
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Legislative Reform (Horserace Betting Levy) Order 2018

Restatement and amendment of the law regarding the horserace betting levy

- 4.—(1) The Gambling Act 2005 is amended as follows.
(2) After section 338, insert—

“PART 17A

HORSERACE BETTING LEVY

The levy

The horserace betting levy

- 338A.**—(1) Bookmakers and betting exchange providers must pay a horserace betting levy to the Commission in respect of each levy period in accordance with this Part.
(2) The persons by whom the levy is payable include those bookmakers and betting exchange providers who are required to hold remote operating licences.
(3) The Commission must assess and collect the levy in accordance with this Part.
(4) References in this Part to “the levy” are to the horserace betting levy.

Amount of the levy

Amount of the levy

- 338B.**—(1) The amount of the levy payable by a person under section 338A in respect of a levy period is determined as follows.
(2) The levy is charged at the rate of 10% of the amount by which the person’s profits for the levy period exceed the exempt amount for that period (see section 338F).
(3) A person’s profits for a levy period are the sum of—
(a) the person’s profits as a bookmaker on leviable bets for the period (see section 338C),
and
(b) the commission charged by the person as a betting exchange provider on leviable bets during the period (see section 338E).
(4) 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, or by persons at least one of whom, is in Great Britain when the bet is made.
(5) The following are not “horse racing” for the purposes of subsection (4)(a)—

- (a) point to point racing;
- (b) harness racing;
- (c) trotting events.

Profits as a bookmaker

338C. 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 (see section 338D);

OA is the 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

338D.—(1) For the purposes of section 338C, 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.

Betting exchange commission

338E.—(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) An 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 338B(3)(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

338F.—(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 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 Commission 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)(1).

Assessment and collection of the levy

Power to obtain information to assess liability

338G.—(1) The Commission may by notice require any person who appears to it to be liable to pay the levy under section 338A in respect of a levy period to provide it with information reasonably required by it for the purpose of assessing the person's liability under that section.

(2) The information must be provided by the person—

(a) in such manner and form as may be specified in the notice, and

(b) within such reasonable period as may be so specified.

(3) If a person fails without reasonable excuse to comply with a notice under subsection (1), the Commission may enforce the duty to comply with the notice in civil proceedings for an injunction.

(4) Failure to comply with a requirement under this section does not affect a person's liability under section 338A.

Assessment and collection of the levy

338H.—(1) As soon as is reasonably practicable after the end of a levy period, the Commission must give an assessment notice to each person whom it has assessed as liable to pay the levy under section 338A in respect of that period.

(2) The assessment notice must state—

(a) the amount that the Commission has 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) The amount becomes due after the end of the period of 28 days beginning with—

(a) the day after the day on which the assessment notice is given to the person, or

(1) 2006 c. 46.

- (b) if the person brings judicial review proceedings in respect of the assessment notice, the day after the day on which those proceedings are finally determined or abandoned.
- (4) The amount is recoverable by the Commission as a debt due to it.
- (5) Subsections (3) and (4) do not apply to the extent of any payments on account (under section 338I or otherwise).
- (6) Where a person's liability to pay the levy in respect of a levy period is discharged in accordance with the assessment notice—
 - (a) the Commission must give the person a notice to the effect that the liability is discharged, and
 - (b) such a notice is conclusive evidence of the facts stated in it.
- (7) The Commission may, at any time before a person's liability to pay the levy in accordance with an assessment notice is discharged, withdraw or amend the assessment notice.

Payments on account

338I.—(1) The Commission may require a person who appears to it to be liable to pay the levy under section 338A in respect of a levy period to make payments on account in advance of giving an assessment notice to the person under section 338H.

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

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

(3) Subject to subsection (4), payments on account become due on the date or dates specified in the notice of determination.

(4) If the person brings judicial review proceedings in respect of the notice of determination, any payments on account which would, under subsection (3), have become due before the final determination or abandonment of those proceedings instead become due on the final determination or abandonment of those proceedings.

(5) The amount of a payment on account is recoverable by the Commission as a debt due to it.

(6) The Commission may, at any time before a payment on account required by a notice of determination is paid, withdraw or amend the notice of determination in respect of that payment.

Relief from payments on account

338J.—(1) Subject to subsections (10) and (11), a person who has been given a notice of determination under section 338I may apply in writing to the Commission to be excused from making payments on account in accordance with the notice.

(2) An application under subsection (1) may be made only on the grounds that the person's circumstances make it unjust that the person should make payments on account in accordance with the notice.

(3) The Commission may consult such persons (if any) as it thinks appropriate for the purpose of disposing of such an application.

(4) If, on an application under subsection (1), the Commission is of the opinion that a reduction ought to be made in the payments on account, it must give in respect of each payment becoming due on or after a date specified in the direction (“the specified date”) either of the following directions—

- (a) a direction that the payment is to cease to be payable;
- (b) a direction that the payment is reduced to such amount as the Commission specifies.

(5) If, on an application under subsection (1), the Commission is not of the opinion mentioned in subsection (4), it must dismiss the application.

(6) Where the Commission gives a direction under subsection (4)(a) in respect of a payment on account, it must give the applicant a notice cancelling the relevant notice of determination in so far as the relevant notice of determination relates to that payment on account.

(7) Where the Commission gives a direction under subsection (4)(b) in respect of a payment on account, it must give the applicant a revised notice of determination which has effect from the specified date instead of the relevant notice of determination in so far as the relevant notice of determination relates to that payment on account.

(8) A revised notice of determination given under subsection (7) has effect as if it were a notice of determination given under section 338I.

(9) In subsections (6) and (7), “the relevant notice of determination” means the notice of determination under section 338I in relation to which the application under subsection (1) is made.

(10) A person may make more than one application under subsection (1) in any levy period only if there has been a change in the person’s circumstances since the person’s last application.

(11) If a person brings judicial review proceedings in respect of a notice of determination under section 338I, the person may not make an application under subsection (1) in respect of that notice until those proceedings are finally determined or abandoned.

Return of excess payments

338K.—(1) This section applies where the amount paid on account of the levy by a person in any levy period (under section 338I or otherwise) exceeds the amount of levy assessed by the Commission as payable by the person under section 338A in respect of that period.

(2) The Commission must repay the excess to the person when it gives the assessment notice to the person under section 338H.

Payment of levy receipts to the designated body

The designated body

338L.—(1) In this Part, “the designated body” means the body for the time being designated for the purposes of this Part by the Secretary of State under Schedule 15A.

(2) Schedule 15A contains provision about designation, its review and its termination.

Payment of levy receipts to the designated body

338M.—(1) Subject to subsections (3) to (5), the Commission must pay its levy receipts received during a particular quarter to the designated body before the end of the period of 14 days beginning with the day after the last day of the quarter.

(2) The Commission’s “levy receipts” are the money received by it by way of—

- (a) the levy under section 338A,
- (b) payments on account (under section 338I or otherwise),
- (c) interest or other return on any investment made by the Commission under subsection (5), and
- (d) repayments received under section 338O(7).

(3) The Commission may deduct from its levy receipts amounts in respect of costs reasonably incurred by it, or that it may reasonably incur, in exercising its functions under this Act in relation to the levy.

(4) The Commission may retain from its levy receipts such amounts as it determines that it may reasonably require for the purpose of repaying excess payments under section 338K.

(5) The Commission may invest—

- (a) levy receipts for the time being held by the Commission,
- (b) amounts deducted under subsection (3), and
- (c) amounts retained under subsection (4).

(6) Subsection (1) is also subject to—

- (a) section 338N (suspension of payments), and
- (b) section 338T (application of levy funds other than by the designated body).

(7) In subsection (1), “quarter” means a period of 3 months beginning with 1 April, 1 July, 1 October or 1 January.

Suspension of payments under section 338M

338N.—(1) The Secretary of State may direct the Commission to suspend payments to the designated body under section 338M(1) if—

- (a) the Secretary of State has decided to review the body’s designation under paragraph 2 of Schedule 15A,
- (b) the body’s designation is being reviewed under that paragraph, or
- (c) following such a review, the Secretary of State is satisfied that the body no longer meets the conditions for designation in paragraph 1(2) of that Schedule or the body has failed to discharge one or more of its duties under this Part.

(2) The direction must specify when the suspension takes effect and when it is to end.

(3) The end of the suspension may be expressed by reference to a specified event occurring (for example, by the giving of a notice by the Secretary of State).

Application of levy funds by the designated body

Application of levy funds by the designated body for particular purposes

338O.—(1) Subject to subsection (3), the designated body must apply levy funds 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) In this Part, “levy funds” means—

- (a) money received by the designated body under section 338M(1), and

- (b) interest or other return on any investment made by the designated body under subsection (3)(c).
- (3) The designated body may—
 - (a) deduct from levy funds amounts in respect of costs reasonably incurred by it, or that it may reasonably incur, in exercising its functions under this Act in relation to the levy,
 - (b) retain a reserve of levy funds for purposes conducive to one or more of the purposes specified in subsection (1), and
 - (c) invest—
 - (i) money received by the body under section 338M(1) and for the time being held by it,
 - (ii) amounts deducted under paragraph (a), and
 - (iii) amounts retained under paragraph (b).
- (4) Where the designated body applies levy funds in accordance with subsection (1) by distributing them to another person, the body must make the payment of the funds to the person subject to terms and conditions which—
 - (a) require that the funds are applied for a particular purpose, and
 - (b) enable the designated body to require the repayment, in whole or in part, of the funds paid if any of the terms and conditions subject to which the funds were paid is not complied with.
- (5) The designated body may make the payment of funds to the person subject to such other terms and conditions as the body considers appropriate.
- (6) If payments to the designated body under section 338M(1) are suspended under section 338N, the Secretary of State may direct that while the direction is in force the designated body may not apply levy funds.
- (7) If the designation of a body as the designated body is terminated under paragraph 3 of Schedule 15A, the body must repay to the Commission all levy funds held by the body on the date on which the designation is terminated.
- (8) The body must do so before the end of the period of 28 days beginning with the date on which the designation is terminated.
- (9) Levy funds that are to be repaid to the Commission under subsection (7) are recoverable by the Commission as a debt due to it.

Strategic plan

- 338P.**—(1) The designated body must publish a strategic plan for each financial year.
- (2) A “strategic plan” for a financial year means a statement containing the body’s policies (including its criteria) for the application of levy funds which it considers are likely to be received by it in that financial year.
- (3) In preparing a strategic plan, the body must consult—
 - (a) one or more persons who appear to the body to represent the interests of bookmakers, and betting exchange providers, whose business is concerned with leviable bets, and
 - (b) such other persons as the body thinks appropriate.
- (4) The strategic plan for the first financial year in relation to the body must be published before the end of the period of 3 months beginning with the effective date (see section 338X).

(5) The strategic plan for subsequent financial years must be published before the start of the financial year in question.

Accounts and records

338Q.—(1) The designated body must keep accounting records in respect of levy funds in such form as the Secretary of State may direct.

(2) The body must prepare a statement of accounts for each financial year in which it received, distributed or otherwise applied levy funds.

(3) The statement of accounts must be in such form as the Secretary of State may direct.

(4) The designated body must arrange for the statement of accounts to be audited by a qualified accountant who must examine, certify and report on the statement.

(5) The statement of accounts and the auditor’s report on them must be published by the designated body before the end of the first August after the end of the financial year to which the statement relates.

(6) In this section, “qualified accountant” means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006⁽²⁾.

Annual report

338R.—(1) The designated body must publish a report on its exercise of its functions under this Part during a financial year.

(2) The report must be published by the body before the end of the first August after the end of the financial year to which the report relates.

(3) Subject to subsection (4), the report must be in such form as the Secretary of State may direct.

(4) The report must, among other things, include—

- (a) information about how the body followed the policies in its strategic plan under section 338P,
- (b) information about how levy funds were applied by the body during the financial year, and
- (c) where levy funds were applied by being distributed to other persons—
 - (i) the identity of the persons to whom the funds were paid,
 - (ii) the purpose for which the funds were applied, and
 - (iii) the amount paid in each case.

Power to obtain information from the designated body

Power to obtain information from the designated body

338S.—(1) The Secretary of State may by notice require the designated body to provide the Secretary of State with such information about itself, and the exercise of its functions under this Part, as the Secretary of State may reasonably require for the purpose of the exercise of any of the Secretary of State’s functions under this Part in relation to the body.

(2) The information must be provided by the designated body—

- (a) in such manner and form as may be specified in the notice, and

(2) 2006 c. 46.

- (b) within such reasonable period as may be so specified.

Application of levy funds other than by the designated body

Application of levy funds other than by the designated body

338T.—(1) The Secretary of State may give a direction under this section if—

- (a) there is no designated body, or
- (b) payments to the designated body under section 338M(1) are suspended under section 338N.

(2) A direction under this section is a direction that, while the direction is in force, the money which the Commission would otherwise pay to the designated body under section 338M(1) is to be applied by the Commission in accordance with the direction.

(3) A direction under this section must include provision about—

- (a) the sums to be applied,
- (b) the persons to whom the sums are to be applied,
- (c) the dates by which the sums are to be applied, and
- (d) the terms and conditions subject to which the sums are to be applied.

(4) The Secretary of State may only direct that sums are to be applied for purposes conducive to one or more of the purposes in section 338O(1).

(5) While a direction under this section is in force, sections 338Q and 338R apply to the Commission as if—

- (a) references to the designated body were references to the Commission,
- (b) references to levy funds were references to money which would otherwise be paid to the designated body under section 338M(1),
- (c) references to the functions of the designated body were to the functions of the Commission acting in accordance with a direction under this section, and
- (d) section 338R(4)(a) was omitted.

(6) A direction under this section—

- (a) must specify the date when it comes into force, and
- (b) remains in force until it is revoked or (if earlier) the applicable condition in subsection (1) ceases to be met.

General

Review of the rate of the levy

338U.—(1) The Secretary of State must review whether the rate at which the levy is charged by section 338B(2) remains appropriate to achieve the purposes mentioned in section 338O(1) (a) to (c).

(2) The review must be conducted no later than the end of the period of seven years beginning on 25 April 2017.

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

- (a) lay a report before Parliament setting out the results and conclusions of the review, or

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

Notices

338V.—(1) In this Part, “notice” means a notice in electronic form or otherwise in writing, and references to “notify” are to the giving of a notice.

(2) A notice required or authorised by this Part to be given to a person who is an individual may be given—

- (a) by email to the individual’s email address,
- (b) by delivering it to the individual,
- (c) by sending it by post to the individual at the individual’s usual or last-known place of residence or business in the United Kingdom,
- (d) by leaving it for the individual at that place, or
- (e) by other means with the individual’s consent.

(3) A notice required or authorised by this Part to be given to a person who is a body corporate or unincorporate may be given—

- (a) by email to the person’s email address,
- (b) by sending it by post to a proper officer of the body at its registered or principal office,
- (c) by addressing it to a proper officer of the body and leaving it at that office, or
- (d) by other means with the person’s consent.

(4) A notice required or authorised by this Part to be given to a person who is a partnership in Scotland may be given—

- (a) by email to the person’s email address,
- (b) by sending it by post to the principal office of the partnership,
- (c) by addressing to that partnership and leaving it at that office, or
- (d) by other means with the person’s consent.

(5) For the purposes of subsections (2)(a), (3)(a) and (4)(a), a person’s email address is—

- (a) any email address given by the person as an address for giving that person a notice,
- (b) any email address published for the time being by the person as an address for contacting the person,
- (c) if there is no email address falling under paragraph (a) or (b), any email address by means of which the sender of the notice believes, on reasonable grounds, that the notice will come to the attention of the person or (where that person is a body corporate) a proper officer of that body corporate.

(6) In the application of subsection (3) to a body registered or established outside the United Kingdom, the references to its principal office include references to its principal office within the United Kingdom (if any).

(7) In this section, “proper officer”, in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs.

Directions

338W. A power of the Secretary of State under this Part to give a direction—

- (a) is exercisable by giving the direction in question in writing, and
- (b) includes a power to vary or revoke the direction by a subsequent direction.

Interpretation

338X.—(1) In this Part—

“bet” includes a spread bet and 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 338E(1);

“bookmaker” means a person who carries on the business of—

- (a) receiving or negotiating bets, or
- (b) conducting pool betting operations (see section 12);

“the designated body” has the meaning given by section 338L(1);

“the effective date”, in relation to the designated body, has the meaning given by paragraph 1(1) of Schedule 15A;

“financial year”, in relation to the designated body, means—

- (a) the period—
 - (i) beginning with the effective date, and
 - (ii) ending with the following 31 March or, if the period ending with that date is 3 months or less, ending with the 31 March following that date, and
- (b) each successive period of 12 months beginning with 1 April;

“leviable bet” has the meaning given by section 338B(4);

“the levy” has the meaning given by section 338A(4);

“levy funds” has the meaning given by section 338O(2);

“levy period” means the period of 12 months beginning with 1 April;

“notice” and “notify” have the meaning given in section 338V(1);

“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(3);

“winnings” means winnings of any kind; and references to the payment of and deduction from winnings are to be read accordingly.”

- (3) After Schedule 15 insert Schedule 15A which is set out in Schedule 1 to this Order.