

Draft Regulations laid before Parliament under section 2(3) of the Gambling (Licensing and Advertising) Act 2014 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No.

BETTING, GAMING AND LOTTERIES

The Horserace Betting Levy Regulations 2017

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of the Gambling (Licensing and Advertising) Act 2014⁽¹⁾ and section 2(2) of the European Communities Act 1972⁽²⁾.

The Secretary of State is a Minister designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to measures to give effect to the Economic Community's rules on competition applying to undertakings⁽³⁾.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 2(3) of the Gambling (Licensing and Advertising) Act 2014 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972.

Citation and commencement

- 1.—(1) These Regulations may be cited as the Horserace Betting Levy Regulations 2017.
- (2) These Regulations come into force on whichever is the later of—
 - (a) 1st April 2017,
 - (b) the day after they are made.

The 56th levy scheme

- 2.—(1) This regulation applies if these Regulations come into force after 1st April 2017.
- (2) The levy period for the 56th levy scheme ends with the day on which these Regulations come into force.

(1) 2014 c. 17.

(2) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(3) S.I. 1973/1889.

(3) In calculating a bookmaker’s liability to the levy under the 56th levy scheme for that period, the enactments amended by these Regulations continue to have effect for the purposes of that scheme as if those amendments had not been made.

(4) In this article “the 56th levy scheme” means the levy scheme determined by the Secretary of State under section 1(2) of the Horserace Betting Levy Act 1969(4) on 1st December 2016(5).

Amendments to enactments relating to the Horserace Betting Levy

3. The Schedule to these Regulations amends enactments relating to the Horserace Betting Levy.

Amendments to the Gambling Act 2005 (Horserace Betting Levy) Order 2007

4.—(1) The Gambling Act 2005 (Horserace Betting Levy) Order 2007(6) (savings of the Betting, Gaming and Lotteries Act 1963) is amended as follows.

(2) In article 2(2), for “Section 28(10) of the 1963 Act does” substitute “Sections 28(10) and 28A of the 1963 Act do”.

(3) In article 3(2)(a), omit “bookmakers”.

(4) In article 5, omit “bookmakers”.

Review of the rate at which the Levy is charged

5.—(1) The Secretary of State must review whether the rate at which the levy is charged by section 27(1A) of the 1963 Act remains appropriate to achieve the purposes mentioned in section 24(1)(a) to (c) of that Act.

(2) The review must be conducted no later than the end of the period of seven years, beginning on the day on which these Regulations come into force.

(3) As soon as practicable after the review, the Secretary of State must—

(a) lay a report before each House of Parliament, or

(b) make a statement to the House of Parliament of which that Secretary of State is a member, setting out the results and conclusions of the review.

Date

Name
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

(4) 1969 c. 14.

(5) See Written Parliamentary Statement of the Secretary of State at <https://www.gov.uk/government/speeches/written-ministerial-statement-56th-horserace-betting-levy-scheme>

(6) S.I. 2007/2159.

SCHEDULE

Regulation 3

Amendments to enactments relating to the Horserace Betting Levy

Betting, Gaming and Lotteries Act 1963

1. The Betting, Gaming and Lotteries Act 1963(7), as it has effect by virtue of the Gambling Act 2005 (Horserace Betting Levy) Order 2007, is amended as follows.

2. Section 24 (Horserace Betting Levy Board) is amended as follows.

(1) In subsection (1), for the words following “bookmakers” substitute “and betting exchange providers”.

(2) For subsection (2)(d) substitute—

“(d) one member appointed by the Association of British Bookmakers and the Remote Gambling Association, acting jointly.”

(3) After subsection (2) insert—

“(2A) If the Association of British Bookmakers and the Remote Gambling Association fail to appoint a member under subsection (2)(d) within a reasonable time, the appointment may be made by the chairman of the Levy Board.”

(4) After subsection (3) insert—

“(3A) Any person appointed to be a member of the Board under subsection (2)(d) may be removed from the Board at any time by the Association of British Bookmakers and the Remote Gambling Association, acting jointly.”

(5) In subsection (4)—

(a) omit “or the Bookmakers’ Committee”; and

(b) omit “or (d), as the case may be,”.

(6) After subsection (4) insert—

“(4A) The Association of British Bookmakers and the Remote Gambling Association, acting jointly, may from time to time appoint a person to act in the place of such a person appointed to be a member of the Levy Board as is mentioned in subsection (2)(d) at any meeting of the Levy Board at which that member is unable to be present, and while so acting any such person shall be deemed for the purposes of any act or proceeding of the Levy Board to be a member of that Board.”

3. Omit section 26 (bookmakers’ committee).

4.—(1) Section 27 (bookmakers’ levy schemes) is amended as follows.

(2) In subsection (1)—

(a) after “bookmakers” insert “and betting exchange providers”, and

(b) for the words following “in accordance with” substitute “this section”.

(3) After that subsection insert—

“(1A) The levy is charged at the rate of 10% of the amount by which a person’s profits for a levy period exceed the exempt amount (see section 27D).

(1B) The person’s profits for a levy period are the sum of—

(a) the person’s profits as a bookmaker on leviabable bets for the period (see section 27A), and

(7) 1963 c. 2.

(b) the commission charged by the person as a betting exchange provider on leviable bets during the period (see section 27C).

(1C) The persons by whom the levy is payable include those bookmakers and betting exchange providers who are required to hold remote operating licences.

(1D) In subsection (1C) “remote operating licence” has the same meaning as in the Gambling Act 2005 (see section 67 of that Act).”

(4) Omit subsections (2) to (4).

(5) For the heading substitute “The levy”.

5. After section 27 insert—

“Profits as a bookmaker

27A. A bookmaker’s profits on leviable bets for a levy period are—

$$SM + OA - W$$

where—

SM is the aggregate of the stake money falling due to the bookmaker in the levy period on leviable bets;

OA is aggregate of any other amounts accruing to the bookmaker in the levy period in connection with leviable bets;

W is the aggregate of any winnings paid by the bookmaker in the levy period in respect of leviable bets (irrespective of when the bets were made or determined).

Stake money

27B.—(1) For the purposes of section 27A the stake money on a leviable bet is the aggregate of the amounts which fall due in respect of the bet.

(2) If the stake money falls due to a person other than the bookmaker with whom the bet is made, it is to be treated as falling due to the bookmaker.

(3) Where the bet is not a spread bet and the sum which the person who makes the bet will lose if unsuccessful is known when the bet is made, that sum is to be treated as falling due when the bet is made (irrespective of when it is actually paid or required to be paid).

(4) Where the person who makes the bet does so in pursuance of an offer which waives all or part of the amount which the person would have been required to pay to make the bet, the person is to be treated as being due to pay that amount—

(a) to the bookmaker with whom the bet is made, and

(b) at the time when the bet is made.

(5) But subsection (4) does not apply to the extent that—

(a) the amount in question was won on a leviable bet made in pursuance of a previous offer which waived all or part of the amount which the person would have been required to pay to make the bet, and

(b) the person was not entitled to use the amount otherwise than for the purpose of making a further leviable bet.

(6) In this section “spread bet” means a bet that constitutes a contract the making or accepting of which is a regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000.

Betting exchange commission

27C.—(1) This section applies where one person makes a leviable bet with another person using facilities provided in the course of a business by a third person (“the betting exchange provider”).

(2) Any amount that any party to the bet is charged, whether by deduction from winnings or otherwise, for using those facilities is commission on the bet for the purposes of section 27(1B)(b).

(3) If the amount is charged by a person other than the betting exchange provider, it is to be treated for those purposes as charged by the betting exchange provider.

The exempt amount

27D.—(1) This section applies for the purpose of calculating the exempt amount for a levy period.

(2) Subsections (3) and (4) apply in relation to—

- (a) a person who, at any time in the levy period, is a parent undertaking of one or more other undertakings, and
- (b) those other undertakings.

(3) The undertakings are entitled to a single exempt amount of £500,000 between them for the levy period.

(4) The undertakings—

- (a) may allocate the exempt amount between them as they think fit, and
- (b) must notify the Levy Board in writing of any such allocation, and of any alterations to the allocation.

(5) In any other case, a person’s exempt amount for the levy period is £500,000.

(6) In this section “undertaking” and “parent undertaking” have the meanings given by the Companies Act 2006 (see sections 1161 and 1162 of that Act).

Power to obtain information

27E.—(1) The Levy Board may by notice in writing require any person who appears to them to be liable to pay the levy under section 27 to provide them with information reasonably required by them for the purpose of assessing the person’s liability under that section.

(2) The information must be provided in such manner and form, and within such reasonable period, as may be specified in the notice.

(3) Failure to comply with a requirement under this section does not affect a person’s liability under section 27.”

6.—(1) Section 28 (assessment of or exemption from levy) is amended as follows.

(2) Before subsection (5) insert—

“(4A) As soon as practicable after the end of a levy period, the Levy Board must serve an assessment notice on every person they have assessed as liable to pay the levy under section 27 for that period.

(4B) The assessment notice must state—

- (a) the amount that the Levy Board have assessed that the person is liable to pay,
- (b) the basis on which that amount has been calculated, and

- (c) when and how the amount must be paid.”
- (3) In subsection (5), for “issued by the Levy Board in the case of any bookmaker” substitute “served on any person by the Levy Board”.
- (4) In subsection (6)—
 - (a) omit “or grant the appellant a certificate of exemption from the levy, according to the tribunal’s opinion as to the category in which he falls,”
 - (b) in paragraph (a), omit “or grant the appellant a certificate of exemption”, and
 - (c) omit “as to the category into which the appellant falls for the purposes of the levy for the levy period in question”.
- (5) In subsection (7), for “bookmaker” (in both places) substitute “person”.
- (6) In subsection (8), for “bookmaker” substitute “person”.
- (7) In subsection (9), for “bookmaker” (in both places) substitute “person”.
- (8) Omit subsection (10).
- (9) In the heading, omit “or exemption from bookmakers”.
- 7. After section 28 insert—

“Prohibition on disclosure of information

- 28A.**—(1) This section applies where a relevant officer discloses to any other person in such a manner as to identify a person—
- (a) any declaration by, or assessment on, the person for the purposes of the levy under section 27, or
 - (b) any other information concerning the person obtained under section 27E or 28.
- (2) The relevant officer commits an offence unless the disclosure is made—
- (a) for the purposes of section 28 or of a report of any proceedings before an appeal tribunal under that section, or
 - (b) for the purposes of, or of a report of—
 - (i) proceedings for the recovery from the person of any amount due under section 28 by way of the levy, or
 - (ii) any criminal proceedings.
- (3) A person guilty of an offence under this section is liable to a fine not exceeding level 4 on the standard scale.
- (4) In this section—
- “appeal tribunal” means a tribunal established in pursuance of section 29, and
 - “relevant officer” means a member, officer or servant of—
 - (a) the Levy Board, or
 - (b) an appeal tribunal.”

8.—(1) Section 29 (Levy Appeal Tribunals) is amended as follows.

- (2) In subsection (6), for “bookmaker” (in each place) substitute “person”.
- (3) In subsection (7), for “bookmaker” (in each place) substitute “person”.
- 9.** After section 29 insert—

“Meaning of “leviable bet”

- 29A.**—(1) In this Part “leviable bet” means a bet that—
- (a) relates to horse racing in Great Britain, and
 - (b) is made (whether in person or remotely) by a person who is in Great Britain when the bet is made.
- (2) The following are not “horse racing” for the purposes of subsection (1)(a)—
- (a) point to point racing;
 - (b) harness racing;
 - (c) trotting events.

Meaning of other terms

- 29B.** In this Part—
- “bet” does not include any bet made or stake hazarded in the course of, or incidentally to, any gaming;
- “betting exchange provider” has the meaning given by section 27C(1);
- “bookmaker” means a person who carries on the business of—
- (a) receiving or negotiating bets, or
 - (b) conducting pool betting operations;
- and in paragraph (b), “pool betting” has the same meaning as in the Gambling Act 2005 (see section 12 of that Act);
- “levy period” means the period—
- (a) beginning with the day after that on which the Horserace Betting Levy Regulations 2017 come into force and ending with 31 March 2018, and
 - (b) each subsequent period of 12 months beginning with 1 April;
- “winnings” means winnings of any kind, and references to the payment of and deduction from winnings are to be read accordingly.”

- 10.** Omit section 30 (contributions by successor company).

Horserace Betting Levy Act 1969

- 11.** The Horserace Betting Levy Act 1969(8) is amended as follows.
- 12.** Omit sections 1 and 2 (determination of scheme and assessment of bookmakers).
- 13.**—(1) Section 3 (Levy Board’s costs on appeal) is amended as follows.
- (2) In subsection (1)—
- (a) omit “of individual bookmakers”, and
 - (b) for “bookmaker” (in both places) substitute “person”.
- (3) In subsection (2), for “bookmaker” (in both places) substitute “person”.
- (4) In the heading, omit “by bookmaker”.
- 14.** Omit sections 4 to 6 (miscellaneous provisions about the levy and the Levy Board).

(8) 1969 c. 14.

15. In section 7(2) (interpretation), for the words following “1963; and” substitute ““Levy Board” has the same meaning as in that Act”.

Horserace Betting Levy Act 1981

16. The Horserace Betting Levy Act 1981(9) is amended as follows.

17. For section 1 substitute—

“Payments on account of levy

1.—(1) The Levy Board may require a person who appears to them to be liable to pay the levy under section 27 of the Act of 1963 to make payments on account in advance of assessment to the levy.

(2) The power under subsection (1) is to be exercised by serving on the person a notice of determination stating—

- (a) the amounts that the person must pay,
- (b) when and how the payments are to be made, and
- (c) the basis on which the amount to be paid has been determined.

(3) The Levy Board may at any time withdraw or amend a notice of determination.

(4) The powers of the Levy Board under this section may be exercised only by the Government-appointed members of the Board.

(5) In this section “Government-appointed”, with reference to members of the Levy Board, means appointed for the time being by the Secretary of State.”

18.—(1) Section 2 (appeals) is amended as follows.

(2) In subsection (1)—

- (a) for “bookmaker” substitute “person”, and
- (b) for “in accordance with the scheme” substitute “appropriate, having regard to the person’s likely liability under section 27 of the Act of 1963”.

(3) In subsection (3)—

- (a) for “bookmaker” substitute “person”,
- (b) for “is payable on” substitute “should be paid on”, and
- (c) omit “in accordance with the scheme”.

19.—(1) Section 3 (relief from payments) is amended as follows.

(2) In subsection (1), for “bookmaker” substitute “person”.

(3) In subsection (2), for “the Bookmakers’ Committee and such other” substitute “such”.

(4) In subsection (3), for “bookmaker” substitute “person”.

(5) In subsection (4), for “bookmaker” substitute “person”.

(6) In subsection (5), omit “in accordance with the scheme”.

(7) In subsection (6), for “bookmaker” substitute “person”.

(8) In subsection (7), for “bookmaker” substitute “person”.

(9) In subsection (8), for “1(8)” substitute “1(5)”.

(9) 1981 c. 30.

- 20.**—(1) Section 4 (supplementary provisions) is amended as follows.
- (2) In subsection (1)(b), for “bookmaker” substitute “person on whom the notice is served”.
- (3) In subsection (2), for “bookmaker” (in each place) substitute “person”.
- (4) In subsection (3)—
- (a) for “bookmaker” (in each place) substitute “person”, and
- (b) omit paragraph (b)(ii) (including the “or” at the end).
- (5) In subsection (4), omit “, the Bookmakers’ Committee”.
- (6) In subsection (5), for “bookmaker” (in both places) substitute “person”.
- 21.** In section 5(2) (interpretation), for the words following “Act 1969;” substitute—
- (a) “the Levy Board” has the same meaning as in the Act of 1963;
- (b) “levy period” has the same meaning as in Part 1 of the Act of 1963.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the Horserace Betting Levy (“the Levy”), which is administered by the Horserace Betting Levy Board (“the Levy Board”).

These Regulations commence on 1st April 2017 or the day after they are made, whichever is later. Regulation 2 makes provision for what happens if the Regulations do not come into force on 1st April 2017.

Paragraphs 1 to 10 of the Schedule amend the Betting, Gaming and Lotteries Act 1963 (“1963 Act”). Paragraph 2 amends section 24 of that Act. The duty of the Levy Board of assessing, collecting and applying the levy in section 24(1) is extended to betting exchange providers.

Paragraph 4 of the Schedule amends section 27 of the 1963 Act which creates the liability to pay the Levy. Section 27(1) is amended to extend the class of persons liable to pay the Levy to include betting exchange providers. By virtue of section 27(1C) this includes those bookmakers and betting exchange providers required to hold remote operating licences (within the meaning of Gambling Act 2005). Section 27(1A) charges the Levy at the rate of 10% of the amount by which a person’s profits for a levy period exceed the exempt amount. A person’s profits are the sum of their profits as a bookmaker and any commission charged as a betting exchange provider on leviable bets (section 27(1B)). The exempt amount is set at £500,000 (section 27D). A leviable bet is defined in section 29A as a bet that relates to horse racing in Great Britain and is made (whether in person or remotely) by a person who is in Great Britain when the bet is made.

Paragraph 5 of the Schedule inserts new sections 27A to 27E into the 1963 Act. Sections 27A to 27D detail how profits are to be calculated. Paragraph 6 of the Schedule amends section 28 of the 1963 Act, extending it to apply to all persons liable to the Levy. Paragraph 8 of the Schedule extends provision made about levy appeal tribunals in section 29 to all persons liable to the Levy.

Paragraphs 11 to 15 of the Schedule amend the Horserace Betting Levy Act 1969. Section 3, which relates to the Levy Board’s costs on appeal, is amended to extend to all persons liable to pay the Levy.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Horserace Betting Levy Regulations 2017 No. 589

Paragraphs 16 to 21 of the Schedule amend the Horserace Betting Levy Act 1981. Section 1 provides the Levy Board may require a person to make payments on account in advance of assessment to the Levy. The remainder of the Act is amended to extend it to all persons liable to the Levy.

The Levy is a State aid within the meaning of Article 107(3) of the Treaty on the Functioning of the European Union. The amendments being made to the Levy ensure that it will be compatible with State aid rules.

No impact assessment has been prepared for these Regulations as they do not relate to regulatory matters. An explanatory memorandum is available alongside this instrument on the Legislation UK website at www.legislation.gov.uk.