

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

38th Report of Session 2017–19

Draft Legislative Reform (Horserace Betting Levy) Order 2018

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

(i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;

(ii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,

(b) section 7(2) or section 19 of the Localism Act 2011, or

(c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

(iii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) section 85 of the Northern Ireland Act 1998,

(b) section 17 of the Local Government Act 1999,

(c) section 9 of the Local Government Act 2000,

(d) section 98 of the Local Government Act 2003, or

(e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Thirty Eighth Report

DRAFT LEGISLATIVE REFORM (HORSERACE BETTING LEVY) ORDER 2018

Background

1. This draft Legislative Reform Order (LRO) was laid on 9 October 2018 by the Department for Digital, Culture, Media and Sport (DCMS), together with an Explanatory Document (ED) and a *De Minimis* Assessment.¹ The draft Order is proposed to be made under section 1 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) which allows a Minister to make provisions by order to remove or reduce a burden, such as a financial cost or administrative inconvenience.
2. According to DCMS, the draft Order aims to streamline the administration of the Horserace Betting Levy (“the Levy”) and reduce administrative burdens and financial costs on those affected by the Levy. This is to be achieved by abolishing the Horserace Betting Levy Board (“the Levy Board”) that is currently responsible for Levy assessment, collection and enforcement and transferring these responsibilities to the Gambling Commission. It is intended that the Levy Board’s responsibility for application of Levy funds is to be passed to a new body managed by the racing industry. DCMS says that the expected savings will make available more Levy funding to support the wider horseracing industry.
3. The draft Order would insert all relevant Levy provisions in a new Part 17A of the Gambling Act 2005 and repeal the existing legislation relating to the Levy and its operation, including the Betting, Gaming and Lotteries Act 1963 (“the 1963 Act”) and the Horserace Betting Levy Act 1981 (“the 1981 Act”).

Role of the Committee

4. The Committee’s role is described in its first report on an LRO: “When considering an LRO, our role is not to consider in depth the policy in the draft order, but to consider whether it is ‘appropriate’ to be made, as proposed, under the 2006 Act; and if so, whether it meets the relevant tests in the 2006 Act”.² The Committee’s role is, therefore, twofold:
 - to consider whether it is appropriate for the proposed changes to be made by secondary rather than primary legislation;³ and,
 - to apply the statutory tests set out in the 2006 Act. The tests are: that the proposal removes or reduces a burden (section 1); that various

1 A *De Minimis* Assessment is used where the estimated annual impact of proposed reforms is below the £5 million threshold for a full impact assessment.

2 Delegated Powers and Regulatory Reform Committee (1st Report, Session 2007–08, [HL Paper 11](#)), para 39.

3 In the DPRRC’s report on the Legislative and Regulatory Reform Bill, Session 2005–06, [HL Paper 192](#), the Committee explained (para 49): “Appropriateness involves more than size and controversy: a proposal might sub-delegate too much power; might follow unreasonably soon after the legislation it amends; or it might be that the changes made by the Minister to a Law Commission recommendation, even if not controversial, are too significant.”

pre-conditions have been met (section 3); and, that there has been consultation with relevant parties (section 13).

5. In addition, the Committee considers the level of parliamentary scrutiny to be applied to the draft Order. The 2006 Act allows the Government to propose the negative, affirmative or super-affirmative procedure for each LRO. In this case, the Government have proposed the affirmative procedure. In these circumstances, it is open to the Committee to recommend that the level of parliamentary scrutiny should be upgraded to the super-affirmative procedure.
6. The super-affirmative procedure is described in section 18 of the 2006 Act. It requires the Minister to have regard, amongst other things, to any recommendations of the Committee made during a 60-day period after the laying of the draft Order. After that 60-day period, the Minister may, subject to conditions set out in the 2006 Act, either continue with an Order in the terms of the draft already laid or lay a revised draft Order. It is open to the Committee in either event to decide, before the draft Order is approved by the House, to recommend that “no further proceedings be taken” in relation to the draft Order.

Conclusion

7. The Committee has considered this draft LRO.⁴ It has concerns in relation to aspects of the 2006 Act tests and also to the overarching test of “appropriateness”. It intends therefore to take further evidence in order to address these concerns. For this reason, **the Committee recommends that the LRO should be subject to the super-affirmative procedure.** The scrutiny period is accordingly extended to 12 December 2018.

⁴ The Committee received evidence from Lord Lipsey and the British racing industry (the British Horseracing Authority, Racecourse Association and the Horsemen’s Group). This evidence is published on the Committee’s webpage: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/hldprcrpublications/> [accessed 6 November 2018].

APPENDIX 1: MEMBERS INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.