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Stephen McPartland MP
Chair
Regulatory Reform Committee

Lord Blencathra
Chairman
Delegated Powers and Regulatory Reform Committee

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Dear Mr McPartland and Lord Blencathra

Legislative Reform (Horserace Betting Levy) Order

Following the evidence session on 21st November I committed to provide further information regarding the draft Legislative Reform (Horserace Betting Levy) Order. I am grateful for the opportunity to provide further evidence and to set out the Government's case for these important reforms.

The Government announced at the Budget in March 2016 that it intended to extend the levy to offshore operators and transfer responsibility for distributing Levy funds to the racing industry. Prior to the last General Election, in January 2017¹, the Government announced its intention to:

- i. extend the Levy to online offshore bookmakers using a Statutory Instrument; and
- ii. amend the administration of the Levy using a Legislative Reform Order (LRO).

The package of reforms required State aid approval which was granted by the European Commission in April 2017. The first phase of reforms significantly simplified the Levy, introducing a fixed rate and removing the need for the previous annual round of negotiation on this. It also significantly reduced the number of operators who had to pay the levy. As a result, the Horserace Betting Levy Board has a much reduced role and the second phase of the reforms is aimed at streamlining the administration of the Levy and reducing burdens on those affected.

The Government has the utmost respect for Parliamentary procedure and wishes to assure the committees that the decision to introduce these changes using a LRO was based upon the Government's assessment that an LRO is an appropriate form of legislation to implement the changes. This assessment was taken with reference to statutory tests set out in the Legislative and Regulatory Reform Act 2006.

Reduction in burdens

The Government believes that the draft Order removes or reduces burdens on businesses affected by the Levy and will result in administrative savings of £0.24m per year - providing more funding to support the racing industry. The bookmaking industry have welcomed the potential for

¹ <https://www.gov.uk/government/news/government-boost-for-horseracing-in-betting-levy-reform>



the Gambling Commission to reduce reporting requirements on smaller operators. And the racing industry have set out several examples of how duplication could be reduced in the fixture and funding process. The Government listed seven examples of reduced burdens in the Explanatory Document².

Pre-conditions for use of an LRO

The Government believes that the draft Order satisfies each of the pre-conditions set out in the 2006 Act. The Explanatory Document³ sets out the Government's rationale for this conclusion.

Appropriateness

The Government considers that it is appropriate for the draft Order to be made under the 2006 Act. The Explanatory Note, which accompanies the 2006 Act, states that the power in section 1 "could be used to replace one statutory regime with another where this removes or reduces burdens."

The reforms to the Levy approved by Parliament last year significantly reduced the role of the Levy Board. The draft Order proposes to abolish the Levy Board and enable Government to transfer its collection responsibilities to the Gambling Commission, and its responsibility for distributing the funding to the racing industry, under a revised statutory regime.

The draft Order requires the industry body charged with distributing the funds to consult the betting industry on its strategic plan for spending the Levy, to retain accounting records, to publish an annual report and accounts, to attach terms and conditions to payments made and to distribute the Levy in line with the statutory purposes. The Government will have the power to request information from the body and it is open to Parliament to call on the body to answer questions or provide evidence if necessary. The Government considers the statutory requirements to be proportionate and that they will ensure oversight and transparency over the use of Levy funds.

The Government believes that the draft Order is appropriate and will reduce burdens on industry. We have worked closely with legal advisers in reaching this view and in drafting the Order. A consultation on the use of a LRO to implement the reforms was published in December 2017. A clear majority of respondents supported the Government's proposals, including respondents from the veterinary and breeding sectors.

Committee feedback

I have listened carefully to the points raised by committee members during the evidence session. I know that some expressed concerns about the powers set out in the draft Order for the Government to take action in the future. I would like to clarify the scope of those powers. The Secretary of State will only be able to exercise powers to review the designated body, and to appoint a new body, should the body no longer meet the conditions for designation or if it has failed to comply with the legislative requirements. These provisions are designed as a safeguard to enable the Government to act where there are concerns about the conduct of the designated body.

Please see attached, Annex A, setting out further details in response to points raised during the evidence session. I hope that you will find this information useful when considering whether the draft Order satisfies the statutory tests.

² Explanatory Document, p.9-13.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747015/Explanatory_Document_-_Horserace_Betting_Levy_-_FINAL_pdf.pdf

³ Explanatory Document, p.14-20.

Conclusion

To conclude, I firmly believe that I have demonstrated how the draft Order meets the statutory tests. I am confident that the proposals will reduce burdens in a number of areas, including by reducing reporting requirements on bookmakers.

I am also confident that it is appropriate to make these changes using a LRO having considered the previous use of LROs to abolish a statutory body and to transfer its functions⁴, the safeguards set out in the draft Order to ensure appropriate oversight over the use of Levy funds and the strong support for the reforms from key stakeholders who are directly affected by the changes (as set out in Annex B attached).

The Government will carefully consider any points raised by the committees in their second report on the draft Order and I would like to thank you again for the opportunity to provide evidence.

A handwritten signature in cursive script, appearing to read 'Mims'.

Mims Davies MP

Minister for Sport and Civil Society

⁴ The Legislative Reform (Regulator of Social Housing) (England) Order 2018 abolishes the Regulation Committee of the Homes and Communities Agency and transfers its functions to a new body (<http://www.legislation.gov.uk/ukdsi/2018/9780111166475/note>). In addition, the Legislative Reform (Health and Safety Executive) Order 2008 abolishes the Health and Safety Commission and the Health and Safety Executive and replaced them with a new body (<https://www.legislation.gov.uk/uksi/2008/960/note/made>).

Annex A- detailed response to points raised during evidence session of 21st November

The Right Honourable Member for North Durham (Kevan Jones MP) and the Honourable Member for Stevenage (Stephen McPartland MP) asked about potential cost savings under the proposals. I can confirm that the Government has not included the Levy Board's estimate of potential administrative savings in the baseline estimate because actual figures are available for 2017/18. In addition, the Racing Authority's estimate does not include potential savings. Inclusion of the Levy Board's estimated savings would therefore result in an unfair comparison. The Racing Authority has not provided an estimate of savings because the majority of Levy Board staff will transfer to the Authority on day one and an operational review will be carried out in the first year. We have been fully transparent in setting out these estimates and have illustrated a range of scenarios in the De Minimis Assessment.

As set out in legislation, the Racing Authority will be required to publish an audited statement of accounts which must include full details of costs. Should the Racing Authority fail to maintain administration costs at a reasonable level this will call into question its suitability to continue to distribute Levy funds and to maintain the confidence of the Levy beneficiaries. It is my view that these statutory requirements will ensure that the Racing Authority will seek to reduce costs wherever possible. I have sought further assurances from the Racing Authority that costs will reduce following the transitional period and I would be happy to update the committees on the level of savings achieved.

I want to again make clear that the reforms are not just about financial savings - but about reducing administrative inconveniences on affected businesses. The Legislative and Regulatory Reform Act 2006 states that a Legislative Reform Order may be made under s.1 where it reduces any of the four burdens set out in subsection (3). There is no requirement for an Order to reduce more than one of the four burdens set out. It is the Government's case that the draft Order will remove or reduce burdens relating to both financial costs and administrative inconveniences. However, in the unlikely event that costs do not reduce, then the Order is still within vires of the 2006 Act if administrative inconveniences are reduced.

The Explanatory Note which accompanies the 2006 Act provides several examples which directly relate to some of the examples that the Government has set out. The Note states that an administrative inconvenience may exist even where it does not result in a financial cost, stating by way of example that a requirement on a person to fill in a form may not result in a financial cost, but could be inconvenient for that person. As I set out in my evidence, under our proposals bookmakers will no longer be required to make payments and provide information to two separate organisations - reducing an administrative inconvenience.

In response to Lord Rowland's questions regarding the Government's commitments to Levy reforms, I have set out in my covering letter that the intention to proceed with an LRO was set out prior to the 2017 General Election. Reform of the Levy was not a manifesto commitment.

In response to Lord Tyler's question regarding the Department's plans for consultation ahead of the potential designation of the Racing Authority, I can confirm that we intend to consult directly with the main parties who receive Levy funding to ensure that they have confidence in the Authority's suitability to apply Levy funds. This will include veterinary groups, breeding associations and a variety of organisations in the racing sector.

I committed to provide further information in response to the Honourable Member for Stevenage's query regarding the provision for the designated body to maintain the confidence of the Levy beneficiaries. I can confirm that this will continue to apply following the designation. The review clause in Schedule 15 (s2) states that the Secretary of State can 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. The conditions for designation include it being a suitable body (s1(2)(a)). In order to

be a suitable body it must, amongst other things, command the confidence of the listed beneficiaries (s1(3)(b)). Maintaining the confidence of the beneficiaries is therefore an ongoing requirement - even after designation. If confidence is lost in the designated body then this goes to its suitability which then in turn allows the SoS (through s2) to review the designation.

Lord Blencathra asked about concerns from the veterinary profession relating to the possible removal of a necessary protection for the distribution body to invest in veterinary research and education. I wish to clarify that the statutory objectives for applying Levy funds - including the advancement or encouragement of veterinary science or veterinary education - will remain unchanged. Under the current statutory arrangements there is no requirement to consult the veterinary sector on the use of Levy funds and they are not represented on the Levy Board. However we are introducing a new requirement for the designated body to maintain the confidence of the veterinary sector, and other Levy beneficiaries, providing an important safeguard to protect the veterinary sector's interests.

With regard to Lord Rowlands' points regarding Parliamentary oversight, I can confirm that the Secretary of State is required to publish a notice of designation under Schedule 15A (5)(b) when appointing a body.

In response to Lord Moynihan's question regarding compatibility with s.5(1) of the 2006 Act, which provides that an Order may not "impose, abolish or vary any tax", the Government does not agree that the Levy should be classified as taxation for the purposes of the 2006 Act. Taxation was defined as the "compulsory levying of money for state revenue" during the passage of the 2006 Act⁵. Levy funds cannot be directed to the Exchequer and may only be spent in support of the Levy purposes. In addition, the draft Order does not propose to impose a new tax or levy, or abolish or vary the existing Levy. Its rate and purposes will not be affected, the changes set out are purely concerned with the administration of the Levy, i.e changes to the body charged with collecting and distributing the levy. With regard to Lord Moynihan's question as to whether Government has previously made changes to a tax collecting role via statutory instrument, the Government notes the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999⁶ which transfers functions relating to the administration of national insurance contributions, the Northern Ireland National Insurance Fund, statutory sick pay, statutory maternity pay or pension schemes.

⁵ House of Lords Hansard, 19th July 2006
<http://bit.ly/2DtL6gW>

⁶ <https://www.legislation.gov.uk/ukxi/1999/671/note/made>

Annex B- stakeholder views provided in response to the Government's consultation on the use of a Legislative Reform Order to reform the administration of the Levy

Arena Racing Company

Arena Racing Company own 16 racecourse and currently operates c.35% of the racing that takes place in Great Britain every year.

"ARC believes the Gambling Commission is an appropriate body to collect the Levy and that it is right for the distribution mechanism to be led by delegates from within British racing"

The Federation of Racecourse Bookmakers

The Federation of Racecourse Bookmakers is an umbrella organisation for the three main bookmaker associations (Association of Racecourse Bookmakers; National Association of Bookmakers; Rails Bookmakers Association)

"The FRB recognises the benefits to streamlining the operations of the management of the racing industry and supports Government efforts in this area"

Rare Breeds Survival Trust

The Rare Breeds Survival Trust is the only national charity working to monitor, save and promote all UK native breeds of livestock and promotes British livestock breeds, including native breeds of horses and ponies.

"RBST supports the proposed LRO to transfer the responsibility for expenditure from the Horserace Betting Levy Board to the UK Gambling Commission and the Racing Authority"

The Horse Trust

The Horse Trust is the second largest funder of equine veterinary science and education in the UK.

"The proposal to assign revenue collection to the Gambling Committee and administration of funds to a Racing Authority will reduce administrative burdens on stakeholders and financial outlay as compared to the previous process"

Joint Veterinary Response

This was a combined response to the consultation from the UK's equine veterinary Profession, prepared by the *British Equine Veterinary Association; the Association of Racecourse Veterinary Surgeons; and the Veterinary Schools Council*. The response was co-signed by *World Horse Welfare*, the respected international organisation which engages with racehorse welfare.

"The restructuring of the industry offers an excellent opportunity to modernise the mechanisms underpinning Thoroughbred research funding and thereby add value to British Racing's investment"

Betfred

Betfred are an independent bookmaker who operate online and in 1650 shops throughout the UK.

"We support the Government's objective to reduce financial and administration burdens, following reform of the Levy"

Association of British Bookmakers

The ABB is the industry association for the high street betting industry and represents over 80% of the retail betting market, including Ladbrokes Coral, William Hill, Paddy Power, and 80 independent bookmakers.

“The ABB has full confidence in the Gambling Commission’s ability to collect the Levy... The ABB has confidence in the Gambling Commission’s ability to safeguard information and data provided by bookmakers”

British Horseracing Authority / Horsemen’s Group / Racecourse Association (joint response)

The British Horseracing Authority (BHA); The Horsemen’s Group (HG); and the Racecourse Association (RCA) are the three member organisations of the Racing Authority. The BHA is responsible for the governance, administration and regulation of horseracing and the wider horseracing industry in Britain; and The Horsemen’s Group and the Racecourse Association serve the interests of racing, including racehorse owners, trainers, jockeys, stable staff and breeders and racecourses respectively.

“We agree with Government that an LRO is an appropriate legislative mechanism to implement these reforms”

“We wholeheartedly support DCMS’ three key policy objectives in this important consultation”