



Department for  
Digital, Culture,  
Media & Sport

# **THE LEGISLATIVE REFORM (HORSERACE BETTING LEVY) ORDER 2018**

**EXPLANATORY DOCUMENT BY THE  
DEPARTMENT FOR DIGITAL, CULTURE, MEDIA  
AND SPORT**

**OCTOBER 2018**

## Contents

<b>Chapter 1: Introduction</b> .....	3
<b>Chapter 2: Background to the Order</b> .....	4
Horserace Betting Levy reform.....	4
Extension of the Levy - phase one reforms.....	5
Administrative changes - phase two reforms .....	6
<b>Chapter 3: Statutory requirements</b> .....	9
Power to make the Order.....	9
Compliance with section 3(2) LRRRA pre-conditions.....	14
Other Ministerial duties under the LRRRA.....	21
Contact.....	23
<b>Chapter 4: The detailed proposals and the draft Order</b> .....	24
Levy assessment, collection and enforcement.....	24
Levy application.....	27
Consequential amendments and transitional arrangements.....	31
<b>Chapter 5: Consultation</b> .....	34
Details of the consultation .....	34
Details of the responses received to the consultation.....	38
<b>Chapter 6: Government response</b> .....	42
Government response.....	42
<b>Chapter 7: Conclusion</b> .....	52
Conclusion.....	52
Annex A: List of consultees .....	53
Annex B: List of respondents to the consultation.....	54
Annex C: Consultation response - analysis.....	55
Annex D: List of relevant statutes.....	63

## **1. Chapter 1: Introduction**

- 1.1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (LRRRA) together with the draft of the Legislative Reform (Horserace Betting Levy) Order 2018 (“the draft Order”) which we propose to make under section 1 of the LRRRA.
- 1.2. This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee, and the Regulatory Reform Committee.
- 1.3. The reforms are designed to streamline the administration of the Horserace Betting Levy (“the Levy”) and to reduce administrative inconveniences and financial costs on those affected by the Levy.
- 1.4. The draft Order will transfer responsibility for Levy assessment, collection and enforcement to the Gambling Commission, and pass responsibility for application of Levy funds to a body to be designated by the Secretary of State for these purposes. The reforms will result in the closure of the Horserace Betting Levy Board, a DCMS arm’s length body, and the Levy appeal tribunals.
- 1.5. As a result of expected savings in administration costs, the reforms will ensure that more Levy funding is available to support the beneficiaries of the Levy - including the British horseracing industry and the wider equine population through funding which is provided towards veterinary science and education and the improvement of breeds of horses.
- 1.6. We are seeking to make the law more accessible by proposing to insert all of the relevant Levy provisions in a new Part 17A of the Gambling Act 2005 and to repeal the existing legislation relating to the Levy and its operation.
- 1.7. The draft Order will, therefore, repeal a number of Acts of Parliament which reference the Levy including the Betting, Gaming and Lotteries Act 1963, the Horserace Betting Levy Act 1969 and the Horserace Betting Levy Act 1981.

## **2. Chapter two: Background to the Order**

- 2.1. The Horserace Betting Levy Board (“the Levy Board”) was originally established by the Betting Levy Act in 1961. The Levy Board operates in accordance with the provisions set out in the Betting, Gaming and Lotteries Act 1963 (“the 1963 Act”) and the Horserace Betting Levy Act 1981 (“the 1981 Act”).
- 2.2. The Levy Board is required to assess and collect a statutory levy from the gross profits of bets taken on British horseracing. The Levy is applied, by the Levy Board, in line with the statutory purposes which are:
  - a) the improvement of breeds of horses;
  - b) the advancement or encouragement of veterinary science or veterinary education;
  - c) the improvement of horse racing.
- 2.3. The Levy raised £95m in 2017/18 with the majority of Levy expenditure (over 90%) applied in support of British horseracing.
- 2.4. The 1963 Act established two Levy appeal tribunals, one for England and Wales, and one for Scotland. Under the current statutory arrangements, the Levy Board sends annual assessment notices to all bookmakers and betting exchange providers liable to pay the Levy. The 1963 and 1981 Acts make provision for a person to appeal against their assessment notice (and hence liability to pay Levy), or notice to make payments on account, and for the Levy Board to refer their case to the appropriate Levy appeal tribunal.
- 2.5. The Levy Board is a non-departmental public body, sponsored by the Department for Digital, Culture, Media and Sport (DCMS) and employed 10 FTE members of staff in 2017/18.

### **Horserace Betting Levy reform**

- 2.6. The Government is committed to supporting Britain’s world leading horseracing sector. Racing is the second best attended sport in Britain and provides an estimated £3.45bn<sup>1</sup> to the wider economy.
- 2.7. The Horserace Betting Levy dates back to 1961 and was introduced to offset the decline in race day revenue following the legalisation of bookmakers’ off course operations, which had meant that people wishing to place a bet on a horse race no longer needed to attend that

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<sup>1</sup> Economic Impact of British Racing, Deloitte, 2013 <https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/economic-impact-of-british-racing.html>

race. The Levy ensured that some proceeds from off-course operations were returned to racing.

- 2.8. At Budget 2016<sup>2</sup>, the Government committed to a series of reforms to the Horserace Betting Levy. The first phase of reforms (which extended the Levy to cover online bookmakers) were implemented via secondary legislation in April 2017.<sup>3</sup>

### **Extension of the Levy - phase one reforms**

- 2.9. Following a series of consultations on options for modernising the Levy, the Government implemented the first phase of a package of reforms to modernise the Horserace Betting Levy on 25 April 2017. The package of reforms are designed to help secure the future of horseracing by ensuring a fair return to the sport from gambling operators and to streamline the administration of the Levy.
- 2.10. The first phase of reforms extended the Levy to include offshore online bookmakers for the first time - reversing a steady period of decline in Levy yield as a result of the rapid growth of online gambling. The reforms contributed to a £45m increase in statutory Levy receipts in the year following implementation<sup>4</sup> - providing a significant funding boost across a range of areas including prize money at the lower and middle tiers of the racing industry; industry recruitment, training and education; equine welfare; and measures to promote growth in the horse population.
- 2.11. As a result of the first phase of reforms to the Levy, a number of the original functions of the Levy Board have fallen away or have been significantly reduced. Following the introduction of an exempt amount<sup>5</sup>, the number of operators required to pay the Levy has fallen from over 600 to fewer than 50. This means that there are significantly less operator returns to verify and process, as well as a significantly reduced potential for disputes.

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<sup>2</sup> Budget 2016, p.11

[https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment\\_data/file/508193/HMT\\_Budget\\_2016\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/508193/HMT_Budget_2016_Web_Accessible.pdf)

Further details were included in the following document which was published on the day of the Budget <https://www.gov.uk/Government/consultations/extending-the-horserace-betting-levy-a-consultation-on-implementation>

<sup>3</sup> The Horserace Betting Levy Regulations 2017 (S.I. 2017/589)

<http://www.legislation.gov.uk/ukSI/2017/589/contents/made>

<sup>4</sup> Horserace Betting Levy Board, Annual Reports

<https://www.hblb.org.uk/page/21>

<sup>5</sup> The exempt amount is £500,000 for a Levy period and was introduced as part of the first phase of Levy reforms in April 2017 (full detail regarding the exempt amount is set out in s.338F of the draft Order).

- 2.12. The Levy rate is now fixed at 10% and the previous system of differing Levy rates and rebates no longer applies. Therefore there is no longer a requirement for the Levy Board to agree a Levy Scheme annually on the basis of recommendations made by the Bookmakers' Committee, which has now been abolished. The establishment of a fixed rate has also removed the potential for disputes by bookmakers over differential rates and rebates.

## **Administrative changes - phase two reforms**

### **Overview of proposals**

- 2.13. The policy objectives of the second phase of reforms are to streamline the administration of the Levy and to reduce administrative inconveniences and financial costs on those affected by the Levy.
- 2.14. The Levy Board is a small organisation with an average headcount of 13 FTE staff over the five years to 2016/17. Following the first phase of Levy reforms, completed in April 2017, the Levy Board's role has reduced following the removal of the annual process to set the Levy scheme.
- 2.15. The Government considers that splitting the Levy Board's collection and application functions will provide opportunities to reduce administrative inconveniences and financial costs on those affected by the Levy. The Government estimates that the reforms will result in a reduction in administration costs related to the levy (see para 3.24).

### *Levy collection*

- 2.16. Responsibility for assessment, collection and enforcement of the Levy will transfer to the Gambling Commission, a non-departmental public body sponsored by DCMS. The Levy Board's functions to assess, collect and enforce the Levy will be replicated (with amendments set out below) in a new Part of the Gambling Act 2005 ('Part 17A').
- 2.17. 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 and opportunities to reduce administrative burdens on those businesses with a Levy liability who currently pay money, and provide information, to both the Levy Board and the Commission.

### *Levy application*

- 2.18. Following three previous consultations on Levy reform, the Government concluded that there is no longer a case for Government, through the three Government-appointed Levy Board members, to have involvement in annual decisions on Levy expenditure, and that the beneficiaries of the Levy are best-placed to decide on the allocation and application of Levy funds.
- 2.19. The draft Order will grant new powers for the Secretary of State to designate a body to apply - or distribute - Levy funds. The designated body must represent the interests of one or more of those involved in horseracing, veterinary science or veterinary education, or breeding of horses - and must command the confidence of all of those listed above.
- 2.20. The designated body will be subject to certain requirements relating to the application of funds which will be set out in legislation. The Secretary of State will have powers to suspend payments to the body and to review its status if the Secretary of State has reason to suspect the body no longer meets the conditions for designation or has failed to comply with its legislative duties. The Secretary of State will have power to terminate the status of the designated body and to appoint a new body following a review.
- 2.21. The current statutory purposes for the application of Levy funds will remain unchanged. These state that Levy funds must be applied for purposes conducive to one or more of the following purposes:
- (a) the improvement of breeds of horses;
  - (b) the advancement or encouragement of veterinary science or veterinary education;
  - (c) the improvement of horse racing.
- 2.22. The Government considers that this approach provides a sufficient degree of oversight and accountability over Levy funds and provides the Secretary of State with effective powers to act in the future, if required.
- 2.23. The Government believes that transferring the application function to the Levy beneficiaries will remove duplication in current processes, such as deciding on funding allocation, or conducting data analysis and will enable more efficient processes for allocating and delivering funding for the benefit of the Levy beneficiaries.
- 2.24. At consultation stage, the Government set out that the racing industry was working to establish a body to take on the Levy application function, which is known as the Racing Authority. The Government is minded to designate the Racing Authority as the designated body

responsible for the application of Levy funds, subject to the passage of the legislation. The Government intends to formally designate the Authority once the legislation is in place, subject to being satisfied that the Racing Authority meets the statutory criteria to fulfil the Levy application role.

*Other*

- 2.25. The reforms will result in the closure of the Horserace Betting Levy Board, the Horserace Betting Levy Appeal Tribunal for England and Wales and the Horserace Betting Levy Appeal Tribunal for Scotland.
- 2.26. The proposals will therefore result in the removal of Government from ongoing involvement in relation to Levy application decisions. At present, Government-appointed members on the Board of the Levy Board have a role in agreeing expenditure decisions. Under the proposals, the Government will no longer have an ongoing involvement in this area.
- 2.27. Maximising the efficiency of arm's length bodies is an important issue for Government. The proposals support the Government's approach to Public Bodies Reform and build on the objective of managing and simplifying the public bodies landscape.

*Implementation*

- 2.28. The proposed reforms are intended to take effect in April 2019.

### **3. Chapter three: Statutory requirements**

#### **Power to make order: section 1 of the Legislative and Regulatory Reform Act 2006**

- 3.1. The Government propose to make this Order in accordance with section 1 of the Legislative and Regulatory Reform Act 2006 (LRRRA). It will remove and reduce burdens in accordance with section 1(2) of the LRRRA, namely financial burdens (section 1(3)(a)) and administrative inconveniences (section 1(3)(b)). The Government considers that there are a number of financial costs or administrative inconveniences which will be reduced or removed by the draft Order.

#### **Reductions in financial costs and administrative inconveniences relating to assessment and collection of the Levy**

- 3.2. The Government believes that the proposal to transfer the collection function to the Gambling Commission will create numerous opportunities to reduce administrative and compliance burdens on betting operators. We have identified the following examples:

##### *Reduction in administrative inconvenience associated with making payments and providing information to separate bodies*

- 3.3. The Levy Board currently requests information from bookmakers on their profits on British racing by customers in Great Britain to enable it to assess Levy liability.
- 3.4. However, betting operators are also required, under the terms of their licence, to provide information to the Gambling Commission, including in relation to their horseracing business, for regulatory purposes. The returns must include details of the operator's gross profits on racing.
- 3.5. Therefore under the current system bookmakers must provide similar information to both the Levy Board and the Gambling Commission. The proposed reforms therefore create opportunities to reduce administrative inconveniences for bookmakers in this area by providing information on horseracing to one organisation as opposed to two separate organisations, with related opportunities to move to a single set of detailed reporting requirements.
- 3.6. In addition, the Gambling Commission currently collect licence fees from licensed operators while the Levy Board collects the Levy payments. Under the proposals, while operators may still be required to make separate payments for licence fees and Levy, they will no

longer be required to transact with two organisations - reducing compliance and administrative inconveniences.

*Reduction in administrative inconveniences associated with the provision of information to assess Levy liability*

- 3.7. While the Government acknowledges that the provision of information for regulatory purposes is, in some circumstances, essential to ensure that Levy liability is assessed accurately, the introduction of a threshold above which payments are due brought in a risk of unnecessary reporting requirements.
- 3.8. The Gambling Commission will be better placed than the Levy Board, as a result of its regulatory role, to identify and rule out operators who have very low profits on horseracing and who would therefore clearly fall below the threshold<sup>6</sup> of profits on bets taken on British horseracing – thereby reducing unnecessary reporting by smaller operators over time. The trade body representing land-based bookmakers, the Association of British Bookmakers, welcomed this in response to the Government’s consultation, noting that the Gambling Commission could cross-reference information held as part of the licensing process to ‘rule out’ operators who have very low profits on horseracing; and noted the importance of reducing burdens on smaller operators, in particular.

*Reduction in financial costs associated with the provision of an independent accountants report*

- 3.9. The Levy Board currently require all bookmakers with profits on British racing of greater than £250,000 to provide a full independent accountant’s report<sup>7</sup> to verify that information provided, in relation to Levy liability, is accurate. A reduction in the number of information requests, as set out above, will result in fewer bookmakers being required to provide information for Levy purposes - negating the cost of providing an independent accountants report and therefore reducing a financial cost.
- 3.10. The Gambling Commission will be well placed to reduce reporting requirements in this area, for example by amending this threshold, based on its knowledge of the betting market, thereby reducing financial costs to bookmakers.

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<sup>6</sup> The exempt amount is £500,000 for a Levy period and was introduced as part of the first phase of Levy reforms in April 2017 (full detail regarding the exempt amount is set out in s.338F of the draft Order).

<sup>7</sup> HBLB, Report of the Independent Accountant  
<https://www.hblb.org.uk/page/88>

## **Reductions in financial costs and administrative inconveniences relating to Levy application**

- 3.11. The Government believes that the proposal to transfer responsibility for application of Levy funds to the designated body will create numerous opportunities to reduce financial costs and administrative inconveniences on the Levy beneficiaries. We have identified the following examples:

### *Reduction in administrative inconveniences to the horseracing industry relating to the fixture funding allocation process*

- 3.12. Over 90% of Levy income is applied in support of the statutory objective of the improvement of horseracing. Most of this expenditure is directed towards prize money, with other payments in relation to racing fixtures allocated directly to racecourses as a contribution towards Raceday Services costs<sup>8</sup>, or paid into the Fixture Incentive fund<sup>9</sup>.
- 3.13. Levy funds provide a significant percentage of prize money for racing fixtures which informs fixture planning. The process for the agreement of the annual allocation of fixture funding involves racing's tripartite parties (British Horseracing Authority (BHA), Racecourse Association, Horsemen's Group) submitting proposals to the Levy Board which are subsequently implemented by Levy Board staff who have not been involved in the formulation of these proposals.
- 3.14. The Racing Authority (who wish to be appointed as the designated body to apply Levy funds) will be directly representative of these organisations, and will therefore directly implement decisions made by the parties having been involved in the decision making process.
- 3.15. Therefore, under the current system, these functions are carried out by different bodies. The racing industry has argued that this results in several areas of overlap and the provision of two sets of policies, with time and resource expended to ensure consistency between the two.
- 3.16. The Government believes that enabling the Levy beneficiaries to have direct control over the application of Levy funds will allow for more streamlined and efficient decision-making processes. The reforms will allow the Levy beneficiaries greater freedom to organise the administration of fixture funding in a way that reduces burdens and duplication in this area; for example by creating opportunities for

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<sup>8</sup> Raceday Services costs include regulation and integrity costs.

<sup>9</sup> Fixture incentives are paid to racecourses to stage fixtures at certain times of the year that are relatively unattractive for racegoers but beneficial for off-course betting and therefore Levy generation.

processes relating to fixtures and funding to be merged and one set of joint policies to be developed.

- 3.17. While the Levy Board is not currently party to the Fixture and Funding Group<sup>10</sup>, the Government considers that the Levy beneficiaries are best placed to decide on the most effective approach to the assessment and administration of applications for Levy funding for racing fixtures.
- 3.18. It will be for the Levy beneficiaries to manage this process appropriately; for example to ensure that potential reductions in administrative burdens are balanced against any potential conflicts of interest arising from membership of the Fixture and Funding Group<sup>11</sup>.

*Reduction in administrative inconveniences for the horseracing industry relating to system synergies*

- 3.19. The racing industry have stated that policy development by the tripartite parties (the BHA, the Racecourse Association and the Horsemen's Group) often relies upon data from the Levy Board systems which needs to be requested, leading to a longer timescale for decision making. The proposed transfer of responsibility to the designated body has the potential to eliminate this administrative inconvenience.
- 3.20. The racing industry is regularly required to arrange additional fixtures during the year (for example, as a result of poor weather). The BHA review a range of factors including weather forecasts, impact on the race programme and horse population before identifying, via a competitive process, a racecourse which will be allocated an additional fixture. On each of such occasions, the BHA must approach the Levy Board to request funds for the new fixture relating to prize money and integrity payments.
- 3.21. A designated body would enable this process to be streamlined, with a body representative of the Levy beneficiaries, including British horseracing, empowered to design a process for allocating funding to fixtures in a more flexible way, removing an administrative inconvenience.

*Reduction in administrative inconveniences for the horseracing industry relating to funding for industry recruitment and training*

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<sup>10</sup> While the Levy Board was historically party to discussions relating to both the fixture and funding process via the industry Fixture and Funding Group, this has not been the case in recent years as it has not been considered appropriate for the central funding body to be involved in the process to develop funding recommendations; and to then assess such applications.

<sup>11</sup> Ibid.

- 3.22. With regard to Levy payments towards industry recruitment and training, the Levy Board sub-contracts the BHA to arrange and deliver strategy and funding requests in this area. The BHA operates a Programme Board to agree a strategy with key stakeholders and makes submissions to the Levy Board. The Levy Board approves funding (potentially following further queries) and then sub-contracts the BHA to allocate funds.
- 3.23. This process could be streamlined under the proposals - as many of the representative bodies on the Programme Board will be represented by members of the Racing Authority - thereby eliminating an administrative inconvenience on the racing industry.

*Reduction in financial costs to the Levy beneficiaries*

- 3.24. The Government estimates an annual saving of £0.24m relating to the administration of the Levy as a result of the proposed reforms<sup>12</sup>. As the costs of collecting and applying the Levy are met by Levy funds, this will increase the amount of funding available to be applied for the benefit of British horseracing. This will also be of indirect financial benefit to the betting industry because of the common interest between the racing and betting sectors<sup>13</sup>. For example, an increase in prize money will attract larger field sizes, which supports a more profitable betting market.
- 3.25. The proposal to transfer responsibility for enforcement of non-payment of Levy to the Gambling Commission will result in the Commission assuming responsibility for the full enforcement process. At present the enforcement process involves both the Levy Board and the Gambling Commission. In cases of non-payment, the Levy Board may refer such instances to the Gambling Commission in certain prescribed circumstances and request that an operating licence is revoked. Under the reforms, the Gambling Commission will have discretion to take enforcement action. This will streamline the enforcement process and may reduce burdens both in the administration of the Levy and on bookmakers.
- 3.26. At present the Levy Board requests data from the Gambling Commission to gain information on the number of licenced operators who offer sports betting as part of the Levy assessment function. This process will no longer be required under the proposals, with the

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<sup>12</sup> Further detail of estimated savings is set out in the accompanying De Minimis Assessment.

<sup>13</sup> A detailed economic analysis of the common interest between the racing and betting sectors, including common interest cost estimates, is provided in the Government commissioned Frontier Economics report "An economic analysis of the funding of horseracing" (June 2016).

<https://www.gov.uk/Government/publications/an-economic-analysis-of-the-funding-of-horseracing>

Gambling Commission holding this data - reducing administrative inconveniences related to the assessment process.

### *Conclusion*

- 3.27. In view of these factors, the Government considers it appropriate to use the order-making power in section 1 of LRRRA to alleviate burdens on payers of the Levy and those who benefit from Levy funding.

### **Compliance with section 3(2) of the LRRRA - Preconditions**

- 3.28. The Government is satisfied that the draft Order serves the purpose set out in section 1(2) of the LRRRA and the conditions in section 3(2) are satisfied in relation to the draft Order - as set out below. Further details of specific policy decisions are set out in Chapter 6.

### **Non Legislative Solutions**

- 3.29. The transfer of the Levy collection and Levy application powers to the Gambling Commission and to the designated body respectively cannot be satisfactorily secured by non-legislative means. To achieve the transfers, amendments to existing legislation are required.
- 3.30. Non-legislative options do not enable the Government to amend the constitution and governance arrangements for the administration of the Levy which are clearly defined in legislation.
- 3.31. The Levy Board's scope, functions and membership are fixed in legislation. Non-legislative options could not therefore achieve the benefits outlined above. Reductions in administrative inconveniences for the racing industry, opportunities to reduce burdens on payers of the Levy and the cost savings set out above cannot be fully realised without legislation.

### **Proportionality**

- 3.32. The Government considers that the draft Order is proportionate to the policy objective set out in chapter 2. The reforms will reduce administrative inconveniences and financial costs to affected businesses. The proposals were first announced in March 2016, and have followed extensive consultation over the future of the Levy.
- 3.33. We consider it is proportionate to separate the collection and application functions, recognising the expertise that different bodies could bring to each of these roles. We consider that the Levy beneficiaries are best placed to administer the application of funds. This acknowledges that the proposed designated body, the Racing

Authority, will be formed by the key racing bodies<sup>14</sup> which make up the core industry and have clear pathways for consultation with the grassroots and other smaller industry bodies.

- 3.34. With regard to collection, the Gambling Commission has well-established relationships with those liable to pay the Levy as the industry regulator. The Commission collects licence fees from bookmakers and regulatory returns which include details of operators' horseracing turnover and gross profits.
- 3.35. The Government is satisfied that the proposals to transfer powers to the Gambling Commission to assess, collect and enforce the Levy are proportionate to the policy objectives and are necessary to ensure compliance with the Commission's statutory duties to assess and collect the Levy.
- 3.36. The Government considers that the proposal to provide for an express power for the Gambling Commission to enforce the duty for a person to provide information via civil proceedings (s.338G (3)) is proportionate to the policy objective of ensuring that the Commission has the necessary powers to accurately assess a person's liability to pay the Levy.
- 3.37. The Government has proposed to place requirements upon the designated body in legislation, including to consult the betting industry on its strategic plan for Levy application (s.338P); to retain accounting records and to publish an annual report and accounts (s.338R and s.338Q); to attach terms and conditions to payments made to beneficiaries (s.338O (4)&(5)); and to apply the Levy in line with the Levy purposes (s.338O(1)). The Government is satisfied that these requirements are proportionate to the policy objective and ensure that there is a sufficient degree of oversight and transparency over the use of Levy funds.
- 3.38. The Government has proposed to grant new powers to the Secretary of State to require information from the designated body (s.338S), to designate a body and to review and/or terminate a designated body (sch.15A). The Government is satisfied that such powers are proportionate to the policy objective and ensure that there is a sufficient degree of oversight and transparency over the activities of the designated body, which provides appropriate powers for the Secretary of State to take proportionate action in response to potential concerns

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<sup>14</sup> British Horseracing Authority, Press Release, 2015  
[https://www.britishhorseracing.com/press\\_releases/historic-moment-for-british-horseracing-as-members-agreement-is-signed/](https://www.britishhorseracing.com/press_releases/historic-moment-for-british-horseracing-as-members-agreement-is-signed/)

raised about the conduct of the designated body. For example the power to review the designated body requires that the body is given the opportunity to make representations to the Secretary of State.

- 3.39. The Government is satisfied that removal of the criminal offence of disclosure of information (currently, s.28A of the 1963 Act) is proportionate to the policy objective of streamlining the administration of the Levy and does not prevent a person from safeguarding their personal or commercially sensitive data (see also paragraphs 3.53 to 3.58).

### **Fair Balance**

- 3.40. The Government is satisfied that the provisions in the draft Order strike a fair balance between the public interest of improving the operation of the Levy system and the interests of any person adversely affected by the reforms.
- 3.41. The draft Order provides for a transfer scheme which will provide a mechanism for the Levy Board staff to transfer to the bodies undertaking the Levy Board's functions, where appropriate, in line with Transfer of Undertakings (Protection of Employment) regulations.
- 3.42. We consider that the proposals to transfer the collection function to the Gambling Commission and the application function to a designated body strike a fair balance between the public interest of improving the operation of the Levy system and any person adversely affected by those changes. The provisions are expected to result in a reduction in the overall compliance costs for payers of the Levy and to increase efficiency of Levy application.

### *Levy Appeal Tribunals*

- 3.43. We consider that the proposal to abolish the Levy Appeal Tribunals strikes a fair balance between the public interest in reducing burdens associated with the Levy system and the interests of those who may be adversely affected by it. We do not consider that this will remove any necessary protection, nor prevent a betting operator from challenging an assessment of Levy liability (see also paragraphs 3.46 to 3.52)

### *Information*

- 3.44. We consider that the proposed removal of the criminal offence of disclosure of information (currently, s.28A of the 1963 Act) strikes a fair balance between the public interest in reducing burdens associated with the Levy system and the interests of those who may be adversely affected by it.

- 3.45. The Government considers that the proposal to include an express power for the Gambling Commission to enforce the duty for a person to provide information via civil proceedings (s.338G (3)) strikes a fair balance between the public interest of ensuring liability to pay the Levy is accurately assessed and the interests of any person adversely affected by it.

## **Necessary Protection**

### *Levy Appeal Tribunals*

- 3.46. The Government is of the view that the proposed repeal of the Levy Appeal Tribunals does not remove any necessary protections. We have reached this view having considered previous use of the Tribunals, the impact of recent reforms which have simplified the Levy process, and having assessed the alternative methods which are available for bookmakers to raise a dispute with the collection body.
- 3.47. Bookmakers currently have the right to appeal a Levy assessment notice (and hence liability to pay Levy) to one of the Levy Appeal Tribunals. However, in practice, the Levy Board attempts to resolve disputes directly with bookmakers to avoid the time and cost of a tribunal hearing. This approach has proved effective, and the last known hearing of a Levy tribunal was over 25 years ago.
- 3.48. The Gambling Commission has confirmed it will adopt a similar approach to dispute resolution, in line with its current processes and procedures for resolving disputes with operators.
- 3.49. Furthermore, calculation of the Levy is a much simplified process following the 2017 reforms which established a fixed Levy rate and exempt amount in legislation - providing a clear legislative position on Levy liability.
- 3.50. The collection body no longer has discretion in setting the Levy rate, or in setting discounts for smaller operators, and so the scope for disputes over the amount of Levy due has been significantly reduced. In the first year of the new regime (2017/18) there were no disputes regarding assessment of liability. In addition, there are now fewer than 50 operators paying the Levy compared to more than 600 previously.
- 3.51. In circumstances where a bookmaker is unable to resolve a dispute regarding Levy liability with the Commission directly, we consider that judicial review is an appropriate remedy for bookmakers who wish to challenge an administrative decision of the Gambling Commission regarding the amount of Levy due.

- 3.52. While one individual respondent to the consultation did argue that abolition of the appeal right would remove a necessary protection, respondents from the betting industry did not raise any concerns about this proposal nor indicate that they considered this would remove a necessary protection. Based on the factors set out above, the Government does not consider that the Appeal Tribunals are a necessary protection.

### *Information*

- 3.53. We are satisfied that the proposed removal of the criminal offence in relation to disclosure of information does not remove a necessary protection. We do not think that s.28A should be replicated and applied to the Gambling Commission because the reforms will result in the removal of commercial betting and racing representatives from the Board of the collection body.
- 3.54. The current structure of the Levy Board, whose Board includes representatives from both the racing and betting sectors, will not be replicated under the new arrangements. The Gambling Commission has no commercial interests or industry representation - eliminating any tension or risks in the handling of data received by officers of the collection body in relation to dealings with the Board.
- 3.55. In addition, we consider that the Commission's existing policies for handling sensitive data and for sharing data with third parties are sufficiently robust to provide appropriate assurance and safeguards that data which might identify an individual will not be disclosed.
- 3.56. The Gambling Commission currently handles sensitive commercial data on a daily basis as part of its regulatory function. 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 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. The Gambling Commission has robust and established policies and processes in place to protect operators' data.
- 3.57. Furthermore, respondents to the consultation did not raise any concerns with the Government's preferred option to repeal the s.28A offence.

- 3.58. With regard to the proposed power for the Gambling Commission to share information with the designated body, the Government does not consider that this removes any necessary protection from the betting industry as all of the safeguards which apply to the handling of information by Commission staff will apply.

*Betting industry representation*

- 3.59. The Government does not consider that the betting industry's current representation on the Board of the Horserace Betting Levy Board is a necessary protection. The betting industry currently has one of seven seats on the Levy Board. This, in part, reflects the betting industry's historic role in putting forward annual Levy schemes, via the Bookmakers' Committee, for agreement by the Levy Board. These annual schemes dictated the amounts which the betting industry would be required to pay in the forthcoming year and would often include a series of rebates and discounts for smaller operators. The process of annual Levy schemes was abolished as a result of the first phase of Levy reforms.
- 3.60. In addition, the Government has proposed to include a statutory requirement for the designated body to consult the betting industry on its annual strategic plan which includes its policies and criteria for the application of Levy funds. The Racing Authority has set up the Betting and Racing Liaison Group to facilitate such consultation and to provide for a closer relationship between the two industries, which includes proposals for data sharing to help grow betting on the sport by scheduling more races at times conducive to maximise betting opportunities (e.g. during football's international break).
- 3.61. The Government considers that the proposed requirement for the designated body to consult with the betting industry on its plans for the application of Levy funds provides an appropriate degree of involvement for the betting industry in spending decisions. The Government does not believe that requiring the designated body to include a betting representative on its Board would be proportionate to the policy objectives.

**Rights and Freedoms**

- 3.62. The Government considers that the draft Order does not prevent any person from continuing to exercise any rights or freedoms which that person might reasonably expect to continue to exercise. The transfer of the collection and application functions will not prevent any person from continuing to exercise any right or freedom.

*Betting industry representation*

- 3.63. The Government notes the points raised by the Remote Gambling Association in response to consultation, which suggested that the absence of betting industry representation on the designated body may remove rights or freedoms which the betting industry may reasonably expect to continue.
- 3.64. However the Government does not agree that betting industry representation on the Levy application body is a right or freedom which a person might reasonably expect to continue. As set out above, the betting industry's representation on the Levy Board reflects the historic role of the Board in agreeing annual Levy schemes - which is no longer the case. The betting industry holds just one of seven seats on the Levy Board. The draft Order provides that the designated body will be required to consult the betting industry on its proposed strategy and criteria for the application of funds - and to publish the strategy - ensuring that the sector continues to have the right to input into Levy application decisions.

#### *Transparency*

- 3.65. The Government notes the point raised by an anonymous respondent to the consultation who argued that the public will lose their right to subject the Levy expenditure process to scrutiny via Freedom of Information laws.
- 3.66. While the Freedom of Information Act 2000 will not apply to the designated body under the reforms, the Government does not accept that the proposals will diminish transparency in the Levy application process. Conversely, the Government considers that the current standards of transparency regarding the application of Levy funds will be significantly enhanced due to the robust transparency and reporting requirements which are proposed in the draft Order. The designated body will be required to keep accounting records and to publish an annual report and accounts detailing its activities and expenditure decisions. This must include the identities of the persons to whom Levy funds were paid; the purpose for which the funds were applied and the amount paid in each case.

#### **Constitutional Significance**

- 3.67. The Government does not consider that the provisions are of constitutional significance.

## **Other Ministerial duties under the LRRRA 2006**

### **Consultation**

- 3.68. An eight week public consultation ran from 21 December 2017 to 16 February 2018<sup>15</sup>. Copies of the consultation were sent to key stakeholders (listed at Annex A) and to the Parliamentary Committees.
- 3.69. The consultation sought views on whether a Legislative Reform Order was an appropriate mechanism for implementing the Government's proposals and whether the preconditions in section 3(2) of the LRRRA were met. The consultation document did not contain a draft Order.
- 3.70. Further detail about the consultation, responses received, and the resultant changes to the Government's proposal are set out in Chapters 5 and 6.

### **Parliamentary procedure**

- 3.71. The Government recommends that the draft Order and the Explanatory Document should be laid before Parliament under the affirmative resolution procedure. The Government considers that this will provide the appropriate level of scrutiny.
- 3.72. The amendments are not purely administrative or technical however they are clearly explained in this document (see chapters 4 and 6) and are proportionate to the policy objectives. The policy has been carefully considered and revised as a result of full and open public consultation. The policy is not of such fundamental significance so as to require the super-affirmative process.

### **European Convention on Human Rights**

- 3.73. It is the view of the Minister for Sport and Civil Society that the provisions of the Legislative Reform (Horserace Betting Levy) Order 2018 are compatible with the rights under the convention.

### **Compatibility with legal obligations arising from membership of the European Union**

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<sup>15</sup> Consultation on the use of a Legislative Reform order to reform the administration of the Horserace Betting Levy, 2017 <https://www.gov.uk/Government/consultations/consultation-on-the-use-of-a-legislative-reform-order-to-reform-the-administration-of-the-horserace-betting-levy>

- 3.74. The proposals included in the draft Order are compatible with all obligations arising from membership of the European Union.
- 3.75. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

### **Extent and territorial application**

- 3.76. The extent and territorial application of this draft Order is England and Wales and Scotland. The draft Order does not extend to Northern Ireland.

### **Impact Assessment**

- 3.77. The Government has prepared a De Minimis Assessment which has been published alongside this Explanatory Document. The Equivalent Annual Direct Cost to Business (EANDCB) as a result of the Government's proposals is estimated to amount to £0.1m NPV (Net Present Value) over 10 years, and is therefore well below the £5m threshold for self-certification.
- 3.78. The Government considers that the reforms will result in estimated annual administration savings of £0.24m per annum which will result in more Levy funds being made available for direct expenditure to support the Levy purposes, as set out in legislation. While this is lower than the saving set out at consultation stage, this reflects a new transitional model which will enable the transfer of the majority of the Levy Board staff who work on Levy distribution to the Racing Authority (the proposed designated body) on day one. This will ensure the retention of knowledge and expertise of the Levy Board staff.
- 3.79. The revised estimate also includes costs for a second Independent Director (not included in consultation stage estimates) which has been included to provide improved decision making and rigour to Board discussions. Further information on the estimated administrative savings is provided in the De Minimis Assessment, published alongside this document.

### **Review**

- 3.80. Section 28 of the Small Business, Enterprise and Employment Act 2015 provides a duty on the Minister to review regulatory provisions in respect of certain qualifying activities<sup>16</sup>. Section 28 does not apply to the extent that the power is exercised so as to make or amend provision imposing, abolishing or varying any tax, duty, levy or other charge, or provision in connection with such provision<sup>17</sup>.
- 3.81. The Government does not consider that a general review provision is appropriate as the regulatory provisions in respect of the Horserace Betting Levy are all inserted into primary legislation. However, the draft Order does include a requirement for the Secretary of State to review the Levy rate. New section 338U in the Gambling Act 2005 replicates Regulation 5 of the Horserace Betting Levy Regulations 2017 so as to retain the Government's commitment to review the Levy rate within seven years of 25 April 2017.

### **Contact**

- 3.82. James Perkins, Department for Digital, Culture, Media and Sport (Telephone: 0207 211 6920 or email: [james.perkins@culture.gov.uk](mailto:james.perkins@culture.gov.uk)) can be contacted regarding any queries related to the instrument.

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<sup>16</sup> Small Business, Enterprise and Employment Act 2015, Explanatory Note <http://www.legislation.gov.uk/ukpga/2015/26/notes/division/5/2/5/1>

<sup>17</sup> See section 28(3) of the Small Business, Enterprise and Employment Act 2015

#### **4. Chapter four: The detailed proposals and a summary of the Draft Order**

- 4.1. This chapter of the explanatory document provides a summary of the Government's proposals as set out in the draft Order. Further details regarding the proposals is set out in the Government response to the consultation in Chapter 6.

##### **Overview**

- 4.2. The draft Order repeals the existing legislation relating to the Levy and its operation, substantially re-enacting it in a new Part of the Gambling Act 2005 (Part 17A) with amendments as discussed below.
- 4.3. The draft Order abolishes both the Horserace Betting Levy Board and the Levy Appeal Tribunal for England and Wales, and the Tribunal for Scotland.
- 4.4. Responsibility for assessment, collection and enforcement of the Levy is transferred to the Gambling Commission.
- 4.5. The draft Order grants new powers for the Secretary of State to designate a body to apply Levy funds. The 'designated body model' draws on a precedent found in legislation relating to Higher Education.<sup>18</sup> The designated body will be subject to requirements relating to the application of Levy funds, set out in legislation, and the Secretary of State will have powers to suspend payments to the body and to review its status if the Secretary of State has reason to suspect the body no longer meets the conditions for designation, or has failed to comply with its legislative duties. The Secretary of State will have power to terminate the status of the designated body and to appoint a new body following a review.
- 4.6. The draft Order provides for commencement of the Order in two stages to ensure a smooth transition to the new arrangements. The first stage commences the provisions required for the Secretary of State to designate a body to be the designated body and to prepare a transfer scheme in connection with the abolition of the Levy Board and the appeal tribunals. The remaining provisions implementing the reforms are commenced on the day the designated body comes into effect.

##### **Levy assessment, collection and enforcement**

- 4.7. The draft Order replicates the majority of the Levy Board's assessment and collection powers which are set out below.

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<sup>18</sup> Higher Education Act 2004 and Higher Education and Research Act 2017.

## *Gambling Act 2005 - Part 17A - Horserace Betting Levy*

### *s.338A - The horserace betting levy*

- 4.8. This section replicates parts of s.24(1) and s.27(1) and (1C) of the 1963 Act while providing that payment of the Levy should now be made to the Gambling Commission. Bookmakers and betting exchange providers will have a duty to pay the Horserace Betting Levy to the Gambling Commission in respect of each Levy period. The Commission must assess and collect the Levy in accordance with the legislation.

### *s.338B - Amount of levy*

- 4.9. This section replicates s.27(1A) & (1B) and s.29A of the 1963 Act. It sets out the Levy rate, which was included in legislation as part of the first phase of Levy reforms, and defines a leviable bet.
- 4.10. In order to make the legislation more easily understood the draft Order includes a minor amendment to the definition of a “leviable bet” in s.338B(4)(b) to make it clearer that where there is more than one person party to the bet, for example in betting exchange bets, at least one of those persons must be in GB when the bet is made. This does not change the operation of the current legislation.
- 4.11. Betting exchange commission remains to be included in a person’s profits when the bet relates to horseracing in GB and at least one party to the bet was in GB when the bet was made. The change is simply to make the legislation more easily understood.

### *s.338C - Profits as a bookmaker*

- 4.12. This section replicates s.27A of the 1963 Act and sets out how profits on leviable bets should be calculated.

### *s.338D - Stake money*

- 4.13. This section replicates s.27B of the 1963 Act and sets out how stake money should be calculated.

### *s.338E - Betting exchange commission*

- 4.14. This section replicates s.27C of the 1963 Act and sets out how betting exchange commission should be treated for the purpose of calculating a person’s profits and Levy liability.

### *s.338F - The exempt amount*

- 4.15. This section replicates s.27D of the 1963 Act and sets out details of the £500,000 exempt amount, which was included in legislation as part of the first phase of Levy reforms.

*s.338G - Power to obtain information to assess levy liability*

- 4.16. This section replicates s.27E of the 1963 Act which provides that the collection body may require information reasonably required from any person who appears liable to pay the Levy. Information from payers enables the collection body to confirm that payments made on account based on estimates during the year accurately reflect true liability at the year end.
- 4.17. The draft Order provides the Gambling Commission with an express power to enforce the duty to provide information in civil proceedings via an injunction (s.338G (3)).

*s.338H - Assessment and collection of the levy*

- 4.18. This section replicates s.28(4A), (4B), (7) & (8) of the 1963 Act and, following the end of a Levy period, requires the Gambling Commission to give an assessment notice to those it has assessed as liable to pay the Levy in respect of the Levy period. Where a person brings judicial review proceedings in respect of an assessment notice, the requirement to pay the Levy will be postponed until the outcome of the proceedings. This is in line with current provisions postponing payment until the outcome of an appeal to the Levy tribunals (which are being abolished).

*s.338I - Payments on account*

- 4.19. This section replicates s.1(1)-(3) & s.4(1) of the Horserace Betting Levy Act 1981 and enables the Gambling Commission to require those who appear liable to pay the Levy to make payments on account in advance of assessment of liability.

*s.338J - Relief from payments on account*

- 4.20. This section replicates s.3 of the 1981 Act with the Gambling Commission now exercising the Levy Board's functions. The provision allows a person who has been given a notice of determination by the Commission to apply in writing to be excused from making payments on account, if their circumstances make it unjust that they should make payments on account in advance.

*s.338K - Return of excess payments*

- 4.21. This section replicates s.4(2) of the 1981 Act and requires the Commission to repay any excess payments made on account when it provides an assessment notice under s.338H.

*s.338M - Payment of levy receipts to the designated body*

- 4.22. The draft Order provides that the Gambling Commission must pay its Levy receipts to the designated body at least once each quarter. The section defines “levy receipts” which includes money received by the Commission in relation to payment of the Levy under s.338A, payments made on account under s.338I or otherwise, the interest or other return on any investment made by the Commission (see below) and any repayments received as a result of the termination of the designated body.
- 4.23. The draft Order also includes powers for the Commission to deduct reasonable administration costs, and to retain funds for the purposes of repaying any excess payments from bookmakers made on account as per the requirements set out in s.338K. This replicates the Levy Board’s current power to apply Levy funds to cover administration costs. The power for the collection body to retain reserves of Levy funds is now linked to a specific purpose (repayment of excess amounts).
- 4.24. As the Commission has the power to retain reserves for the purposes of returning excess payments under s.338K, the draft Order provides that it may invest Levy receipts held.

*s.338N - Suspension of payments under section 338M*

- 4.25. The draft Order contains a power for the Secretary of State to direct the Commission to suspend payments to the designated body if the Secretary of State has decided to review the body’s designation or following such a review, the Secretary of State is satisfied that the body no longer meets the conditions for designation (see below). The direction must specify when the suspension is to start and end. The Secretary of State may also direct that, while the suspension is in force, the designated body may not apply Levy funds (section 338O(6)).

**Levy application**

*s.338L - The designated body*

- 4.26. This section sets out that “the designated body” means the body for the time being designated for the purposes of Part 17A of the Gambling Act 2005 by the Secretary of State under Schedule 15A.

## *Schedule 15A*

### *Designation of a body*

- 4.27. The draft Order provides that the Secretary of State must designate a body corporate to be the designated body but only if the Secretary of State is satisfied that the body meets each of the following conditions:
- i) it is a suitable body;
  - ii) it is capable of applying Levy funds in an effective manner in accordance with its duty under s.338O;
  - iii) it is capable of exercising its legislative functions under Part 17A;
  - iv) it consents to the designation.
- 4.28. In considering whether a body is suitable the Secretary of State must have regard (among other things) to whether:
- i) it appears to represent the interests of one or more of the following groups: persons involved in horse racing; persons involved in veterinary science; persons involved in veterinary education; persons involved in the breeding of horses; and
  - ii) it commands the confidence of the persons mentioned in (i).

### *Review of designation*

- 4.29. The Secretary of State may review the designation of a body if the Secretary of State has reason to suspect that the body no longer meets the conditions for designation (as set out above) or the body has failed to discharge one or more of its legislative duties under Part 17A. In conducting a review the Secretary of State must give the designated body an opportunity to make representations.

### *Termination of designation*

- 4.30. The draft Order sets out a number of conditions whereby the designation of a body may be terminated. These include termination by way of agreement between the designated body and the Secretary of State and notice of termination given by either the designated body or the Secretary of State. The Secretary of State may only give notice terminating the status of the designated body following a review and if satisfied that the body no longer meets the conditions for designation or has failed to discharge one or more of its duties under Part 17A.
- 4.31. If the designation of a body is terminated, the Secretary of State may, by regulations, make saving or transitional provision. The Secretary of State may also make a property transfer scheme in respect any

property which has been acquired by the former designated body as a result of the application of Levy funds and any rights or liabilities arising as result of the application of Levy funds. This provides a mechanism to ensure a smooth transition to any future arrangements.

*s.338O - Application of levy funds by the designated body for particular purposes*

- 4.32. This provision sets out the requirements regarding the application of Levy funds by the designated body. It replicates the Levy Board's duty under s.24(1) to "apply" the levy funds for purposes conducive to one or more of the listed purposes. The permitted purposes remain the same as at present. These are:
- a) the improvement of breeds of horses;
  - b) the advancement or encouragement of veterinary science or veterinary education;
  - c) the improvement of horse racing.
- 4.33. Section 338O(3) includes power for the designated body to deduct reasonable administrative costs from Levy funds, retain a reserve of Levy funds for purposes conducive to one or more of the statutory purposes above and to invest amounts deducted or retained accordingly.
- 4.34. Subsection (4) requires the designated body to attach terms and conditions to the payment of Levy funds to another person. The terms and conditions must include a requirement that the funds are applied for a particular purpose, and must enable the designated body to require repayments of funds if any of the terms and conditions subject to which the funds were paid are breached.
- 4.35. Subsection (7) places a duty on the designated body to repay all levy funds held to the Commission in the event its designation is terminated.
- 4.36. Subsection (9) provides that Levy funds due to be repaid to the Commission under subsection (7) are recoverable by the Commission as a debt due.

*s.338P - Strategic plan*

- 4.37. The designated body must publish a strategic plan for each financial year which contains a statement setting out the body's policies (including its criteria) for the application of Levy funds. In preparing a strategic plan the designated body must consult one or more persons who appear to represent the interests of bookmakers, and betting exchange providers, whose business is concerned with leviable bets and such other persons as the body thinks appropriate. The strategic

plan must be published before the start of the financial year in question.

*s.338Q - Accounts and records; s.338R - Annual report*

- 4.38. The designated body must keep accounting records, prepare a statement of accounts and have the accounts audited by a qualified accountant each year. The accounts must be published annually.
- 4.39. The designated body must also report on the exercise of its functions each year including in relation to how the body followed the policies in its strategic plan (s.338P), information about how the levy funds were applied including the identity of persons to who funds were paid, the purpose for which funds were applied and the amount paid in each case.

*s.338S - Power to obtain information from the designated body*

- 4.40. The draft Order provides that the Secretary of State may, by notice, require the designated body to provide such information, about itself and the exercise of its functions under legislation, as the Secretary of State may reasonably require for the exercise of the Secretary of State's statutory functions.

*s.338T - Application of levy funds other than by the designated body*

- 4.41. This section contains interim provisions to provide a mechanism to enable a continuous flow of Levy funding in the event that no designated body is in place (for example where the body ceases to exist or its status has been terminated pending the designation of a new body) or where the Secretary of State has suspended payments to the designated body under s.338N.
- 4.42. In such cases, the draft Order provides that the Secretary of State has power to direct that Levy funds which would otherwise be paid to the designated body are to be applied by the Gambling Commission in accordance with the Secretary of State's direction.
- 4.43. A direction by the Secretary of State must include provisions about the sums to be applied, the persons to who the sums are to be applied and the terms and conditions subject to which the sums are to be applied.

**Other**

*s.338U - Review of the rate of the Levy*

- 4.44. This section replicates regulation 5 of the Horserace Betting Levy Regulations 2017 and retains the Government's commitment to review the Levy rate within seven years of 25 April 2017.

*s.338V - Notices; s.338W - Directions; and s.338X - Interpretation*

- 4.45. The draft Order sets out the requirements for the serving of notices at s.338V.
- 4.46. The draft Order provides that, where the Secretary of State gives a direction under this Part, that this is exercisable by giving the direction in writing and includes a power to vary or revoke such direction by a subsequent direction.
- 4.47. The draft Order sets out a number of definitions relating to the legislation.

**Consequential amendments**

- 4.48. The draft Order sets out a number of consequential amendments which are necessary owing to the historic nature of the Levy legislation which features in multiple Acts of Parliament dating back to the 1960s. Amendments of particular interest are highlighted in the Explanatory Document in this section. A full list of amendments can be found in the draft Order.

*Gambling Act 2005*

- 4.49. As noted above, the draft Order inserts the Levy provisions into a new Part of the Gambling Act 2005 (Part 17A). As a result of this, the draft Order amends several provisions in the 2005 Act to clarify their application to the Commission's Levy functions. Sections 22 (duty to promote the licensing objectives) and s.23 (statement of principles for licensing and regulation) are amended to clarify that references to the Commission's functions under the 2005 Act do not include its functions under Part 17A (horserace betting levy).
- 4.50. Sections 116 (review) and 120 (conditions for suspension or revocation of operating licences) are amended to replicate the basis of the current regulatory enforcement provisions set out in The Gambling Act 2005 (Horserace Betting Levy) Order 2007, with the Levy Board's discretion to request review or revocation of a licence for non-payment transferred to the Commission.
- 4.51. Part 15 (inspection) and s.342 (false information) are amended to clarify that they do not apply to the Commission's Levy functions.

- 4.52. Schedule 6 (Exchange of Information: Persons and Bodies) is amended to include the designated body in Part 3. This enables the Commission to provide information received by it in the exercise of its functions to the designated body for use in the exercise of the body's functions.

#### *Gambling (Licensing and Advertising) Act 2014*

- 4.53. The draft Order repeals section 2 of the Gambling (Licensing and Advertising) Act 2014. Section 2 provides that the Secretary of State may by regulations make provision to secure payment of the Levy by bookmakers who are required to hold a remote operating licence issued by the Gambling Commission. This power was exercised as part of the first phase of reforms to the Levy by way of the Horserace Betting Levy Regulations 2017 and amendment to the 1963 Act.
- 4.54. The provision extending payment of the Levy to include bookmakers who are required to hold remote operating licences is replicated in new section 338A inserted into the Gambling Act 2005.

#### *Horserace Betting and Olympic Lottery Act 2004*

- 4.55. The draft Order amends the Horserace Betting and Olympic Lottery Act 2004 to retain the power for Government to abolish the Levy system in future via secondary legislation. The Government has no plans to abolish the Levy system; this amendment simply maintains the current legislative position.

### **Other**

#### *Transitional and supplementary provisions and savings*

- 4.56. The draft Order provides that any actions undertaken by the Levy Board in relation to the Levy before the abolition date may be continued by the Gambling Commission, or the designated body in the case of actions relating to the application of Levy funds, after the abolition date.
- 4.57. The draft Order also includes provisions to ensure that any appeals referred to a Levy Appeal Tribunal may be continued after the effective date, with the Levy Appeal Tribunal continuing to exist for the purposes of determining the appeal.

#### *Transfer schemes*

- 4.58. The draft Order provides that the Secretary of State may make one or more transfer schemes or staff transfer schemes in connection with the abolition of the Horserace Betting Levy Board and the Levy Appeal

Tribunals.

## **5. Chapter five: Consultation**

### **Details of the consultation**

- 5.1. A public consultation ran for eight weeks from 21 December 2017 to 16 February 2018<sup>19</sup>. The consultation did not include a draft Legislative Reform Order. Copies of the consultation were sent to key stakeholders (see Annex A) and to the Parliamentary Committees.
- 5.2. The consultation sought views on whether a Legislative Reform Order was an appropriate mechanism for implementing the Government's proposals and whether the preconditions in section 3(2) of the LRRRA were met.
- 5.3. The consultation followed three previous consultations on options and proposals for reform or replacement of the Horserace Betting Levy.
- 5.4. The consultation set out the Government's proposals in three main areas: transferring responsibility for collecting the Levy from the Levy Board to the Gambling Commission; transferring responsibility for application of the Levy from the Levy Board to the racing industry; and other administrative arrangements.

### *Overview of consultation proposals*

#### **Transferring responsibility for collecting the Levy from the Levy Board to the Gambling Commission**

- 5.5. The consultation set out proposals to transfer responsibility for collecting the Levy to the Gambling Commission. The consultation set out that the transfer of the collection function to an existing arm's length body - which carries out an analogous function in collecting licence fees from bookmakers - would provide opportunities for savings from economies of scale. The Gambling Commission's costs in administering the Levy will continue to be met from Levy funds, as is the case with the Levy Board currently.
- 5.6. The Government argued that a reduction in administration costs would maximise the amount of Levy funds that can be spent by the Levy beneficiaries in support of the core objectives of the Levy, which would also be of indirect financial benefit to businesses in the betting sector.

### **Information requirements and assessment of Levy due**

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<sup>19</sup> Consultation on the use of a Legislative Reform Order to reform the administration of the Horserace Betting Levy, December 2017 <https://www.gov.uk/Government/consultations/consultation-on-the-use-of-a-legislative-reform-order-to-reform-the-administration-of-the-horserace-betting-levy>

- 5.7. The Government proposed for the Gambling Commission to take on the Levy Board's statutory powers to obtain information reasonably required to assess levy liability.

#### Protection of operators' data

- 5.8. The Government considered that the Gambling Commission's existing policies and procedures for safeguarding and handling commercially sensitive and personal data were robust in protecting betting operators data, and proposed that the offence of disclosure of information found at s.28A of the 1963 Act would not be replicated.

#### Levy periods and payments

- 5.9. The consultation set out two options regarding the period upon which levy liability is calculated, namely whether to maintain the status quo whereby the Levy is paid on the basis of anticipated profits for the current year and subsequently reconciled at year end (the Government's preferred option); or to change the system so as to calculate the amount due based on operators profits from the previous year ('Levy-1').
- 5.10. In regards to calculating the Levy owed, the Government proposed to grant the Gambling Commission the same powers the Levy Board have currently, enabling the Commission to set out the amount owed for a given period and determine the frequency of collection.

#### Enforcement

- 5.11. Where there is a failure to pay the Levy, the Government proposed that the Gambling Commission should have powers to take a civil enforcement route, where necessary, to recover funds - as the Levy Board have currently.
- 5.12. In addition, mirroring the current approach whereby the Levy Board has discretion to refer cases of non-payment to the Commission where certain criteria are met, and whether to require the Commission to revoke a licence, the consultation set out that the Gambling Commission should have powers to review and revoke an operator's licence in cases of non-payment of the Levy. It was proposed that the Gambling Commission would have discretion as to whether, and when, to make use of this power, informed by the facts of each case.

#### Appeals

- 5.13. The Government proposed to abolish the Horserace Betting Levy Appeal Tribunal for England and Wales and the Horserace Betting Levy Appeal Tribunal for Scotland.
- 5.14. It was noted that, in practice, the Levy Board attempts to resolve disputes directly with bookmakers to avoid the time and cost of a Tribunal hearing. The last known hearing of a Levy tribunal was in the 1990s and the Gambling Commission is expected to adopt similar approach to dispute resolution (direct engagement with operators), in line with its current processes and procedures.
- 5.15. The consultation noted alternative options available for operators to challenge a decision of the Commission, such as Judicial Review and the ability to appeal to the General Regulatory Chamber in the event a licence is revoked.
- 5.16. It was also noted that the Levy Tribunals are public bodies and the proposals therefore support the Government's approach to Public Bodies Reform and build on the objective of managing and simplifying the public bodies landscape.

### **Transfer responsibility for distribution of the Levy from the Levy Board to the Levy beneficiaries**

- 5.17. The Government proposed to transfer the responsibility for expenditure decisions and the application of the Levy to the beneficiaries of Levy funds. The consultation set out that the racing industry have been working to establish a body to take on this function, which is to be known as the Racing Authority.
- 5.18. In delivering this proposal, the Government sought to remove its involvement in annual decisions on levy expenditure, considering that the British horse racing industry is best-placed to decide on the allocation of levy funds.

### Levy expenditure

- 5.19. The Government proposed to include a requirement for the distribution body to consult the betting industry and other relevant stakeholders on its strategy for the disbursement of Levy funds.

### Transparency requirements

- 5.20. The consultation set out that the distribution body would be required to publish an annual report and statement of accounts setting out its use of levy funds. The accounts must be audited independently and a

subsequent report published, which is analogous to the requirements incumbent on the Levy Board.

- 5.21. The consultation noted the requirement for the distribution body to comply with State aid rules including those requirements agreed as part of the State aid approval<sup>20</sup> for the package of reforms.

## **Administrative arrangements**

### Administration costs

- 5.22. The Government proposed that administration costs for both the Gambling Commission and the new distribution body will be recovered from Levy receipts, as is the case currently for the Levy Board. The Government also proposed that the Gambling Commission will be able to hold reserves from Levy funds.

### Assets and liabilities

- 5.23. The Government proposed that the majority of the Levy Board's assets and liabilities will transfer to the new distribution body, with some assets and liabilities moving to the Gambling Commission. The consultation set out that the LRO will include provision for the transfer of the Levy Board's assets and liabilities.

## **Consultation questions**

- 5.24. In line with these proposals, the consultation set out a number of questions that were designed to help respondents provide evidence to inform the assessment. The questions were as follows:
- 5.24.1. Do you agree that the proposals will remove or reduce burdens?
  - 5.24.2. 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?
  - 5.24.3. Are there any non-legislative means that would satisfactorily remedy the issues which the proposals intend to address?
  - 5.24.4. Are the proposals proportionate to the policy objectives?
  - 5.24.5. Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?
  - 5.24.6. Do the proposals remove any necessary protection?

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<sup>20</sup> Horserace Betting Levy for Great Britain, 2017  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46216](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46216)

- 5.24.7. 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.

### **Details of responses received to the consultation**

- 5.25. The Government received twelve responses to the consultation from a range of respondents, including those representing the racing, breeding, betting and veterinary industries (see Annex B for a list of respondents). Several of the responses received were from trade bodies representing a large number of members across these sectors. A question by question summary of responses received is included at Annex C.

### **Responses from the betting industry**

- 5.26. A total of four responses were received from the betting industry, including one response from a betting operator and three separate responses from trade bodies representing a large section of the industry. On the whole, the betting industry did not oppose the reforms, though they disagreed with the Government's argument that efficiencies from the reforms would be of indirect financial benefit to the betting industry due to the common interest between betting and racing. They argued that the anticipated savings would benefit the racing sector alone, as the Levy rate nonetheless remained fixed for betting operators.
- 5.27. One trade body from the betting industry stated that the proposals would remove the statutory involvement of bookmakers in distribution decisions. One other trade body and a betting operator raised similar points, suggesting that the Racing Authority should be required to consult with the betting sector on its strategy for disbursement of Levy funds to ensure an appropriate level of representation in decision making.
- 5.28. More specifically, one betting operator and one on-course trade body called for betting operators to be members of the Racing Authority, suggesting the need for distinct representation from across the sector.
- 5.29. The Federation of Racecourse Bookmakers were supportive in principle but suggested that a consultation should be held on the nature of the Racing Authority. One betting operator (Betfred) suggested the need for transparency requirements, such as the Racing Authority publishing details of all spending over £500 in full, and that their administration costs should not increase in any one year by more than the Government agreed rate of inflation. The Remote Gambling

Association supported the Government proposal to introduce annual reporting arrangements for the distribution body.

- 5.30. The Association of British Bookmakers, representing the land-based betting sector, strongly agreed with the Government's preferred option to maintain the current Levy period. The Association highlighted that the alternative 'Levy-1' proposal would seriously disadvantage the retail sector due to the fact that gross win on horseracing is in decline in betting shops, putting the retail sector at risk of overpaying if required to pay based on the previous year's trading. One betting operator (Betfred) also favoured the current levy period, stating that the current system of collection and payment is effective.
- 5.31. All betting industry respondents were generally satisfied with the proposal for the Gambling Commission to collect the Levy and one respondent suggested that the Commission would be in a position to cross-reference information to rule out operators with low profits. It was emphasised that the Gambling Commission should be allowed the flexibility to develop administrative processes for collection and enforcement.

#### Responses from the racing industry

- 5.32. The racing industry was largely supportive of the proposed reforms. The constituent members of the future Racing Authority - the British Horseracing Authority, the Horsemen's Group and the Racecourse Association - were strongly in favour of the proposals, citing their estimate of annual efficiency savings at c.£1.4 million, the potential to eliminate a significant number of duplicative functions and layers of administration, and the economies of scale that could be achieved through merging and streamlining the collection and enforcement processes.
- 5.33. The response highlighted that increased funding from efficiency savings would support participants and the grassroots of British racing, as well as further improving horse welfare and veterinary sciences and enhancing the attractiveness of British racing as a socially responsible betting product. In addition, the constituent members favoured the Government's preferred option to retain the current Levy period, noting that it better reflects and encourages direct partnership between racing and betting.
- 5.34. Arena Racecourse Company (ARC) called for a formal relationship between betting and racing to be included within the constitution of the Racing Authority, and expressed its interest in seeing how the expertise of the Levy Board could be retained in the new

arrangements. ARC questioned the nature of the relationship between the BHA and the Racing Authority - a concern echoed by one further respondent from the racing sector - and highlighted the desirability of ensuring clear demarcation between roles, responsibilities and spending commitments of the Racing Authority and the BHA. ARC also noted the need to set out clear mechanisms for holding the Racing Authority to account than those currently in place for the Levy Board.

#### Responses concerning the veterinary, breeds and equine welfare sectors

- 5.35. The veterinary and equine welfare sectors supported modernisation of the Levy in principle, but raised concerns that the proposals would remove the statutory obligation to invest in racehorse health and welfare through veterinary research and education.
- 5.36. One group of respondents proposed a specific requirement for the Racing Authority to consult with the equine veterinary industry, while suggesting that veterinary expenditure should be split to ensure Levy funds are sufficiently distributed across all aspects of veterinary work and research. They also welcomed the Government's proposed transparency requirements for the distribution body, which it suggested would be served by a Thoroughbred Research Council modelled on the UK research councils.
- 5.37. The Rare Breed Society Trust were supportive of the reforms and the continued commitment to support the improvement of breeds.

#### Responses from Parliamentarians and interested individuals

- 5.38. Two Parliamentarians (Lord Lipsey and Philip Davies MP) and one anonymous individual respondent questioned both the financial arguments for the proposals and the legality of using a LRO to implement the reforms. It was stated that alternative non-legislative options had not been considered and that the reforms were not proportionate to the policy.
- 5.39. The two Parliamentarians asked why modernisation of the Levy Board had not been considered as an option, and argued both that the statutory remit of the Gambling Commission does not permit it to collect the Levy, and that the reforms will vary a process of taxation, for which primary legislation would be the appropriate vehicle.
- 5.40. It was highlighted through these responses that oversight and control over the use of public money would be removed from Government, and that the public would no longer have a right to subject the levy expenditure process to scrutiny through the Freedom of Information

Act. It was also argued that the criteria for use of a LRO were not being met, in particular that the financial argument was tenuous.

- 5.41. One anonymous respondent said that the costings were unrealistic, had been sourced from bodies with naturally divergent interests and that the Racing Authority has no corporate substance and its costs were highly uncertain. The same respondent stated that assumptions had been made that were favourable to the reforms, that dissimilar values had been compared, and that risks to the project had not been quantified. It was also noted that the proposed legislative changes would not remove the Government's responsibility to ensure compliance with State aid rules over the lifetime of the Racing Authority.

## 6. Chapter six: Government response

- 6.1. The Government wishes to place on records its thanks to all those who responded to the consultation. The views of respondents have been fully considered in light of the policy objectives and the criteria for use of a Legislative Reform Order under the LRA 2006. This section outlines the Government's response to the consultation.

### **Transferring responsibility for collecting the Levy from the Levy Board to the Gambling Commission**

- 6.2. The Government notes that the majority of respondents to the consultation supported the policy to transfer the Levy collection function to the Gambling Commission. In particular the Association of British Bookmakers suggested the Commission would be in a position to cross-reference information to rule out operators with low profits, thereby reducing burdens on smaller operators.

### Information requirements and assessment of Levy

- 6.3. At consultation, the Government set out that the Gambling Commission would take on the Levy Board'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. **Therefore we intend to replicate the current statutory powers for the collection body to obtain information reasonably required to assess levy liability.**
- 6.4. The Government considers it essential that the collection body has proportionate powers to ensure compliance with the legislative requirements.
- 6.5. **Therefore we propose to grant an express power to the Commission to enforce the duty to provide information in civil proceedings via an injunction.**
- 6.6. We consider that this is an effective and proportionate approach which will ensure that the Commission has the appropriate tools necessary to ensure compliance with the law.

### Protection of operators' data

- 6.7. One respondent from the betting industry supported the Government's view that the existing protections in place at the Gambling Commission

regarding the processing of data are sufficiently robust to ensure the protection of operators' data. Other respondents did not provide views on this point.

- 6.8. The Gambling Commission processes operator data on a daily basis as part of their regulatory duties. The 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<sup>21</sup> 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.
- 6.9. The current structure of the Levy Board, whose Board includes representatives from both the racing and betting sectors, will not be replicated under the new arrangements. The Gambling Commission has no commercial interests or industry representation - eliminating any tension or risks in the handling of data received by officers of the collection body in relation to dealings with the Board.
- 6.10. **The Government is satisfied that the existing protections in place regarding the processing of data at the Gambling Commission will safeguard operators' data. The Government, therefore, does not intend to replicate the s.28A offence found in the Betting, Gaming and Lotteries Act 1963.**
- 6.11. As noted in the pre-conditions section in Chapter 3, we are satisfied that removal of the criminal offence in relation to disclosure of information does not remove a necessary protection.

#### Levy periods

- 6.12. The land-based betting sector, one individual betting operator and the Racing industry strongly agreed with the Government's preferred option to maintain the current definition of a Levy period<sup>22</sup> and did not support the alternative option set out. There were no responses which provided support for the alternative option.
- 6.13. **The Government agrees that the alternative option could have a disproportionate impact on certain groups of betting operator and is unconvinced of the potential benefits of this option. As**

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<sup>21</sup> Cabinet Office, Government Security Classifications  
<https://www.gov.uk/government/publications/government-security-classifications>

<sup>22</sup> Levy period is defined as the period of 12 months beginning with 1 April.

**proposed at consultation, we therefore intend to maintain the current definition of a Levy period.**

#### Enforcement

- 6.14. The Government considers that an effective and proportionate enforcement mechanism is essential to encourage and ensure compliance with the Gambling Commission's statutory duty to collect and assess the Levy.
- 6.15. At consultation, the Government proposed to replicate the current enforcement provisions which enable the collection body to pursue non-payment as a civil debt due; and allow for the Gambling Commission to take regulatory action in the form of a licence review - and potentially - revocation, subject to certain criteria.<sup>23</sup> The Gambling Commission will have discretion as to whether, and when, to make use of these powers, informed by the facts of each case.
- 6.16. The Government maintains that this approach provides a strong deterrent against non-payment and has included these provisions in the draft Order.**

#### Appeals

- 6.17. As noted in the Government's consultation, the last known hearing of a Levy Appeal Tribunal was over 25 years ago and the Levy Board attempts to resolve disputes directly with the bookmakers to avoid the time and cost of a tribunal hearing. The Gambling Commission has confirmed it will adopt a similar approach to dispute resolution, in line with its current processes and procedures for resolving disputes with operators.
- 6.18. Calculation of the Levy is now a much simplified process following the 2017 reforms which established a fixed Levy rate and exempt amount in legislation - providing a clear legislative position on Levy liability. The collection body no longer has discretion in setting the Levy rate, or in setting discounts for smaller operators, and so the scope for disputes over the amount of Levy due has been significantly reduced.
- 6.19. In circumstances where a bookmaker is unable to resolve a dispute regarding Levy liability with the Commission directly, we consider that judicial review is an appropriate remedy for bookmakers who wish to challenge an administrative decision of the Gambling Commission regarding the amount of Levy due.

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<sup>23</sup> Non-payment for at least three months on more than one occasion in the last five years.

- 6.20. In addition, operators will continue to have a right of appeal to the First Tier Tribunal (General Regulatory Chamber) against any decision of the Gambling Commission to revoke their licence for non-payment of Levy.
- 6.21. The Government therefore intends to abolish the Horserace Betting Levy Appeal Tribunal for England and Wales; and the Tribunal for Scotland.**
- 6.22. Appointments to the Scottish tribunal are made by the Lord President of the Court of Session, however overall responsibility for the Scottish tribunal rests with the UK Government. The Government has consulted the Scottish Government on the proposals to abolish the Tribunal and confirms that the Scottish Government supports the approach set out above.

### **Transfer responsibility for application of the Levy from the Levy Board to the racing industry**

- 6.23. The Government welcomes the feedback received by respondents in relation to proposals to transfer responsibility for the application of Levy funds to the racing industry. The Government notes that the Racing industry were strongly in favour of the proposals while some respondents expressed concerns.

### Designated body

- 6.24. While the consultation set out that the distribution body would be subject to legislative requirements, especially those relating to transparency, some consultation respondent expressed concerns about the level of Government oversight over the activities of the distribution body and the mechanisms available to hold the designated body to account.
- 6.25. The Government has considered these views as part of the final policy design and has built on the proposals set out at consultation. The Government has proposed to grant the Secretary of State powers to designate a body to apply Levy funds, drawing on a precedent found in Higher Education legislation<sup>24</sup>.
- 6.26. The Government proposes that the Secretary of State will have powers to appoint a designated body to fulfil the Levy application function.**

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<sup>24</sup> Higher Education Act 2004 and Higher Education and Research Act 2017.

- 6.27. The draft Order provides that the Secretary of State must designate a body corporate to be the designated body but only if the Secretary of State is satisfied that the body meets each of the following conditions:
- i) it is a suitable body;
  - ii) it is capable of applying Levy funds in an effective manner in accordance with its duty under s.338O;
  - iii) it is capable of exercising its legislative functions under Part 17A;
  - iv) it consents to the designation.
- 6.28. When considering if a body is suitable the Secretary of State must have regard (among other things) to whether:
- i) it appears to represent the interests of one or more of the following groups: persons involved in horse racing; persons involved in veterinary science; persons involved in veterinary education; persons involved in the breeding of horses; and
  - ii) it commands the confidence of the persons mentioned in (i).
- 6.29. The Government considers that the criteria for designation fulfills the policy objectives by enabling the transfer of responsibility for the application of Levy funds to a body which is representative of one or more of the Levy beneficiaries.
- 6.30. The Government also considers that the requirement for the designated body to command the confidence of those involved in horseracing, breeding of horses and veterinary science and education will help to ensure that the body will act in the interests of all Levy beneficiaries.

#### Secretary of State powers

- 6.31. The Government is mindful of the need to ensure appropriate mechanisms are in place to respond to any concerns raised regarding the designated body. While the Secretary of State must be satisfied that a body meets the criteria for designation (set out above) at the outset, the Government considers it necessary to include powers to take action, where appropriate, in response to any future concerns raised regarding the designated body.
- 6.32. The Government proposes that the Secretary of State will have powers to obtain information from the designated body, suspend payments to the body and to review its status if the Secretary of State has reason to suspect it no longer meets the conditions for designation, or has failed to discharge one or more of its legislative duties.**

- 6.33. The Government recognises the need to ensure that administrative changes to the Levy are future-proof and include appropriate mechanisms to enable a change in the designated body in future if required.
- 6.34. The Government proposes that the Secretary of State will have powers to terminate the status of the designated body and to appoint a new body following a review.**
- 6.35. The Government considers that the ability to obtain information, suspend payments, conduct a review and to terminate the status of the designated body will ensure that robust and proportionate powers are available to the Secretary of State to take action, where appropriate, in response to any concerns raised.
- 6.36. Where the Secretary of State seeks to terminate the status of a designated body, this may only happen once the Secretary of State has conducted a review and is satisfied that the body no longer meets the conditions for designation or has failed to discharge its legislative duties.

#### Interim arrangements

- 6.37. In circumstances where the Secretary of State has exercised powers to suspend payments to the designated body or where there is no designated body in place, the Government recognises the need to ensure there are mechanisms in place to enable a continued flow of funding to Levy beneficiaries, pending the expiration of a suspension of payments or the appointment of a new designated body.
- 6.38. The Government proposes that the Secretary of State will have powers to direct that Levy funds which would otherwise be paid to the designated body are to be applied by the Gambling Commission in accordance with the Secretary of State's direction.**
- 6.39. A direction by the Secretary of State must include provisions about the sums to be applied, the persons to who the sums are to be applied and the terms and conditions subject to which the sums are to be applied.
- 6.40. The Government considers that these provisions provide an effective means to enable a continuous flow of funding in such circumstances.

#### Levy expenditure

- 6.41. The Government notes that some consultation respondents voiced concern that the proposals would remove the statutory involvement of bookmakers in Levy allocation decisions.

- 6.42. The betting industry currently has one of seven seats on the Levy Board. This, in part, reflects the betting industry's historic role in putting forward annual Levy schemes, via the Bookmakers' Committee, for agreement by the Board. These annual schemes dictated the amounts which the betting industry would be required to pay in the forthcoming year and would often include a series of rebates and discounts for smaller operators. The process of annual Levy schemes was abolished as a result of the first phase of Levy reforms.
- 6.43. At consultation, the Government proposed that the distribution body would be required to consult the betting industry on its strategy for disbursement of Levy funds.
- 6.44. The Government has proposed a statutory requirement for the designated body to consult with the betting industry on its strategy for disbursement of Levy funds - and to publish that strategy. The Government believes that this will provide an appropriate degree of involvement for the betting industry in spending decisions.**
- 6.45. The Government does not believe that requiring the designated body to include a representative on its Board would be proportionate to the policy objectives. We have proposed a statutory requirement for the designated body to consult the betting industry on its strategic plan - which includes its policies and criteria for the application of Levy funds.
- 6.46. Drawing on the consultation stage proposals, the Racing Authority has set up the Betting and Racing Liaison Group to facilitate such consultation and to provide for a closer relationship between the two industries.
- 6.47. The Government notes the concerns raised by the equine veterinary sector regarding the statutory objectives for the application of Levy funding. The Government wishes to reassure the sector that the statutory objectives for applying Levy funds - the improvement of horseracing; the improvement of breeds of horses; the advancement or encouragement of veterinary science or veterinary education - will remain unchanged following these reforms.
- 6.48. The Government also notes the equine veterinary sector's proposal for the designated body to be required to consult the veterinary sector on its strategy for the application of Levy funds.
- 6.49. The Government is confident that the requirement for the designated body to command the confidence of those parties identified in the statutory objectives, including those representing the veterinary sector,

will ensure that the designated body will have full regard to the views of the veterinary sector when allocating funding without the need for a statutory requirement for consultation.

- 6.50. The Government is encouraged by the continued engagement<sup>25</sup> between the Racing Authority and the equine and veterinary research sectors to identify opportunities to enhance the current model for funding.

#### Transparency requirements

- 6.51. The Government welcomes the feedback received at consultation concerning transparency requirements regarding the distribution body. At consultation, the Government set out that the distribution body must comply with the requirements set out in the European Commission's State aid approval notice. Several respondents to the consultation highlighted the importance of ensuring these requirements were met.
- 6.52. At consultation, the Government stated that the distribution body would be required 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. The Government maintains that transparency and openness over the use of Levy funds are fundamental to ensuring appropriate oversight of the designated body and to ensure the body complies with the State aid commitments.
- 6.53. The Government therefore proposes to require the designated body to publish annual accounts which have been audited by a qualified accountant. The accounts must include information about how the body follows the policies set out in its strategic plan, the identities of those who received funds, the purpose for which funds were applied and the amounts paid.**
- 6.54. The Government has also considered further options to ensure compliance with the State aid commitments and has built upon the proposals set out at consultation to provide additional safeguards and assurances regarding compliance.
- 6.55. The Government also proposes to introduce a legislative requirement on the designated body to attach terms and conditions to payments made. The terms and conditions must include a requirement to ensure that funds are applied for a particular purpose and that there is a mechanism to require**

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<sup>25</sup> British Horseracing Authority, Press Release, Notes to Editors (3)  
[https://www.britishhorseracing.com/press\\_releases/racing-authority-agreed-sports-leaders/](https://www.britishhorseracing.com/press_releases/racing-authority-agreed-sports-leaders/)

**repayment of funds if any of the terms and conditions are breached.**

- 6.56. The Government considers that these requirements are proportionate to ensuring compliance with the State aid commitments and will provide assurance in legislation that the designated body has appropriate arrangements in place to effectively administer Levy application.
- 6.57. The designated body model provides the Secretary of State with powers to take action - including revocation of the designated body's status - if the body fails to comply with its legislative duties. This includes compliance with the legislative requirements to publish an annual report and accounts which identifies the beneficiaries of Levy funding and the amounts paid - and legislative requirements to ensure that mechanisms are in place to recover unspent or misappropriated funds from recipients.
- 6.58. The Government considers that these safeguards will ensure that the designated body is fully transparent in its use of Levy funds and delivers on the commitments made as part of State aid approval for the reforms.

Administrative arrangements

- 6.59. The Government acknowledges feedback from consultation respondents regarding the potential administrative savings.
- 6.60. **The Government considers that the transfer of functions is likely to result in administrative savings, estimated at £0.24m per annum, which will result in more Levy funding being made available to support the Levy's core purposes.**
- 6.61. The Government has provided an updated De Minimis Assessment which is published alongside the legislation. The Assessment acknowledges a number of assumptions and risks attached to the estimates of administrative savings.
- 6.62. The Government acknowledges feedback from consultation respondents regarding the need to ensure a smooth transition to the new arrangements, including in relation to retaining the Levy Board's knowledge and expertise.
- 6.63. As set out in the De Minimis Assessment, the Racing Authority has proposed a new transitional model which provides an opportunity for the majority of current HBLB staff with a role in the Levy application process to transfer to the Racing Authority.

- 6.64. The Government welcomes this proposal which will help to ensure the retention of knowledge and expertise of the Levy Board. The Government is working closely with the Levy Board, Gambling Commission and the Racing Authority to ensure a smooth transition to the new arrangements.

Administration costs

- 6.65. Administration costs incurred by the designated body and the Gambling Commission relating to the Levy will be met from Levy receipts as is the case for the HBLB currently. Such costs will be limited to those “reasonably incurred” in relations to the exercise of Levy functions under the legislation.

## **7. Chapter seven: Conclusion**

- 7.1. The Government has fulfilled the obligations to undertake a full and extensive consultation on the proposals. The responses to the consultation have been analysed. The Government has carefully considered feedback received at consultation and has decided to take forward the proposals with some small refinements to reflect feedback.
- 7.2. In particular the Government has introduced further safeguards to ensure sufficient oversight of the designated body by providing for new powers for the SoS to suspend payments to the body and to review and terminate the status of a designated body where it fails to uphold the criteria for designation; or where it fails to exercise its legislative duties. This will ensure that the Government has an effective means to respond to any future concerns, should they arise, in relation to the designated body.
- 7.3. The Government has also refined the requirements placed on the designated body in legislation to ensure compliance with the UK's State aid commitments and to provide further assurance over the body's conduct.
- 7.4. Given the final proposals build on the principles outlined at consultation, while including further detail and refinement in response to consultation feedback, the Government considers it appropriate to proceed without further consultation.
- 7.5. The Government is confident that the final proposals set out in the LRO firmly meet the policy objectives, set out in Chapter 2, which are to streamline the administration of the Levy and to reduce administrative inconveniences and financial costs on those affected by the Levy.
- 7.6. The changes will provide for a modern and efficient Levy system which best serves the interests of businesses affected by the Levy, maximises the proportion of Levy funds which may be applied in pursuit of the statutory objectives and includes appropriate safeguards to ensure an appropriate level of transparency and oversight over the use of Levy funds.
- 7.7. In light of the consultation responses received, the Government considers that the proposals should be implemented, as set out in the draft Order, which will be laid before Parliament under the affirmative procedure.

## **Annex A - List of consultees**

- Arena Racing Company
- Association of British Bookmakers
- Betfred
- British Equine Veterinary Association
- British Horseracing Authority
- European Gaming and Betting Association
- Federation of Racecourse Bookmakers
- Gambling Commission
- Gibraltar Betting and Gaming Association
- Horserace Betting Levy Board
- Individual spread betting operators (two)
- Individual veterinarians (three)
- Ladbrokes-Coral
- Lord Lipsey
- Paddy Power - Betfair
- Remote Gambling Association
- Sky Betting and Gaming
- Scottish Government
- Welsh Government
- William Hill

## **Annex B - List of respondents to consultation**

The following individuals or organisations submitted a written response to the consultation:

- Arena Racing Company
- Association of British Bookmakers
- Betfred
- British Equine Veterinary Association, The Veterinary Schools Council, The Association of Racecourse Veterinary Surgeons and World Horse Welfare (joint response)
- British Horseracing Authority, the Racecourse Association and the Horsemen's Group (joint response)
- Federation of Racecourse Bookmakers
- Lord Lipsey and Philip Davies (joint response)
- Members of the public requesting anonymity (two)
- Rare Breeds Survival Trust
- Remote Gambling Association
- The Horse Trust

## **Annex C - Consultation responses: analysis**

The following section provides a question by question analysis of responses to the consultation. It should be noted that some respondents did not respond to all questions and therefore do not appear under the analysis for every question. Where respondents provided a consultation response which did not directly respond to the questions set out, but nevertheless included general comments on the proposals, we have included a summary of their response under our analysis of question 2 which considers the expected benefits of the overall proposals.

### **Q1. Do you agree that the proposals will remove or reduce burdens?**

#### Association of British Bookmakers

The Association of British Bookmakers (ABB) stated the administrative burden for those operators whose profits are below the threshold to pay the Levy should be as light as possible and agreed with proposals set out in the consultation for the Gambling Commission to cross-reference information they hold as part of the licensing process to 'rule out' operators who have very low profits on horseracing overall. The ABB highlighted the importance on minimising compliance burdens on smaller operators.

#### Arena Racing Company

Arena Racing Company (ARC) stated that the administrative savings appear achievable if the process of transferring responsibilities, and early stages of transition, are managed effectively.

#### Betfred

Betfred noted that any changes to the administration of the Levy should remove and reduce any administrative and financial burdens relating to both collection of the levy and to those paying the levy, to enable the maximum amount of Levy to be spent on the statutory objectives.

British Racing (combined response from the three member organisations of the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen's Group; and the Racecourse Association)

The combined response from British racing agreed with the Government's argument that the proposals will remove or reduce administrative and financial burdens for organisations and participants within the racing industry. They noted that the Racing Authority will remove a significant number of duplicative functions and layers of administration within British racing and that the new system will reduce burdens for the betting industry.

### Federation of Racecourse Bookmakers

The Federation of Racecourse Bookmakers (FRB) recognised the benefits to streamlining the operations of the racing industry and supports Government efforts in this area.

### Lord Lipsey and Philip Davies MP

A joint response to the consultation from Lord Lipsey and Philip Davies MP argued that the Government's assessment of cost savings was tenuous and that it was not clear what burden is being removed by transferring the collection of the Levy from one body to another.

### Remote Gambling Association

The Remote Gambling Association (RGA) did not believe that the consultation document had explained how there would be any reduction in financial burdens on the betting industry. The RGA set out that if the reforms do lead to a reduction in the overall administrative costs of the levy then it should be made clear that these reductions benefit the horseracing sector alone.

### The Horse Trust

The Horse Trust stated that the proposals will reduce administrative burdens on stakeholders and financial outlay when compared to the previous process.

## **Q2. 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?**

### Anonymous respondent

An anonymous respondent argued that the financial arguments set out were unreliable for a variety of reasons including that significant assumptions have been made in favour of the reforms and that the Racing Authority has no corporate substance and its costs are highly uncertain.

### Arena Racing Company

ARC noted the efficiency, transparency and accountability under which the HBLB has operated over the years needs to be maintained, and enhanced, as part of the future system for collection and distribution of the levy.

### Association of British Bookmakers

The ABB expressed "full confidence" in the Gambling Commission's ability to collect the Levy in an appropriate way and in the Commission's ability to safeguard information. The ABB noted the importance for the Gambling Commission to have

flexibility to develop administrative processes for the collection and enforcement of the Levy over time.

The ABB strongly agreed with the Government's preferred option to maintain the current Levy period. The Association highlighted that the alternative levy year -1 proposal would seriously disadvantage the retail sector due to the fact that gross win on horseracing is in decline in betting shops, putting the retail sector at risk of overpaying if required to pay based on the previous year's trading.

### Betfred

Betfred supported the Government's objective to reduce financial and administration burdens, following reform of the Levy. Betfred stated that the current system of collection and payment works effectively and that reconciliation of Levy is not a burden. Betfred supported the Government's proposal to retain the current definition of Levy period, and therefore to reject the alternative option to adopt the levy year -1 approach.

Betfred argued that the Racing Authority should include betting industry representatives as full members, that the Authority should be required to respond to any consultation exercise held relating to distribution and, in the interests of transparency and accountability, that the Racing Authority should publish details of all spending over £500. Finally, it was argued that administration costs for both the Authority and the Gambling Commission should not increase in any one year by more than the Government agreed rate of inflation.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen's Group; and the Racecourse Association)

British Racing agreed with the Government's analysis that there will be a reduction in administration costs relating to the Levy – through both the collection and distribution bodies.

British Racing agreed that it is appropriate for the Gambling Commission to take on the Levy Board's statutory powers to obtain information from betting operators to assess Levy liability, and that merging and streamlining the collection and enforcement processes under the remit of the Gambling Commission will create significant economies of scale.

British Racing agreed with the Government's conclusion to maintain the existing definition of levy period based on the current year's trading.

British Racing agreed that the Gambling Commission should be provided with appropriate powers to pursue the civil enforcement route to recover funds from operators with outstanding Levy liability, and be able to revoke an operator's licence should they not pay the Levy.

British Racing “wholeheartedly” agreed that Racing is best placed to determine the allocation of Levy funds.

British Racing agreed that it is important that the betting industry, and other key stakeholders including the veterinary science and equine sectors, are appropriately consulted on relevant Levy expenditure decisions.

British Racing agreed that it is absolutely appropriate that the Racing Authority is suitably transparent and accountable for all of the important expenditure decisions that it will make.

#### Federation of Racecourse Bookmakers

The FRB expressed support for the Government’s proposals to abolish the Horserace Betting Levy Board and transfer its functions to the Gambling Commission and the new Racing Authority. The FRB suggested that the details of the new Authority should be consulted on, and all industry partners given an opportunity to contribute to its formation.

#### Remote Gambling Association

The RGA challenged the Government’s assertion that any administrative savings would be of indirect benefit to the betting industry, thereby rejecting the common interest arguments set out in the consultation paper.

The RGA sought confirmation that the Government will monitor the actions of the new Racing Authority to ensure that the revised system remains compliant with State aid rules.

#### The Horse Trust

The Horse Trust argued that administrative and financial benefits will generate efficiency savings and reduce financial and administrative burdens on businesses affected by the Levy.

UK equine veterinary profession (combined response from the British Equine Veterinary Association, the Association of Racecourse Veterinary Surgeons, and the Veterinary Schools Council; co-signed by World Horse Welfare).

The UK’s equine veterinary combined response noted the decline in Levy income over recent years and sought assurances that the new system will continue or increase investment in Thoroughbred health, research and education. The response urged the Government to include a requirement for the Racing Authority to specifically consult with the equine veterinary industry and also welcomed the transparency requirements.

**Q3. Are there any non-legislative means that would satisfactorily remedy the issues which the proposals intend to address?**

Anonymous respondent

An anonymous respondent argued that no evidence had been provided that the Government has sought to identify or implement non-legislative efficiency gains within the existing levy mechanism.

Betfred

Betfred stated they did not believe there are any non-legislative means that satisfy the proposed objectives.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen’s Group; and the Racecourse Association)

British Racing believed that the proposals required use of an LRO to implement changes.

The Horse Trust

The Horse Trust did not believe that non-legislative solutions are available.

**Q4. Are the proposals proportionate to the policy objectives?**

Anonymous respondent

An anonymous respondent argued that the reforms were disproportionate as they seek to fundamentally change the structure of the Levy for a small and unverified marginal gain at an unknown but probably high risk.

Arena Racing Company

Arena Racing Company stated that the proposals were proportionate to the policy objectives if there is enough detail and clarity within the legislation.

Betfred

Betfred stated that they consider the proposals are proportionate to the policy objectives.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen’s Group; and the Racecourse Association)

British Racing believed the proposals are suitably proportionate to the policy objectives.

The Horse Trust

The Horse Trust stated that the proposals are proportionate to the policy objective.

**Q5. Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?**

Arena Racing Company

Arena Racing Company stated the proposals strike a fair balance between the public interest and any person adversely affected by it.

Betfred

Betfred stated that they consider the proposals strike a fair balance between the public interest and any person adversely affected by it.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen’s Group; and the Racecourse Association)

British Racing did not believe that any individual organisation within the sport will be adversely affected by the proposals, and that the Racing Authority will work to ensure that this does not occur.

The Horse Trust

The Horse Trust stated that there are significant overall operational efficiencies at a business level and therefore in the public interest. They noted that the proposals represent a fair balance between efficiencies and those affected.

UK equine veterinary profession (combined response from the British Equine Veterinary Association, the Association of Racecourse Veterinary Surgeons, and the Veterinary Schools Council; co-signed by World Horse Welfare).

The combined response from the UK’s equine veterinary profession noted that the interest of the thoroughbred horse are not highlighted in the proposals.

**Q6. Do the proposals remove any necessary protection?**

Anonymous respondent

An anonymous respondent argued that the reforms will remove necessary protections. The respondent argued that the reform will remove oversight by independently appointed Government members, statutory appeals facilities, bookmaking board membership and other protections applicable to public bodies will be removed which are necessary to ensure the appropriate use of public money.

Arena Racing Company

ARC argued that the proposals do not clearly establish the responsibilities of the BHA versus those of the Racing Authority, or set out how the Racing Authority will be held to account.

### Betfred

Betfred stated that they were unaware of any necessary protections which may be removed.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen’s Group; and the Racecourse Association)

British Racing believed the proposals ensured there are necessary protections and appeal processes in place for both betting operators and racing organisations.

### Federation of Racecourse Bookmakers

The FRB set out that the role of setting and reviewing the Levy rate will be passed to the Racing Authority. The FRB stated it was essential that the voice of the on-course betting industry was represented on the Racing Authority and stated that it was difficult to respond to this question without having further detail of the make-up of the Racing Authority.

### The Horse Trust

The Horse Trust argued that the closure of the Levy Board will potentially remove corporate knowledge. They argued that the Racing Authority will need to operate openly, particularly in regards to transparent funding arrangements.

UK equine veterinary profession (combined response from the British Equine Veterinary Association, the Association of Racecourse Veterinary Surgeons, and the Veterinary Schools Council; co-signed by World Horse Welfare).

The combined response from the UK’s equine veterinary profession argued that the proposals remove a necessary and important element of protection for the horse, namely the obligation to invest in its health through veterinary research and education.

**Q7. 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.**

### Anonymous respondent

An anonymous respondent argued that, as the Racing Authority will be a private body, the public will lose the statutory and therefore guaranteed rights to subject the levy expenditure process to scrutiny via Freedom of Information.

### Betfred

Betfred stated that they were unaware of any right or freedom which may be removed.

British Racing (combined response from three member organisations from the new tripartite Racing Authority – the British Horseracing Authority; The Horsemen’s Group; and the Racecourse Association)

British Racing stated that betting operators will still be able to have appropriate, and potentially enhanced, input into expenditure decisions through the new Racing and Betting Liaison Group. British Racing noted that the structure of the Racing Authority would ensure that diverse organisation within British racing are represented in discussions.

#### Remote Gambling Association

The RGA noted that under the previous levy regime there was a statutory Bookmakers’ Committee and its chairman had a seat on the main Levy Board. The RGA noted the proposals to require the Racing Authority to consult the betting sector and suggested the Government mandate annual reporting requirements for the Racing Authority.

#### The Horse Trust

The Horse Trust did not believe that any right or freedom may be removed.

## **Annex D - List of relevant statutes**

This annex provides a list of relevant statutes relating to the reforms:

### Primary legislation

Betting, Gaming and Lotteries Act 1963 (c. 2) - as saved by S.I. 2007/2159

Parliamentary Commissioner Act 1967 (c.13)

Horserace Betting Levy Act 1969 (c.14)

Finance Act 1969 (c.32)

House of Commons Disqualification Act 1975 (c.24)

Horserace Betting Levy Act 1981 (c.30)

Tribunals and Inquiries Act 1992 (c.53)

Judicial Pensions and Retirement Act 1993 (c.8)

Freedom of Information Act 2000 (c.32)

Horserace Betting and Olympic Lottery Act 2004 (c.25)

Constitutional Reform Act 2005 (c.4)

Gambling Act 2005 (c.19)

Gambling (Licensing and Advertising) Act 2014 (c.7)

### Secondary legislation

Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006 (S.I. 2006/3272)

Gambling Act 2005 (Horserace Betting Levy) Order 2007 (S.I. 2007/2159)

Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2012 (S.I. 2012/854)

Horserace Betting Levy Regulations 2017 (S.I. 2017/589)