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# The Horserace Betting Levy

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## Summary

The Horserace Betting Levy is collected by the [Horserace Betting Levy Board](#) (HBLB) from the gross profit of betting on British horseracing. The money raised from the Levy is applied for one or more of the following purposes:

- supporting breeds of horses;
- the advancement or encouragement of veterinary science and education;
- the improvement of horseracing.

The Levy raised £95m in 2017/18.

### Extending the Levy

Until April 2017, the Levy did not extend to overseas betting operators. The [British Horseracing Authority](#) (BHA) estimated that this cost the industry over £20 million annually in lost Levy receipts.

The *Horserace Betting Levy Regulations 2017* (SI 2017/589) came into force on 25 April 2017. The Regulations extended the Levy to all gambling operators offering bets on horseracing in Great Britain. The basis on which the Levy is calculated is now a fixed rate i.e. 10% of profits on leviable bets which exceed £500,000 in a Levy period (1 April to 31 March in any given year).

The revised Levy arrangement required state aid approval. This was received from the European Commission on 21 April 2017.

### Administering the Levy

The Government wants to make changes to the Levy to “reduce financial and administrative burdens on the betting and horseracing industries”. The changes will involve:

- transferring responsibility for collecting and enforcing the Levy from the HBLB to the [Gambling Commission](#);
- transferring the responsibility for expenditure decisions and the distribution of the Levy to the racing industry. Levy funds will be passed to a nominated body which is representative of the British racing industry;
- as a result of transferring the above functions, closing the HBLB and abolishing the Horserace Betting Levy Appeal tribunals.

A Department for Digital, Culture, Media and Sport (DCMS) [consultation](#) on using a Legislative Reform Order to make the changes ran from 21 December 2017 to 16 February 2018. After analysing the responses, the Government decided to take forward its plans. The draft [Legislative Reform \(Horserace Betting Levy\) Order 2018](#) was laid before Parliament on 9 October 2018.

If approved, the Government's changes to the Levy would have taken effect from 1 April 2019. However, the draft Order was considered by the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee. In reports published in December 2018, both Committees [criticised](#) the Government's use of delegated legislation and said that primary legislation should be introduced instead.

In [response](#) to a December 2018 Lords question, the Government said that it was carefully considering the Committee reports.

# 1. Horseracing and betting

According to the BHA, horseracing attracts around 6 million racegoers annually.<sup>1</sup> It is the most televised live sport on terrestrial TV.<sup>2</sup>

The economic impact of the sport is considerable. A 2013 [report](#) found that racing employs around 17,400 people full-time directly, with indirect and associated employment taking the total to approximately 85,000. Racing contributes over £3.45bn a year to the economy and over £275m in taxation.<sup>3</sup>

Betting and horseracing have a long and interdependent relationship:

Without the racecourses, racehorse owners, trainers, jockeys and stable hands there would be no races and no betting profits (with a commensurate impact on the off-course betting industry and the existence of betting shops). Similarly, without betting on horseracing (and the contribution of an agreed proportion of those profits to the sport) there would be no horseracing as it is now and has been for many years.<sup>4</sup>

The [Rules of Racing](#) and the organisation of the fixture list are shaped, in part, by the need for the sport to be attractive to betting customers.<sup>5</sup>

In 2012/13, betting shops gross profits on horseracing were £697.88m.<sup>6</sup>

## 2. The Horserace Betting Levy

The *Betting Levy Act 1961* introduced a statutory levy on the proceeds of horserace betting. This was to offset the decline in raceday revenue after the legalisation of bookmakers' off course operations – meaning that people wishing to bet on a race no longer needed to attend it. The Levy ensured that some of the proceeds from off-course betting were returned to racing.

The current legislative framework is provided by the *Betting, Gaming and Lotteries Act 1963* (as amended). Under the Act, the [Horserace Betting Levy Board](#) (HBLB) collects the Levy from bookmakers and BetFred (the successor company to the Horserace Totalisator Board).

The HBLB is a non-departmental public body. It is sponsored by the Department for Digital, Culture, Media and Sport (DCMS). The HBLB receives no central Government grant-in-aid and no National Lottery funding.<sup>7</sup> The largest proportion of the HBLB's income comes from off-course bets.

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<sup>1</sup> BHA, [British Racing Industry Roadshows 2018](#), p13

<sup>2</sup> DCMS, [Modernising the Horserace Betting Levy - A consultation on reform or replacement](#), August 2014, p15

<sup>3</sup> Deloitte, [The economic impact of British racing](#), 2013, p1

<sup>4</sup> DCMS, [Modernising the Horserace Betting Levy - A consultation on reform or replacement](#), p16

<sup>5</sup> Ibid, p14

<sup>6</sup> Ibid, pp15-6

<sup>7</sup> HBLB website, [Background and statutory responsibilities](#) [accessed 10 July 2019]

### Distribution of Levy money

The money raised from the Levy is applied for one or more of the following purposes:

- support for horse breeds;
- support for veterinary science and education;
- the improvement of horseracing<sup>8</sup>

The majority of Levy income (90%) is applied to the improvement of horseracing. This expenditure is directed mainly to prize money. Other payments are made to racecourses as a contribution toward raceday costs, and as an incentive to stage fixtures at times of the year that are relatively unattractive for racegoers but beneficial for off-course betting and therefore Levy generation.<sup>9</sup>

The Levy raised £95m in 2017/18.<sup>10</sup>

The Levy is distributed each year in accordance with the HBLB's [Business Plan](#).

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<sup>8</sup> *Betting, Gaming and Lotteries Act 1963* s24

<sup>9</sup> HBLB website, [Improvement of Horseracing](#) [accessed 10 July 2019]; for further detail of Levy distribution see DCMS, [Modernising the Horserace Betting Levy - A consultation on reform or replacement](#), pp12-4

<sup>10</sup> DCMS, [Explanatory Document on the Legislative Reform \(Horserace Betting Levy\) Order 2018](#), October 2018, para 2.3

### 3. Extending the Levy

Until April 2017, the Levy did not extend to overseas gambling operators. The BHA estimated that this cost the industry over £20 million annually in lost Levy receipts.

The *Gambling (Licensing and Advertising) Act 2014* amended the *Gambling Act 2005* so that all remote gambling operators are required to obtain a licence from the Gambling Commission to enable them to transact with British customers and advertise in Britain.<sup>11</sup>

Section 2 of the 2014 Act enables the Secretary of State to make regulations so that overseas operators are liable to pay the Levy. This was the result of an [amendment](#) moved, with cross-party support, by the then Government when the Bill had its third reading in the House of Lords.<sup>12</sup>

On 3 March 2016, following a number of DCMS consultations<sup>13</sup>, the Secretary of State [announced](#) that a revised funding arrangement for British racing, applying to all betting operators, would be introduced.<sup>14</sup> This would involve the Secretary of State using the powers in section 2 of the 2014 Act.<sup>15</sup>

The BHA<sup>16</sup> and the [Association of British Bookmakers](#) (ABB)<sup>17</sup> welcomed the announcement.

#### **Draft Horserace Betting Levy Regulations 2017**

The draft *Horserace Betting Levy Regulations 2017* were [approved](#) by Parliament on 29 March 2017. During the debate in the Lords, the Government gave the following context to the revised arrangement:

(...) the Government are proposing to extend the horserace betting levy to betting operators based offshore. Currently, betting operators in Britain are required to pay the levy, whereas those based offshore but otherwise in identical circumstances are not. This is manifestly unfair. Alongside this we are setting the rate of the levy, providing long-term certainty for betting and racing industries.

(...)

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<sup>11</sup> For background to the 2014 Act see the Library's [Briefing Paper](#) (RP 13/55) and [Committee stage report](#) (RP 13/68) on the *Gambling (Licensing and Advertising) Bill 2013/14*

<sup>12</sup> [HL Deb 18 March 2014 cc83-90](#); An [Explanatory Note](#) on the Lords amendment was also published.

<sup>13</sup> [Extending the Horserace Betting Levy - a consultation on implementation](#), June 2014; [Modernising the Horserace Betting Levy - A consultation on reform or replacement](#), August 2014; [Horserace Betting Right: A consultation on potential structure and operation](#), February 2015

<sup>14</sup> [Topical Questions T1. \[903875\]](#) 3 March 2016; See also [PO 903874](#), answered 3 March 2016; A DCMS [document](#) (March 2016) gives further detail of the arrangement and its implementation.

<sup>15</sup> This section was brought into force on 31 January 2017 through the [Gambling \(Licensing and Advertising\) Act 2014 \(Commencement No. 2\) Order 2017](#)

<sup>16</sup> "BHA's Nick Rust hails 'historic' announcement on levy replacement", BHA News, 4 March 2016; See also ["British Racing's response to the 2016 Budget and DCMS announcement on levy replacement"](#), BHA press release, 16 March 2016

<sup>17</sup> ABB, [Statement on funding system for horse racing](#), 4 March 2016

The levy generally works well, providing distinct funding for specific purposes. Areas of expenditure include prize money, veterinary research and education, and upholding integrity. These areas are also crucial from a betting perspective. For example, a healthy prize supports large and competitive field sizes, ensuring that racing remains attractive as a betting product. However, wider changes have meant that the levy is no longer fair to either betting or racing. Given the introduction and subsequent rapid growth in remote—primarily online—gambling in recent years, this has created a system which puts British-based operators at a competitive disadvantage. It has contributed to a significant decline in levy receipts.

While I applaud and pay tribute to those betting operators that have chosen to make voluntary contributions to the sport, efforts at securing a long-term arrangement have failed to materialise. The Government have been left with little choice but to take action to ensure fair competition among betting operators. The UK is by no means unique in this regard. France, Ireland, Germany and others all have similar statutory arrangements in place.<sup>18</sup>

### State aid approval

State aid is when public organisations selectively support certain enterprises or industries, financially or by other means. It is only permitted in certain circumstances – see the Library briefing paper [EU State Aid rules and WTO Subsidies Agreement](#) for further general information.

The horserace betting levy qualifies as state aid essentially because it is formulated, imposed and administered by public bodies, it gives a financial advantage to horse racing companies, will affect intra-EU trade and may distort competition.

In the Lords debate on 29 March 2017, the Government acknowledged that its proposed changes to the Levy would require state aid approval:

(...) The levy is a pre-existing state aid, as it was in place prior to the United Kingdom's accession to the European Economic Community, as it then was. As we are making material changes to the levy, we now require state aid approval from the European Commission. The Government are seeking state aid clearance and these regulations will come into force only once this approval is granted...<sup>19</sup>

State aid approval was received on 21 April 2017. A European Commission (EC) [press release](#) said:

(...) The Commission has approved the measure because it recognises that it is essential for the improvement of horse breeding and horseracing without giving rise to undue distortions of competition. The measure also creates a level playing field among betting operators while at the same time supporting entry of new operators and the development of competition between betting operators, thanks to the de minimis threshold...<sup>20</sup>

<sup>18</sup> [HL Deb 29 March 2017 cc670-1](#)

<sup>19</sup> [HL Deb 29 March 2017 c671](#)

<sup>20</sup> [European Commission Daily News](#), 21 April 2017

Further detail, including a full description of the legal issues, is available in an EC [letter](#) of 21 April 2017.<sup>21</sup>

### **Horserace Betting Levy Regulations in force (25 April 2017)**

The [Horserace Betting Levy Regulations 2017](#) (SI 2017/589) came into force on 25 April 2017.<sup>22</sup>

The Regulations extend the Levy to all gambling operators offering bets on horseracing in Great Britain. The Levy is now calculated at a fixed rate i.e. 10% of profits on leviable bets which exceed £500,000 in a Levy period (1 April to 31 March in any given year).<sup>23</sup>

The Secretary of State must, within seven years, review whether the Levy rate remains appropriate to achieve the Levy purposes.

### **Reaction**

Nick Rust, Chief Executive of the BHA [said](#) the new Levy arrangement was “very important” for British racing and would “make a significant contribution to securing the long term health and growth” of the sport.<sup>24</sup>

In July 2017, Paul Lee, Chair of the HBLB, [said](#) that a “significant increase” in future Levy yield was anticipated.<sup>25</sup>

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<sup>21</sup> European Commission, [State Aid SA.46216 \(2017/N\) – United Kingdom Horserace Betting Levy](#), 21 April 2017

<sup>22</sup> [“Horserace Betting Levy Regulations 2017”](#), HBLB press release, 24 April 2017

<sup>23</sup> HBLB website, [Bookmaker Levy](#) [accessed 10 July 2019]

<sup>24</sup> [“Central funding of British racing moves into new era as replacement Levy comes into force on 25 April 2017”](#), BHA press release, 24 April 2017

<sup>25</sup> [“Prospect of Increased Income and Expenditure as Levy Board Publishes 2016/17 Annual Report”](#), HBLB press release, 12 July 2017

## 4. Administering the Levy

The Government wants to make changes to the Levy to “reduce financial and administrative burdens on the betting and horseracing industries”.<sup>26</sup> The changes will involve:

- transferring responsibility for collecting and enforcing the Levy from the HBLB to the Gambling Commission;
- transferring the responsibility for expenditure decisions and the distribution of the Levy to the racing industry. Levy funds will be passed to a nominated body which is representative of the British racing industry;
- as a result of transferring the above functions, closing the HBLB and abolishing the Horserace Betting Levy Appeal tribunals.<sup>27</sup>

### Consultation (December 2017)

A DCMS [consultation](#) on using a Legislative Reform Order to introduce the changes was published on 21 December 2017. This explained:

3.2. The Government considers there are a number of opportunities to reduce financial and administrative burdens to businesses affected by the Levy. As set out in the accompanying [de minimis assessment](#), the Government estimates that the reforms will result in a reduction in administration costs for those managing the collection and distribution of the levy. Administrative savings will provide a direct benefit to businesses in the racing industry as more Levy funds will be available for distribution, and an indirect benefit for betting operators where investment in racing enhances opportunities for betting.

3.3. The proposals will also result in the removal of Government from ongoing involvement in relation to Levy spending decisions. At present, Government-appointed members on the HBLB board have a role in making expenditure decisions. Under the proposals, the Government will no longer have an ongoing involvement in this area.

3.4. Maximising the efficiency of arm’s length bodies is an important issue for this Government. The proposed administrative reforms support the Government’s approach to Public Bodies Reform, which advocates looking at how public bodies can be merged or share back-office functions, and build on the objectives of promoting openness, transparency and coherence of the public bodies landscape, reducing costs and improving accountability.<sup>28</sup>

Detailed information on the proposals is given in chapter 3 of the consultation document. The consultation closed on 16 February 2018.

### The draft Legislative Reform (Horserace Betting Levy) Order 2018

After analysing the consultation responses, the Government decided to take forward its plans. The draft [Legislative Reform \(Horserace Betting](#)

<sup>26</sup> DCMS, [Consultation on the use of a Legislative Reform Order to reform the administration of the Horserace Betting Levy](#), December 2017, p1

<sup>27</sup> Ibid, p9

<sup>28</sup> Ibid, footnote removed

[Levy\) Order 2018](#) was laid before Parliament on 9 October 2018. An [Explanatory Document](#) gives detailed background to the Order.

The draft Order was considered by the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee. In reports published in December 2018, both Committees [criticised](#) the Government's use of delegated legislation to make changes to the Levy and said that primary legislation should be introduced instead.<sup>29</sup>

The [report](#) of the Regulatory Reform Committee acknowledged that the Government had "continued to make a compelling case" for reforms to the Levy. However, it had not made the case for the use of a Legislative Reform Order to achieve its aims.<sup>30</sup> According to the Committee, the Government's proposals failed to meet the statutory tests required for using such an order because:

(...) it removes the new Racing Authority from the scope of Freedom of Information legislation, makes significant changes to the administering of a tax, and lacks a formal right of consultation for animal welfare and veterinary groups and the betting industry.<sup>31</sup>

The [report](#) of the Delegated Powers and Regulatory Reform Committee concluded that the policy changes to the Levy were "of a character that Parliament would expect them to be contained in a bill and afforded the greater level of parliamentary scrutiny and debate to which primary legislation is subject".<sup>32</sup>

The Government must now consider whether to amend its proposals and submit them to further scrutiny or to introduce primary legislation.

In [response](#) to a December 2018 Lords question, the Government said that it was carefully considering the Committee reports.<sup>33</sup>

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<sup>29</sup> ["Lords and Commons Committees criticise Government's 'inappropriate' horseracing legislation"](#), Regulatory Reform Committee News, 7 December 2018

<sup>30</sup> House of Commons Regulatory Reform Committee, [Draft Legislative Reform \(Horseracing Betting Levy\) Order](#), HC 1756, December 2018, para 45

<sup>31</sup> ["Lords and Commons Committees criticise Government's 'inappropriate' horseracing legislation"](#), Regulatory Reform Committee News, 7 December 2018; HC 1756, para 46

<sup>32</sup> Delegated Powers and Regulatory Reform Committee, [Draft Legislative Reform \(Horserace Betting Levy\) Order 2018](#), HL Paper 249, December 2018,

<sup>33</sup> [HL12356](#) [on Legislative Reform (Horserace Betting Levy) Order 2018], 17 December 2018

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