in the racing industry.

5. Chapter Five: Summary of questions

5.1. The Government would welcome views on any aspects of these proposals, in particular in relation to whether the LRO meets the criteria set out in the LRRA. The following questions are designed to help to provide evidence to inform this assessment:

1. Do you agree that the proposals will remove or reduce burdens?

2. Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 and 4 of this consultation document and addressed in the de minimis assessment?

3. Are there any non-legislative means that would satisfactorily remedy the issues which the proposals intend to address?

4. Are the proposals proportionate to the policy objectives?

5. Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

6. Do the proposals remove any necessary protection?

7. Do the proposals prevent any person from continuing to exercise any right or freedom which he/she might reasonably expect to continue to exercise? If so, please provide details.

Annex A

Parliamentary scrutiny
Both Houses of Parliament scrutinise draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report. Copies of Committees' reports are available on the Parliament website at the following links:

Regulatory Reform Committee (House of Commons)
http://www.parliament.uk/business/committees/committees-a-z/commons-select/regulatory-reform-committee/publications/

Delegated Powers and Regulatory Reform Committee (House of Lords):
http://www.parliament.uk/hldprrcpublications .

When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

Your submission should be as concise as possible, and should focus on one or more of the criteria listed below that a Legislative Reform Order needs to meet, as set out in section 3 of the Legislative Regulatory Reform Act 2006:

• There are no non-legislative alternatives that will achieve the intended outcome of the provision;

• The effect of the provision is proportionate to the policy objective;

• The provision strikes a fair balance between the public interest and the interests of any person adversely affected by it;

• The provision does not remove any necessary protection;

• The provision does not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;

• The provision is not constitutionally significant and;

• Where a provision will restate an enactment, it makes the law more accessible or more easily understood.

Contact details for the Scrutiny Committees who scrutinise Legislative Reform Orders can be found at the following links:

Delegated Powers and Regulatory Reform Committee (House of Lords): http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/contact-us/

Regulatory Reform Committee (House of Commons): http://www.parliament.uk/business/committees/committees-a-z/commons-select/regulatory-reform-committee/contact-us/

Non-disclosure of responses

Section 14(3) of the LRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.