



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Horseracing  
Betting Levy) Order  
2018**

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**Third Report of Session 2017–19**





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**Third Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 5 December 2018*

## The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

### Current membership

[Stephen McPartland MP](#) (*Conservative, Stevenage*) (Chair)

[Bim Afolami MP](#) (*Conservative, Hitchin and Harpenden*)

[Ben Bradley MP](#) (*Conservative, Mansfield*)

[Andrew Bridgen MP](#) (*Conservative, North West Leicestershire*)

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[Conor McGinn MP](#) (*Labour, St Helens North*)

[Karl Turner MP](#) (*Labour, Kingston upon Hull East*)

### Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria: ... whether the draft legislative reform order—

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) has been the subject of, and takes appropriate account of, adequate consultation;

(l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are relevant;

(m) appears to be incompatible with any obligation resulting from membership of the European Union.

### **Publications**

Committee reports are published on the publications page of the Committee's website and in print by Order of the House. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/regrefcom](http://www.parliament.uk/regrefcom).

### **Committee staff**

The current staff of the Committee are Ben Sneddon (Clerk), Daniel Greenberg (Counsel for Domestic Legislation), Ellie Goodchild (Committee Assistant) and Oliver Florence (Committee Media Officer).

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# 1 Introduction

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1. The Regulatory Reform Committee’s role in the making of Legislative Reform Orders is to assess whether the proposals made in such Orders meet the statutory conditions required of an Order under the Legislative and Regulatory Reform Act 2006<sup>1</sup> (‘the 2006 Act’), and to examine the proposals against criteria set out in the Standing Orders of the House.<sup>2</sup>
2. The Committee is also required to consider the Minister’s recommendation as to the approval procedure which should apply to the Order and to report to the House any recommendation that a different procedure should apply.

## Background

3. The Draft Legislative Reform (Horseracing Betting Levy) Order 2018 (‘the draft Order’) was laid before the House on 9 October by the Department for Digital, Media, Culture and Sport (‘the Department’).<sup>3</sup> It was accompanied by an explanatory document.<sup>4</sup> The Department has also provided the Committee with a copy of responses to its 2017–18 consultation on using a Legislative Reform Order to reform the Horseracing Betting Levy<sup>5</sup> and a *De Minimis* Assessment of the draft Order.<sup>6</sup>
4. The purpose of the draft Order is to transfer responsibility for the assessment, collection and enforcement of the Horseracing Betting Levy (‘the Levy’) to the Gambling Commission and to transfer responsibility for the use of Levy funds to a new body to be designated by the Secretary of State for Digital, Culture, Media and Sport. The transfer of these responsibilities will result in the closure of the Horseracing Betting Levy Board (‘the Levy Board’) and the Levy Appeals Tribunals.
5. The draft Order is intended to be made under section 1 of the 2006 Act, which allows a Minister to make provision by order to remove or reduce any burden resulting directly or indirectly from legislation.<sup>7</sup>

## Parliamentary procedure

6. The Minister recommended that the draft Order be subject to the affirmative procedure. The House of Lords Delegated Powers and Regulatory Reform Committee considered the draft Order on 6 November and recommended that, owing to “concerns in relation to aspects of the 2006 Act tests and also to the overarching test of ‘appropriateness’”, the draft Order should be subject to the super-affirmative procedure.<sup>8</sup> Accordingly, the scrutiny period in both Houses was extended to 12 December. Under the super-affirmative procedure, the Committees will report on the draft Orders, after which Ministers must

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1 [Legislative and Regulatory Reform Act 2006](#)

2 Standing Orders of the House of Commons - Public Business 2018, [SO No. 141](#) and [SO No. 151 \(1\)](#)

3 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#)

4 [Explanatory Document for the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#)

5 Department for Digital, Culture, Media and Sport, [Responses to the consultation on the use of a Legislative Reform Order to reform the administration of the Horserace Betting Levy \(9 October 2018\)](#)

6 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#)

7 Legislative and Regulatory Reform Act 2006, [Section 1](#)

8 House of Lords, Draft Legislative Reform (Horseracing Betting Levy) Order 2018, Thirty-Eighth Report of the Delegated Powers and Regulatory Reform Committee, Session 2017–19, [HL Paper 219](#), Para 7

consider any representations received before deciding whether to proceed with the draft Order and whether to make any material changes to it before it is re-laid before the House. The Committee will then issue a further report with a final opinion on the Government's proposals.<sup>9</sup>

7. To inform our report, the Committee met concurrently with the House of Lords Delegated Powers and Regulatory Reform Committee. The Committees together took evidence from Lord Lipsey and from Mims Davies MP, Parliamentary Under-Secretary of State at the Department for Digital, Culture, Media and Sport and officials from the Department. Both Lord Lipsey and the Minister have submitted further written evidence to both Committees.<sup>10</sup> We welcome the opportunity for bicameral working to better inform the scrutiny of the proposed measure, and are grateful to members of the Lords Committee, their clerks and advisers for facilitating this novel approach. We hope to continue working with the Lords Committee on draft Orders and other issues of common interest in the future.

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<sup>9</sup> Legislative and Regulatory Reform Act 2006, [Section 18](#)

<sup>10</sup> Lord Lipsey ([HBL0001](#)), Department for Digital, Culture, Media and Sport ([HBL0002](#)).

## 2 Description of the draft Order

8. Horseracing is the second largest sport in Great Britain, in terms of attendance, revenue generated, and the number of people employed in the industry.<sup>11</sup> The industry supports more than 17,000 jobs in the economy, primarily in rural areas, and generates more than £300 million in tax revenue.<sup>12</sup> The Government describes the UK's position in the sport as 'world-leading'<sup>13</sup> and acknowledges the estimated £3.45 billion contribution the sport makes to the wider economy, with more than £1.1 billion of direct expenditure recorded in 2013.<sup>14</sup>

9. The Horseracing Betting Levy Board was established by the Betting Levy Act 1961 and continues to operate under the terms of the Betting, Gaming and Lotteries Act 1963 ('the 1963 Act'). It has a statutory duty to collect a levy from bookmakers engaged in the horseracing industry, and to apply the funds in pursuit of one or more of the following causes:

- the improvement of breeds of horses;
- the advancement or encouragement of veterinary science or veterinary education;
- the improvement of horseracing.<sup>15</sup>

Around 90 per cent of Levy funds are used for the improvement of horseracing, of which 70 per cent is used to contribute to prize money for horseracing (£48.43 million in 2016/17).<sup>16</sup>

10. The Horseracing Betting Levy Regulations 2017 ('the 2017 regulations') established a fixed levy of 10 per cent of leviable bet profits which exceed £500,000, ending the previous annual setting of the Levy via a Bookmakers' Committee or by the Secretary of State when agreement between the Bookmakers' Committee and the Levy Board could not be reached. The 2017 regulations also extended the coverage of the Levy to include bookmakers based offshore, who were not covered by the 1963 Act and had grown significantly since the advent of online gambling.<sup>17</sup> In its explanatory memorandum to the 2017 regulations the Government confirmed these changes were the first phase of reform of the Levy and that abolition of the Board was intended to be enacted through a Legislative Reform Order.<sup>18</sup>

11. The draft Order proposes to transfer responsibility for the assessment, collection and enforcement of the Levy from the Levy Board to the Gambling Commission, a non-departmental public body also sponsored by the Department. The Commission is the statutory regulator for gambling across the United Kingdom.<sup>19</sup> In making the case for this

11 [Written evidence to the House of Lords Delegated Powers and Regulatory Reform Committee from the British Horseracing Authority, Racecourse Association and the Horsemen's Group](#), Draft Legislative Reform (Horseracing Betting Levy) Order 2018, Thirty-Eighth Report of the Delegated Powers and Regulatory Reform Committee, Session 2017–19, p1. The Horseracing Betting Levy does not extend to Northern Ireland.

12 [Q28](#) [Mims Davies MP], and [Written evidence to the House of Lords Delegated Powers and Regulatory Reform Committee from the British Horseracing Authority, Racecourse Association and the Horsemen's Group](#) as above.

13 [Q28](#) [Mims Davies MP], and [Explanatory Document for the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p4

14 [Deloitte, Economic impact of British Racing for the British Horseracing Authority](#) (11 June 2013), pp 1–2

15 [Horseracing Betting Levy Board, Background and Statutory Responsibilities](#) (accessed 26 October 2018)

16 [Explanatory Document](#), p11 and [Horseracing Betting Levy Board, Annual Report and Accounts 2016 - 17](#), HC 98, p13

17 [Explanatory Memorandum for the Horseracing Betting Levy Regulations 2017](#), p3

18 [Explanatory Memorandum for the Horseracing Betting Levy Regulations 2017](#), p6

19 [Explanatory Document](#), p6

policy change and for the pursuance of a Legislative Reform Order, the Government argues the transfer of responsibility to the Gambling Commission will reduce administrative burdens on those businesses who currently pay and provide information to both the Levy Board and the Commission.<sup>20</sup> The Government has not provided any assessment of potential financial savings that will be made as a result of this administrative change in either the explanatory document or the *De Minimis* Assessment, but claims that “[d]ue to the inherently uncertain nature of forecasts it is difficult to accurately predict exactly what the difference will be between [the Levy Board]’s annual cost and the annual cost for the Gambling Commission.”<sup>21</sup>

12. The draft Order proposes to remove responsibility for the expenditure and distribution of the Levy (described by the Government as ‘administering’) from the Levy Board and grant the Secretary of State powers to designate a new body for such a purpose. The draft Order will also grant the Secretary of State powers to suspend payments to the body, review its status and ultimately to remove its designation and appoint a new body if required. The designated body is required to represent one or more of the following groups:

- i) persons involved in horse racing;
- ii) persons involved in veterinary science;
- iii) persons involved in veterinary education;
- iv) persons involved in the breeding of horses;

and to command the confidence of all those groups.<sup>22</sup> The Secretary of State may, but is not required to, consult these groups in their designation decision.<sup>23</sup> The Government has indicated it is minded to designate a body being established by the racing industry,<sup>24</sup> the Racing Authority.<sup>25</sup> The Racing Authority currently exists in a shadow form, with a Chair and Members appointed by the industry.<sup>26</sup> The existing Levy Board comprises two appointees of the Secretary of State, three appointees of the Jockey Club (currently held by the three members of the tripartite British racing group) and an appointee of the Association of British Bookmakers and Remote Gambling Association.<sup>27</sup> Should the draft Order be made and the Racing Authority be designated, Government appointees and an appointee from the gambling industry would no longer be formally represented. This issue is considered later in the Committee’s report.<sup>28</sup> As with the transfer of powers to the Gambling Commission, the Government has been unable to provide an accurate estimate of the difference in costs between the Levy Board and the new designated authority; however, a combination of the estimated costs for both the Gambling Commission and the Racing Authority gives an estimated annual saving of £240,000.<sup>29</sup>

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20 As above.

21 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p9

22 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p1

23 As above.

24 Represented by the tripartite structure of the British Horseracing Authority, the Racecourse Association and the Horsemen’s Group.

25 [Explanatory Document](#) pp 7–8

26 [“Racing Authority agreed by the sports’ leaders”](#), British Horseracing Authority Press Notice, 8 June 2018

27 Horseracing Betting Levy Board, [Board Members](#) (accessed 26 October 2018)

28 See Chapter 3, criterion F

29 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p9

13. If approved, the proposed reforms will take effect in April 2019. This would involve the closure of the Levy Board, the Horserace Betting Levy Appeal Tribunal for England and Wales and the Horserace Betting Levy Appeal Tribunal for Scotland, and remove Government involvement from decisions in relation to Levy application decisions.

### 3 Assessment of the draft Order

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14. In this section, we assess the draft Order against the criteria set out in the Standing Orders of the House. We make no assessment of the policy within the draft Order other than where it intersects with the prescribed criteria.

#### *A: Appears to make an inappropriate use of delegated legislation*

15. Within the changes made by the draft Order, the proposal to move the collection of the Levy from the Levy Board, established in primary legislation, to the Gambling Commission is a novel use of delegated legislation. While the express powers being delegated to the Gambling Commission to assess, collect and enforce a tax using civil proceedings do not trigger the statutory bar to imposing, abolishing or varying any tax via Legislative Reform Order set out in Section 5 of the 2006 Act,<sup>30</sup> we are concerned that the draft Order is seeking to alter fiscal provisions by delegated rather than primary legislation. As Lord Lipsey set out in his evidence to us, in other cases of tax collection outside HMRC “the fundamental powers for that derive from statute”.<sup>31</sup> The Minister told the Committees that she did not believe the Levy amounted to taxation;<sup>32</sup> however, we do not agree with this assessment of a state mandated compulsory levy on business with statutory purposes for its application.<sup>33</sup>

16. The Gambling Commission is not currently responsible for the assessment, collection and enforcement of a tax. We invited the Minister to provide us with a precedent for such a change;<sup>34</sup> however, her subsequent written evidence to the Committee relied upon the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999,<sup>35</sup> which transferred the administering between two existing Government bodies and was pursuant to an Act explicitly granting powers for this purpose.<sup>36</sup> We do not agree that this is a suitable comparison with a Legislative Reform Order and **we consider that such a change to the responsibilities of the Gambling Commission would best be made by primary legislation.**

17. In its 2017–18 consultation, the Government noted its intention since 2016 to transfer responsibility for the Levy expenditure and distribution from the Levy Board to the horseracing industry.<sup>37</sup> The draft Order does not propose to transfer this power directly, but instead gives the Secretary of State a power to designate a body for the purpose of administering the Levy. The explanatory document provided to the Committee sets out that the intention is still for designation to be given to the horseracing industry and its proposed new Racing Authority.<sup>38</sup> In granting the power for the Secretary of State to

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30 Legislative and Regulatory Reform Act 2006, [Section 5](#)

31 [Qq8–9](#) [Lord Lipsey]

32 [Q75](#) [Mims Davies MP]

33 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p8

34 [Q75](#) [Mims Davies MP]

35 Department for Digital, Culture, Media and Sport ([HBL0002](#)); and, Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 ([SI 1999/671](#))

36 Social Security Contributions (Transfer of Functions, etc.) Act 1999, [section 24](#)

37 Department for Digital, Culture, Media and Sport, [Consultation on the use of a Legislative Reform Order to reform the administration of the Horseracing Betting Levy](#), (December 2017), p17

38 [Explanatory Document](#), pp 7–8

designate an industry body, rather than an arms-length body such as the Levy Board or the Gambling Commission, the draft Order would have the effect of granting the Secretary of State power to privatise the administering of the proceeds of taxation.

18. The Government’s guidance on Legislative Reform Orders sets out that “[f]or highly contentious and political matters primary legislation remains the best option.”<sup>39</sup> While we accept that this proposal has been the subject of public consultation, the use of a draft Order to achieve the policy goal limits the degree of scrutiny available to both Houses and the possibility of amending the proposals. The draft Order, as presented, also makes a significant number of amendments to primary legislation.

**19. The transfer of tax collecting powers and the privatisation of the administering of the Levy are politically significant and are therefore an inappropriate use of a Legislative Reform Order. We conclude that such a measure would be best proceeded with by primary rather than delegated legislation.**

***B: Serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft order under section 1 of the Act)***

20. The Government has proposed these legislative changes be made by Legislative Reform Order on the basis that they remove financial burdens and administrative inconveniences under the terms of section 1 of the 2006 Act. On the transfer of powers to the Gambling Commission, the Government considers a range of opportunities in its explanatory document, including the potential for the removal of duplication in reporting requirements, the Gambling Commission being “well-placed” to reduce reporting requirements for bookmakers, and the potential for the Gambling Commission to be able to identify bookmakers not required to pay the Levy.<sup>40</sup> The *De Minimis* Assessment of the draft Order does not provide any quantifiable improvements for the gambling industry or the operation of the Levy from this measure, but repeats the potential non-quantifiable benefits in the explanatory document.<sup>41</sup> From the information provided by the Government, it is not clear that this part of the draft Order will necessarily serve the purpose of removing or reducing burdens, and any potential savings are most likely to fall with the Gambling Commission rather than reduce a burden on business.

21. On the removal of the power to administer the Levy from the Levy Board and the granting of the power of the Secretary of State to designate a new body, the Government has indicated it expects a marginal increase in the amount of money available to grant from the Levy as a result.<sup>42</sup> The Government has estimated that up to £240,000 extra may be made available for Levy funds as a result of administrative savings from the transfer to the proposed Racing Authority.<sup>43</sup> As with the transfer of powers to the Gambling Commission, the Government does also identify non-quantifiable and potential indirect savings, such as a suggestion that “an increase in prize money will attract larger field sizes,

39 Department for Business, Innovation and Skills, [Legislative Reform Orders: Guide for Policy Officials](#) (May 2016), p7

40 [Explanatory Document](#), pp 9–10

41 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), pp 10–11

42 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p10

43 [Explanatory Document](#), p13 and [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p14

which supports a more profitable betting market.”<sup>44</sup> In the Government’s *De Minimis* Assessment, they note these figures are predicated on acceptance of the figures provided by the shadow Racing Authority, a lack of comparable data from the current Levy Board and a decision not to reflect potential savings identified by the current Levy Board for retaining the status quo.<sup>45</sup> In her evidence to us, the Minister noted that no comparison was made because the Racing Authority had not set out potential savings.<sup>46</sup> As a Legislative Reform Order is predicated on the reduction of burdens, we find it disappointing that such work has not been undertaken to justify the draft Order.

22. The Committees questioned the Minister on the potential for savings and reductions of burdens. While she was optimistic on the potential for savings, she was unable to add to the limited information provided by the Government with the draft Order. The Minister described financial savings as being “a target and an aspiration”<sup>47</sup> but the draft Order does not include a target and the Minister did not agree a statutory target was necessary.<sup>48</sup> While the Government has oversight of the Gambling Commission and can intervene in any failures in its arms-length body on the costs of collection of the Levy, the scope for intervention with the new designated authority for the administering of the Levy is limited to the removal of the designation and the designation of a new body, a process which itself could incur further costs.<sup>49</sup>

**23. The Government has not supplied sufficient evidence on the actual benefits of the reforms, or the mechanisms by which the new responsible bodies can be held to account for failing to reduce burdens. We do not agree that this test has been met.**

***C: Serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft order under section 2 of the Act)***

24. The draft Order is being made under section 1 of the 2006 Act and so is not required to meet this criterion.

***D: Secures a policy objective which could not be satisfactorily secured by non-legislative means***

25. The functions of the Levy Board are set out in primary legislation, including in the Betting, Gaming and Lotteries Act 1963, the Horserace Betting Levy Act 1969, and the Horserace Betting Levy Act 1981. Changes to the administration of the Levy and the abolition of the Levy Board and associated tribunals on the scale can only be made via amendments to this legislation. **We are satisfied that this test has been met.**

***E: Has an effect which is proportionate to the policy objective***

26. The objective of closing the Levy Board was set out by the Government in 2016 and been the subject of multiple consultations.<sup>50</sup> The closure of the Levy Board, transfer of

44 As above.

45 [De Minimis Assessment of the draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), pp 14–15

46 [Qq30–31](#) [Mims Davies MP]; and, Department for Digital, Culture, Media and Sport ([HBL0002](#)).

47 [Q34](#) [Mims Davies MP]

48 [Qq35–45](#) [Mims Davies MP]

49 [Q43](#) [Mims Davies MP], and [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), pp 13–15

50 [Explanatory Document](#), p14

functions and abolition of tribunals will be a significant change to the operation of the Levy and we have considered the political significance above.<sup>51</sup> **We have been unable to estimate the impact the policy will have on stakeholders, based on the evidence provided by the Government. Consequently we are unable to make a judgement on the proportionality of the draft Order and so cannot judge that this test has been met.**

***F: Strikes a fair balance between the public interest and the interests of any person adversely affected by it***

27. The abolition of the Levy Board will also see the winding-up of its Committees, including the Veterinary Advisory Committee, responsible for to advise the Levy Board on investment of the Levy on veterinary investment.<sup>52</sup> The draft Order requires that in designating an authority (expected to be the Racing Authority), the Secretary of State must “have regard to” whether the authority “appears to represent the interests of” persons involved in one or more of horse racing, veterinary science, veterinary education or breeding of horses, and that such people “may be consulted” on the designated of the body.<sup>53</sup> While the Secretary of State must take these bodies into account and draw the designation decision to their attention, they are not currently required to formally consult these bodies. In her evidence to the Committee, the Minister noted the creation of a veterinary subgroup by the Racing Authority to ensure engagement, but this does not constitute a statutory role in either the establishment or running of the authority.<sup>54</sup> When challenged, the Minister said the Legislative Reform Order process was itself to blame:

The issue with the LRO process is that, in order to go through the process and deliver what we are looking for, pushing the envelope around the veterinary area is more difficult.<sup>55</sup>

We believe it is in the interests of those groups who may statutorily be beneficiaries of the Levy but not represented on the designated authority to be formally consulted on the designation. The Government has the potential to do this if it pursues this policy change by primary legislation, and it appears willing to do so.

28. In evidence to the Committee, the Government confirmed it does intend to consult with bodies on the designation of the body,<sup>56</sup> however, this is not statutory and does not provide certainty for parties that they will continue to be consulted on the operation of the designated authority. Although the Government has confirmed the draft Order does require the designated body to retain the confidence of these bodies,<sup>57</sup> there is no formal mechanism by which this would be measured, and a requirement only that the Secretary of State may act rather than must act if confidence is lost.<sup>58</sup>

29. The Government’s proposals on the administration of the Levy will also remove the formal representation of the gambling industry in the application of the Levy (see paragraph 10). In response, the shadow Racing Authority has established a Betting and

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51 See Criterion A.

52 Horseracing Betting Levy Board, [Veterinary Advisory Committee](#) (accessed 26 October 2018)

53 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p13

54 [Q56](#) [Mims Davies MP], [Q64](#) [Mims Davies MP]

55 [Q69](#) [Mims Davies MP]

56 [Q64](#) [Mims Davies MP]; and, Department for Digital, Culture, Media and Sport ([HBL0002](#)).

57 Department for Digital, Culture, Media and Sport ([HBL0002](#)).

58 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), pp13–15

Racing Liaison Group and intends to work constructively with the Authority.<sup>59</sup> In the Government’s consultation on the draft Order, the gambling industry was critical of the lack of representation of the sector in the designated authority.<sup>60</sup> While remedies suggested by the industry include formal representation, we agree with the Government that their proposed 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—is sufficient.<sup>61</sup> However, given the need to exercise this statutory role, we believe that the gambling industry should be included in those who should be consulted on the designation of the body.

**30. We conclude that the proposals from the Government as drafted, while intended to include a role for those previously engaged with the Horseracing Betting Levy Board, lack a formal commitment to consult with those groups. These changes would be best made by primary legislation with an opportunity to formalise the relationship of the designated authority with the veterinary, animal welfare and betting industries. We recommend that, should the Government seek to proceed with this draft Order or introduce primary legislation, they amend sub-paragraph (4) to require, rather than merely allow for, consultation with groups representing persons mentioned in sub-paragraph (3)(a)(i) to (iv) on the designation of a body for applying the Levy funds, and that the Government also be required to consult with the gambling industry on the designation. The Government should formalise the mechanisms by which the ongoing confidence of interested parties will be measured and set out a requirement that the Secretary of State act if confidence of such parties is lost.**

### **G: Does not remove any necessary protection**

31. The closure of the Levy Board will also see the closure of the Horserace Betting Levy Appeal Tribunal for England and Wales and the Horserace Betting Levy Appeal Tribunal for Scotland, which were available to bookmakers to appeal a Levy assessment notice and therefore the liability to pay the Levy.<sup>62</sup> In removing this protection, the Government notes that the tribunal is last known to have met more than 25 years ago, and that 2017 regulations have further simplified the assessment and payment process. The Government proposes that any dispute could be resolved by judicial review, which although not directly comparable to a tribunal, does provide a legal remedy to the collection of the Levy.<sup>63</sup> We are concerned that no assessment is made in the draft Order of the difference in burden on a potential applicant and no consideration has been made of a transfer to the established first-tier tribunal system; however, we note that respondents to the Government’s consultation who may be affected by the change were not opposed to it.<sup>64</sup>

32. The draft Order removes a criminal offence of disclosure of information currently in Section 28A of the Betting, Gaming and Lotteries Act 1963. This prevents anyone involved in the collection of the Levy from disclosing details of declarations or assessments of the Levy due, or any identifying information, protecting commercially sensitive information

59 [Explanatory Document](#), p19 and [“Racing Authority agreed by the sports’ leaders”](#), British Horseracing Authority Press Notice, 8 June 2018

60 [Explanatory Document](#), p38

61 [Explanatory Document](#), p48

62 [Explanatory Document](#), p17

63 As above.

64 [Explanatory Document](#), p18

and personal information of the bookmaking industry.<sup>65</sup> The Government contends that the removal of the protection is appropriate because the transfer of collection of the Levy to the Gambling Commission, which is without industry representation or commercial interest, removes the risk to bookmakers.<sup>66</sup> The Government instead suggests that existing non-statutory procedures of the Commission and the Civil Service will suffice for the protection of this information.<sup>67</sup> We are concerned that the Government is seeking to remove a protection and rely on a non-statutory approach; however, we recognise that the bookmaking industry has not opposed these changes.<sup>68</sup>

33. In removing the administering of the Levy from a statutory body (the Levy Board) to a designated body, the proposals will remove the coverage of the Freedom of Information Act from the administering of the Levy. We are concerned that an organisation responsible for the spending of taxation income of around £100 million each year would no longer be subject to Freedom of Information legislation,<sup>69</sup> and therefore **we find that this test has not been met. We recommend that, should the Government seek to proceed with this draft Order or introduce primary legislation, they should ensure that the designated body is covered by the Freedom of Information Act.**

***H: Does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise***

34. As a consequence of removing the administering of the Levy from a public body the designated body will, unlike the current Levy Board, not be subject to the oversight of the Parliamentary and Health Service Ombudsman for the handling of complaints.<sup>70</sup> Combined with the removal of the application of the Freedom of Information Act, we are concerned that the transparency and accountability of the designated body will be less than that of the current Levy Board, and therefore **we find that this test has not been met.**

***I: Is not of constitutional significance***

35. The Government does not consider that the draft Order is of constitutional significance. **We agree.**

***J: Makes the law more accessible or more easily understood (in the case of provisions restating enactments)***

36. **The draft Order does not raise any issues in respect of this test.**

***K: Has been the subject of, and takes appropriate account of, adequate consultation***

37. The Department for Digital, Culture, Media and Sport carried out a consultation between 21 December 2017 and 16 February 2018 on the use of a Legislative Reform Order

65 Betting, Gaming and Lotteries Act 1963, [Section 28A](#)

66 [Explanatory Document](#), p18

67 As above.

68 As above.

69 Horseracing Betting Levy Board, [Annual Report and Accounts 2017–18](#), HC 1267, p32

70 [Draft Legislative Reform \(Horseracing Betting Levy\) Order 2018](#), p16

to make its proposed reforms to the Levy.<sup>71</sup> This followed prior consultation on the policy decision to reform the Levy. The Government received 12 responses, of which four were from the gambling industry, three from bodies related to animal welfare, three from the racing industry, and three from other interested parties, including a joint response from Philip Davies MP and Lord Lipsey.<sup>72</sup>

38. In her evidence to the Committees, the Minister repeatedly told us there was “no opposition” to the draft Order and it was “supported by everybody”.<sup>73</sup> The responses to the consultation do not fully support the Minister’s claims. The responses received to the Government’s consultation on the use of a Legislative Reform Order to achieve the policy goals accept the Government’s intention to make the reforms, but we do not agree that acceptance is synonymous with support. Lord Lipsey—who responded to the consultation—set this out in his oral evidence to the Committees, telling us “I am against the thing on substance”.<sup>74</sup> The evidence we received from Lord Lipsey and the consultation responses received by the Government included specific concerns about the detail of the proposals contained within the draft Order.

39. The gambling industry broadly accepted the proposals of the draft Order given the Government’s established direction of travel on reform of the Levy.<sup>75</sup> They expressed concerns on the potential for savings to be made for their industry, with which we concur in paragraph 22 above. The industry also expressed concerns about representation with the new designated authority. In its response to these concerns, the Government highlighted its inclusion of a requirement “to consult with the betting industry on its strategy for disbursement of Levy fund”.<sup>76</sup> In addition, this Committee has recommended a formal right to consultation for interested parties, including the betting industry, on the designation of a body.<sup>77</sup>

40. The response received from Philip Davies MP and Lord Lipsey expresses concerns about the policy intent of the draft Order, whether it is suitable for the Legislative Reform Order process and the need for involvement of the gambling industry in the distribution of the Levy.<sup>78</sup> We make no comment on the policy intent of the Government, but have considered in criteria A to C whether the draft Order is a suitable use of the process.

41. The racing industry were supportive of the proposals. The members of the potential new designated authority were fully supportive and were optimistic on the opportunity for administrative and financial savings.<sup>79</sup> One respondent, Arena Racecourse Company, expressed support for increased representation for the gambling industry, and a clear demarcation between the proposed Racing Authority and from the British Horseracing Authority. The veterinary and equine welfare sectors accepted the proposals but expressed

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71 Department for Digital, Culture, Media and Sport, [Consultation on the use of a Legislative Reform Order to reform the administration of the Horseracing Betting Levy](#), December 2017

72 [Explanatory Document](#), p54

73 [Q28](#) [Mims Davies MP], [Q37](#) [Mims Davies MP], [Q55](#) [Mims Davies MP]

74 [Q3](#) [Lord Lipsey]

75 Association of British Bookmakers, [Response to the Consultation on the use of a Legislative Reform Order to reform the administration of the horseracing levy](#), February 2018

76 [Explanatory Document](#), p48

77 See paragraph 23.

78 Philip Davies MP and Lord Lipsey, [Response to the Consultation on the use of a Legislative Reform Order to reform the administration of the horseracing levy](#), January 2018

79 [Explanatory Document](#), p39

concern about a potential loss of representation.<sup>80</sup> The Committee’s recommendation for a formal consultation on the designation of a body would better ensure these concerns are met by the Government.

**42. We conclude that the draft Order has been subject to an appropriate level of consultation. We are content that the decision by the Department to proceed with the draft Order has taken some account of the feedback received but regret the Minister’s characterisation of the responses as being entirely supportive.**

***L: Gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are relevant***

43. The criteria for consideration under Standing Order No 151 include “that there appears to be a doubt whether it is intra vires or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made.”<sup>81</sup> **We consider the novel transferring of a power to collect a tax, as set out against the appropriateness test in criterion A above, gives rise to an issue.**

***M: Appears to be incompatible with any obligation resulting from membership of the European Union.***

44. The then Minister for Sport and Civil Society stated she was satisfied that the proposals in the draft Order are compatible with the United Kingdom’s obligations as a member of the European Union. **We agree.**

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80 [Explanatory Document](#), p40

81 Standing Orders of the House of Commons - Public Business 2017, [SO No. 151 \(1\)\(B\)\(vi\)](#)

## 4 Conclusion

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45. While the Government has continued to make a compelling case for the reforms to Horseracing Betting Levy, it has not made the case for the use of a Legislative Reform Order to achieve its aims.

46. Our scrutiny of the draft Order has found that it does not make appropriate use of delegated legislation, does not provide certainty on the reductions of burdens on which it is predicated, and removes the right of scrutiny under the Freedom of Information Act and by the Parliamentary and Health Service Ombudsman. We therefore find that the draft Order does not meet required preconditions and tests for a Legislative Reform Order to be made.

47. Under the super-affirmative procedure, it is now for the Government to decide whether to proceed with the draft Order, and if it does proceed, whether it should be amended prior to being brought back before the House. Should the Government seek to proceed with the draft Order as currently presented to Parliament, we would expect to report that no further proceedings be taken in relation to it. *The Government should bring forward primary legislation to enable full scrutiny of these measures.*

# Formal minutes

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## Wednesday 5 December 2018

Members present:

Stephen McPartland, in the Chair

Ben Bradley                      Mr Kevan Jones

Kirstene Hair                    Conor McGinn

Graham P Jones

*1. Draft Report (Draft Legislative Reform (Horseracing Betting Levy) Order 2018)*

Draft Report (*Draft Legislative Reform (Horseracing Betting Levy) Order 2018*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph

Paragraphs 1 to 47 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134

[Adjourned to a date and time to be fixed by the Chair

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Concurrent meeting with the House of Lords Delegated Powers and Regulatory Reform Committee:

### Wednesday 21 November 2018

*Question number*

**Lord Lipsey**

[Q1–25](#)

**Mims Davies MP**, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport, **Julie Carney**, Deputy Director, Head of Gambling and Lotteries, DCMS, **James Perkins**, Head of Horserace Betting, DCMS, and **Harry Navanayagam**, Legal Adviser, DCMS

[Q26–84](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

HBL numbers are generated by the evidence processing system and so may not be complete.

- 1 Department for Digital, Culture, Media and Sport ([HBL0002](#))
- 2 Lord Lipsey ([HBL0001](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Draft Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018	HC 869
Second Report	Draft Legislative Reform (Regulator of Social Housing) (England) Order 2018 and Draft Legislative Reform (Constitution of the Council of the Royal College of Veterinary Surgeons) Order 2018	HC 944