

Modernising the Horserace Betting Levy

A consultation on reform or replacement

27th August 2014

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

|  |  |  |
| --- | --- | --- |
| **Chapter** | **Title** | **Page** |
|  |  |  |
|  | Ministerial foreword | 4 |
|  |  |  |
| 1 | Introduction | 5 |
|  |  |  |
| 2 | Context | 9 |
|  |  |  |
| 3 | Policy objectives | 19 |
|  |  |  |
| 4 | Option 1 – Levy reform | 23 |
|  |  |  |
| 5 | Option 2 – a new statutory framework | 30 |
|  |  |  |
| 6 | Fit with policy criteria | 35 |
|  |  |  |
| 7 | Next steps | 37 |
|  |  |  |
| 8 | Summary of questions | 38 |

Ministerial Foreword

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By Helen Grant MP, Minister for Sports and Tourism.



I am very pleased to be launching the second of two consultations concerning the future of the Horse Racing Betting levy.

In his budget this year, the Chancellor announced that Government would be consulting on the Levy, firstly to consider the mechanics of extending the existing Levy to offshore remote betting operators, and secondly to focus on matters concerning the future of the Levy, including reform or possible modernisation.

The first consultation was launched on 26th June and has now closed. 23 responses were received and I am currently considering those responses within the context of determining appropriate next steps.

In this second consultation we are seeking views on the merits of reforming the existing Levy, or replacing the levy with a bespoke statutory framework underpinned by commercial agreements between Betting and Racing.

I'm very aware that Betting and Horseracing go hand in hand and that the two industries are unequivocally linked together. Any future arrangement must meet the criteria I have previously set of being fair, enforceable, sustainable and legally sound.

Over the last three months, I have been speaking to key stakeholders within Horse Racing and Betting to identify common ground ahead of this formal consultation. I look forward to their – and other interested parties - continued fruitful engagement with the options set out and I am happy to further facilitate engagement where that helps. Government has no preferred option and I hope this process can lead to an outcome that benefits both industries, the wider economy and consumers.

1. Introduction

**Policy summary**

* 1. The Horserace Betting Levy (the Levy) is currently collected by the Horserace Betting Levy Board (the HBLB) from the gross profits of betting on British horseracing, and distributed to help improve horseracing, improve the breeds of horses and to contribute to veterinary research and education.
	2. In recent years the Levy has regularly been criticised in certain quarters for being out of date and there have been calls for change. The Chancellor announced in Budget 2014 that the Government would launch two consultations on the Levy. The first, on the mechanics of extending the Levy to offshore remote betting operators was published on 26th June.
	3. This is the second consultation: it seeks views on two options: reforming the existing Levy and replacing the Levy with a bespoke statutory framework. It proceeds from the assumption that there is a continuing need for a statutory framework to underpin arrangements enabling a flow of funding from betting on British horseracing back into the sport for the mutual benefit of both racing and betting. This is because a statutory framework can ensure that all those who benefit from betting on the horseracing “product” contribute and that there are no free-riders.
	4. The Government currently does not prefer one option over the other and this consultation will play a key part in helping to develop a practical solution to the question: what would be the best statutory funding mechanism to support the common interests of the betting industry and the sport of horseracing?
	5. This consultation is about betting and horseracing. The Government has no plans to develop a model that would apply to all sports.
	6. The Government is seeking a mechanism that will meet the following criteria:
* Fair – as between, and within, both betting and racing industries
* Sustainable – future-proofed, flexible, offering stability and certainty and proportionate
* Enforceable – binding on all operators licensed by the Gambling Commission taking bets on British horseracing
* Legally sound – complying with UK and EU law

* Removing the Government as far as is possible from involvement in the affairs of betting and racing

 Scope of consultation

* 1. This is a public consultation which covers Great Britain (England, Scotland and Wales: Northern Ireland has its own levy arrangements). We particularly seek views from those within the horseracing and betting industries, including offshore remote betting operators taking bets on British horseracing who will be required to take out licences from the Gambling Commission under the Gambling Act 2014.
	2. The consultation may also be of interest to others that benefit directly or indirectly from funding provided currently through the Horserace Betting Levy, such as racecourses, breeding groups, veterinary groups, owners, trainers, stable staff and jockeys; as well as all betting operators – irrespective of location - that take bets on British horseracing from customers based in Great Britain.
	3. It may also be of interest to those in other gambling business sectors, race-goers, customers of betting operators, and others with an interest in racing and gambling. We welcome views from anybody and all responses will be appropriately considered.
	4. The consultation period will run for 10 weeks from 27th August to 5th November 2014.
	5. Please respond before the closing date. There is a summary of the questions in Chapter 8. Please send responses to levy.consultations@culture.gsi.gov.uk Responses sent to any other inbox will not be taken into consideration. If you do not have access to email, please respond to:

Adrian Goodall

Horserace Betting Levy Extension Consultation

Gambling, Lottery and Licensing team

4th Floor, 100 Parliament Street,

London SW1A 2BQ

* 1. This consultation is intended to be an entirely written exercise but we reserve the right to follow up any responses to seek further information. Please contact Adrian Goodall on 020 7211 6093 if you require any other format e.g. Braille, Large Font or Audio.
	2. For enquiries about the handling of this consultation please contact the DCMS Correspondence Team at the above address or e-mail at enquiries@culture.gov.uk heading your communication “Levy reform options consultation”.
	3. Copies of responses may be published after the consultation closing date on the Department’s website: [www.gov.uk/government/organisations/department-for-culture-media-sport](http://www.gov.uk/government/organisations/department-for-culture-media-sport)
	4. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (“FOIA”), the Data Protection Act 1998 (“DPA”) and the Environmental Information Regulations 2004).
	5. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
	6. The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
	7. The consultation follows the Government’s Consultation Principles 2013 which is available at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.
1. Context

**The Horserace Betting Levy**

* 1. The Horserace Betting Levy (the Levy) is collected by the Horserace Betting Levy Board (HBLB) from the gross profit[[1]](#footnote-1) of betting on British horseracing (i.e. horseracing in England, Scotland and Wales) and distributed to help improve horseracing and, in particular, breeding and veterinary research and education.

* 1. The concept of a statutory Levy on the proceeds of horserace betting was first introduced by the Betting Levy Act 1961 to offset the decline in race day revenue (gate receipts) following the legalisation of bookmakers’ off course operations, which had meant that people wishing to place a bet on a horserace no longer needed to attend it. The Levy ensured that some proceeds from off-course operations were returned to racing.
	2. The Levy in its present form was introduced by the Betting, Gaming and Lotteries Act 1963 (‘the 1963 Act’), sections 24-31. This Act created the HBLB; set out the purposes to which the Levy should be applied; provided for a Bookmakers’ Committee to recommend annual Levy Schemes; and established Levy appeal tribunals. The Horserace Betting Levy Act 1969 (“the 1969 Act”) introduced the process whereby the Secretary of State determines a Levy scheme should the HBLB not accept a recommendation from the Bookmakers’ Committee; and put in place sanctions in the event that bookmakers failed to pay their contribution to the Levy. The Horserace Betting Levy Act 1981 enabled bookmakers to make Levy payments on account.

*Liability to pay Levy*

* 1. “Bookmakers” who are liable to pay the Levy are defined in sections 27(2)(a) and 55(1) of the 1963 Act. Section 27(2)(b) of the 1963 Act provides that bookmakers can be “divided for the purposes of the levy into different categories”. Separate provision (section 30) is made for the Levy to be paid by the Tote (pool betting). The HBLB agrees directly with the operators of the Tote (Betfred since 2011) what they will pay in any Levy period.
	2. “Bookmaker” embraces all on-shore licensed betting platforms and categories as they have developed. This means that the Levy is currently collected from off-course betting on British horseracing, pool betting (run by Betfred following the sale of the Tote in 2011), and on-course bookmakers. Off-course betting includes bets placed at Licensed Betting Offices (LBOs), spread betting firms and bet broking operations, including betting exchanges and remotely.
	3. The HBLB has never sought to collect the Levy from offshore gambling operators; it was generally accepted that the 1963 Act was not considered to have extra-territorial effect. In addition, customers of betting exchanges (as opposed to the betting exchanges themselves) are not leviable bookmakers, as confirmed by the Court of Appeal in 2013[[2]](#footnote-2). The Government is currently consulting on the mechanics of extending the Levy to offshore remote gambling operators who will be licensed by the Gambling Commission once the Gambling (Licensing and Advertising) Act 2014 is commenced.

*Annual Levy Schemes*

* 1. The Bookmakers’ Committee (comprised wholly of representatives from the betting industry) recommends each year the categories, rates, conditions and definitions of the Scheme to be applied from April in the following year and forwards them to the Levy Board for consideration.
	2. Membership of the Levy Board is as follows:

Chairman – appointed by the Secretary of State

2 independent Government appointed members – appointed by the Secretary of State

3 Jockey Club nominees, currently:

* British Horseracing Authority Chief Executive
* Racecourse Association Chairman
* Horsemen’s Group Chairman

Bookmakers’ Committee Chairman (Ex-officio)

* 1. The Bookmakers’ Committee has a great deal of scope in recommending how the Levy is to be calculated as no formula is set out on the face of the legislation. Currently, for all bookmakers other than racecourse bookmakers, the Levy is collected as a percentage of gross profits on British horserace betting business – irrespective of where the customer is located. However, in the past various other models have been applied for calculating the Levy, including fixed fees or as a percentage of turnover. These different methods reflect the fact that each Levy Scheme is agreed annually.
	2. The 1969 Act makes provision for the Secretary of State to determine a Levy Scheme if the Levy Board is unable to give its approval by 31 October in the year preceding that in which it is to be applied (section 1) and separate provision for a determination process for the Tote (section 5). In the last decade, the Secretary of State has been called upon twice to determine a Levy Scheme; the 47th Levy Scheme (2008/9) and the 50th Levy Scheme (2011/12).

*Appeal and enforcement*

* 1. The HBLB sends annual assessment notices to all bookmakers liable to pay the Levy. Section 28(5)-(7) of the 1963 Act makes provision for bookmakers to appeal against their assessment notice (and hence liability to pay Levy) and for the HBLB to refer their case to one of the two Levy appeal tribunals (one for England and Wales and one for Scotland). In practice, this is a very rare occurrence and a Tribunal last sat in the 1980s. HBLB now attempts to resolve any disputes directly with the bookmaker, thus negating the time and cost of a Tribunal hearing.
	2. The Gambling Act 2005 (Horserace Betting Levy) Order 2007 requires the Gambling Commission to review an operating licence if the HBLB notifies the Commission that the holder of an operating licence is in default of Levy payments. The Gambling Commission must provide the operating licence holder with an opportunity to make representations before coming to a conclusion. If the default on Levy payments is confirmed, and the HBLB asks for the operating licence to be revoked, the Gambling Commission must revoke the operating licence.

*Levy income and distribution*

* 1. Levy yields – including voluntary contributions - were typically in the range of £90-£100m from 2004/05 to 2008/09 but then fell to around £60m-£75m in subsequent years as set out in the table below.

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Year** | **05/06** | **06/07** | **07/08** | **08/09** | **09/10** | **10/11** | **11/12** | **12/13** | **13/14** | **14/15** |
| **Statutory Levy yield (£m)** | 97.7 | 98.7 | 116.5 | 91.6 | 75.4 | 59.5 | 67.7 | 66.7 | 70.1 | 67.9 |
| **Standard Levy rate (%)** | 10 | 10 | 10 | 10 | 10 | 10 | 10.75 | 10.75 | 10.75 | 10.75 |
| **Voluntary payments (£m)** | 0 | 0 |  | 1.3 | 0 | 0.2 | 6.9 | 7.6 | 7.8 | 12.3 |
| **Total Levy yield (£m)** | **97.7** | **98.7** | **116.5** | **92.9** | **75.4** | **59.7** | **74.6** | **74.3** | **77.9** | **80.2** |

Source: HBLB. Figures for 2013/14 and 2014/15 are estimates. The statutory Levy has been supplemented by additional voluntary contributions, principally through Betfair’s five year agreement with Racing in 2012. The “Big Four” retail operators - Betfred, Gala Coral, Ladbrokes and William Hill – reached agreement with Racing in October 2013 to make additional voluntary contributions for four years from 2014/15. When the exceptional additional yield derived in 2007/08 from bookmakers’ profits on ‘high roller’ betting clients are excluded, the total that year is approximately £100m.

* 1. Taking £100m as a typical annual value for the period from 2004/05 to 2007/08 there has been a fall of £33m to the most recent actual statutory Levy yield of £66.7 (2012/13).Some of this gap can be accounted for by the large bookmakers having moved their remote betting operations offshore since 2008. However, other factors at play include:
		+ a decline in gross profits in betting shops derived from horseracing partly as a result of the growth of new gambling products and channels;
		+ Levy calculation based on gross profits rather than turnover meaning that a decline in profit margins leads to a decline in Levy yield; and
		+ an increase in the number of betting shops that have fallen below the threshold above which they pay the full Levy percentage of 10.75.
	2. The Levy accounts for 7% of the inflow of money to racing[[3]](#footnote-3) but plays an important role in maintaining the quality of the racing product by incentivising racecourses (mainly through prize money) to put on meetings at times and of a quality that will generate more betting and hence more Levy. Usually, some 90% of the Horserace Betting Levy Board’s expenditure in any one year falls into three categories: prize money, Raceday Services and Fixture Incentive Fund (FIF). All three of these types of grant are paid to racecourses, and all 58 racecourses in Britain are eligible for funding by virtue of staging fixtures under the Rules of Racing set by the British Horseracing Authority (BHA), the governing and regulatory authority for the sport.
	3. Racecourse funding streams, including the Levy are illustrated in the table below. Media rights were the area of largest growth in the industry as a whole, generating £173m, up from £104m in the 2009 report. These increased media rights contributed heavily to racecourse cashflows being up by 1% overall, despite a marked decline in funds from the Levy.

| **Revenue source** | **2005** | **2008** | **2012** |
| --- | --- | --- | --- |
| **Total****(£m)**  | **Total****(£m)**  | **Total****(£m)**  |
| **Entry fees** |  | 17 | 16 |
| **Admissions** | 88 | 120 | 114 |
| **Catering** | 80 | 100 | 100 |
| **On-course betting** | 11 | 9 | 8 |
| **Media** | 42 | 57 | 88 |
| **Sponsorship** | 16 | 20 | 31 |
| **Other commercial** | 61 | 61 | 65 |
| **Levy** | 89 | 89 | 56 |
| **TOTAL** | **387** | **473** | **478** |

 Source: *The Economic Impact of British Racing* published by Deloitte in 2006, 2009 and 2013

* 1. The Betting Patterns Working Party (BPWP) comprised of Racing and Betting appointees, with Levy Board chairmanship and executive support, meets 4 or 5 times a year, with a sub-group of key Executives from the Levy Board, Betting and Racing holding a fortnightly call and meeting monthly. The BPWP monitors betting performance and data with a view to recommending mutually beneficial changes to the race programme to maximise levy generation and make best possible use of the horse population.

**Betting on horseracing**

* 1. Horseracing and betting on horseracing are inextricably linked. The Rules of Racing and the organisation of the fixture list have been shaped by the need for the sport to be attractive to betting customers as well as the needs of racing as a pure sport.
	2. “Racing” is used as shorthand for a wide range of stakeholders in the British horseracing industry – including racecourses, racehorse owners, jockeys, trainers and breeders. It does not have any separate legal identity, but is governed and regulated by the British Horseracing Authority, whose member organisations cover the full breadth of the sport: the Racecourse Association, Racehorse Owners Association, Thoroughbred Breeders Association and Licensed Personnel comprising trainers, jockeys and stable staff.
	3. Racing is the second most popular spectator sport in the country. Certain major race meetings attract the largest crowds, such as Royal Ascot (280,268 in 2012 at an average of 56,053 a day) and the Cheltenham Festival (237,369 people in 2012 at an average of 59,342 a day). However, horseracing also appeals to a very broad segment of the population throughout the country – with even relatively small weekday regional fixtures regularly attracting over 1,000 people, predominantly from local communities.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Year** | **2006** | **2007** | **2008** | **2009** | **2010** | **2011** | **2012** |
| Attendances | 5.9m | 5.8m | 5.7m | 5.7m | 5.8m | 6.1m | 5.6m |

* 1. Horseracing is the most televised live sport on terrestrial TV. The sport was broadcast by Channel 4 and the BBC (taken together) on more than 80 days in 2011. Since 2013, Channel 4 has had exclusive rights to show British horseracing with and there were 88 days of broadcasting in 2013 (representing more than 300 hours of coverage). In addition, Racing has two dedicated satellite television channels (At the Races and Racing UK).
	2. Satellite Information Services and Turf TV provide services to licensed betting offices. Customers can also access live pictures of a specific race by placing a bet with the vast majority of British focussed online betting companies. This is a rapid growth area with an estimated 70m video streams across all platforms being watched in 2012 - up by 30% on 2011 (Source: Deloitte, 2013)
	3. Combined with the British thoroughbred breeding industry, Horseracing is the largest sporting employer in Britain. It employs around 17,400 people fulltime directly, with indirect and associated employment taking the total to approximately 85,000. It has an overall economic impact, including capital expenditure, of over £3.5bn. (Deloitte, 2013)
	4. The 58 racecourses are located across England, Wales and Scotland, from Newton Abbot in the south to Perth in the north, Ffos Las to the west and Great Yarmouth in the east. The racecourses, predominantly rural but many in urban areas or on the fringes of major cities, also act as major social hubs on race days and non-race days alike.
	5. According to the British Gambling Prevalence Survey 2010 published by the Gambling Commission (2010) 73% (35.5 million) of the adult population in Great Britain participate in some sort of gambling activity. The proportion of respondents betting on horseracing in the four weeks preceding the survey is set out in the table below were:

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Year to March 2010** | **Year to March 2011** | **Year to Sept 2011** |
| Betting on horse races or virtual horse races with a bookmaker (not including online) | 3.5% | 4.0% | 4.6% |

* 1. 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.
	2. The horserace betting market in the UK is relatively broad with a number of different betting opportunities for British customers. Licensed bookmakers are available at racecourses, off-course betting shops, via telephone, internet and via the use of handheld electronic devices such as smartphones. Customers can choose fixed odds betting, pool betting, or can bet through betting exchanges.
	3. The table below illustrates Gambling Commission licensed betting operator gross profits on all horseracing:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year** | **2008/09 (£m)** | **2009/10 (£m)** | **2010/11 (£m)** | **2011/12 (£m)** | **2012/13 (£m)** |
| Betting shops | 843.79 | 768.42 | 704.82 | 675.06 | 697.88 |
| Remote betting | - | 201.29 | 105.97 | 92.21 | 118.44 |
| Pool betting | 85.01 | 78.36 | 84.45 | 88.23 | 84.55 |
| On-course  | 23.17 | 24.03 | 21.09 | 20.15 | 17.48 |
| **Total** | **951.97** | **1,072.10** | **916.33** | **875.65** | **918.35** |

Source: Gambling Commission

* 1. The betting shop market of over 9,000 shops is dominated by four main high street operators, accounting for 82% of all betting shops:

|  |  |
| --- | --- |
| **Organisation** | **Total Betting Shops** |
| **As at 31 March 2009** | **As at 31 March 2010** | **As at 31 March 2011** | **As at 31 March 2012** | **As at 31 March 2013** |
| William Hill | 2,228 | 2,263 | 2,350 | 2,320 | 2,345 |
| Ladbrokes | 2,080 | 2,073 | 2,097 | 2,131 | 2,227 |
| Gala Coral Group | 1,630 | 1,645 | 1,712 | 1,725 | 1,745 |
| Betfred | 808 | 829 | 840 | 1,345 | 1,369 |
| Tote | 516 | 512 | 514 |
| Other | 1,600 | 1,500 | \*1,554 | \*1,607 | 1,369 |
| **Total** | **8,872** | **8,822** | **9,067** | **9,128** | **9,055** |

\*During 2010/11 the Gambling Commission requested gambling premises data from all licensing authorities in Great Britain in order to update its location database. All but 14 licensing authorities responded and this information is used here where previously the Commission has published only estimates. All other figures are obtained directly from operators.

* 1. These shops employ approximately 55,000 full and part time staff, with a broad mix of opportunities for men and women as well as flexible working options.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year** | **2008/09**  | **2009/10** | **2010/11** | **2011/12** | **2012/13** |
| Average number of employees (including full and part time posts) | 60,247 | 55,695 | 54,077 | 54,728 | 54,093 |

* 1. The graph below illustrates that, while decreasing as an overall proportion of gross profits (win), betting on horseracing remains the single biggest sports betting product of bookmakers.



Source: *The Economic Impact of British Racing,* 2013, Deloitte, p.40

* 1. The graph in 2.31 above only includes figures for remote operators based in Britain: all bar Bet365 of the top twenty online operators are located offshore. There is inevitably a shortage of publicly available data for offshore online operators so it is difficult to make an assessment of the online market. It has been estimated (Deloitte, 2013) that total gross profits could be well in excess of £100m p.a. However, the diversity of online offerings means that gross profits from British Horseracing will be a much smaller proportion of the whole than, say, in Licenced Betting Offices.

1. Policy objectives

**Introduction**

* 1. Betting and horseracing have a unique interdependent relationship that has shaped both for over 200 years – one which is not mirrored in the relationship between betting and other sports: it explains why there was a Levy in the first place. The Levy is the only funding flow into racing which is used for the mutual benefit of both the whole of betting and the whole of the racing industries. An increase in betting on British horseracing should lead to an increase in Levy yield.

* 1. The Levy is a mechanism for transferring funds from the business of betting on horseraces to “horseracing” in a broad sense and began life as a result of the legalisation of off-course cash betting in 1961. Both betting and racing industries, recognising a mutual interdependence, wished to see the Levy introduced. The principle of transferring funding to racing from the proceeds of betting under statutory arrangements had already been established as far back as 1928 when the Tote was created as a non-profit making activity with surpluses distributed for the benefit of racing.

* 1. The legislation under which the Levy currently operates (the Betting, Gaming and Lotteries Act, 1963) remains essentially unchanged. In recent years elements of the Levy have regularly been criticised. Issues raised have included:
* “Leakage” as a result of gambling operators moving their remote business offshore;
* Board membership;
* Annual Levy Schemes (preventing effective long term planning)
* Whether racing should distribute Levy funds
* The Government’s role in Determining the Levy
* Lack of negotiation in that the Levy Board can only accept or reject what is proposed by the Bookmakers’ Committee
	1. The Chancellor announced in Budget 2014 that the Government would launch two consultations on the Levy. The first, on the mechanics of extending the Levy to offshore remote betting operators, was published on 26th June.

**Consultation scope**

* 1. In setting the scope of this consultation, the Government considered four alternatives and decided to focus on two as set out in the diagram below:

****

* 1. Status Quo is not a desired option as there are too many issues with the system as it stands that need to be addressed - not least the fact it does not extend to offshore remote operators.
	2. The Government has decided not to consult on abolishing the Levy altogether with no statutory replacement. There is a continuing need for a statutory framework to underpin arrangements enabling a flow of funding from betting on British horseracing back into the sport for the mutual benefit of both racing and betting. This is because a statutory framework can ensure that all those who benefit from betting on the horseracing “product” contribute and that there are no free-riders.
	3. This consultation therefore seeks to identify common ground on arrangements underpinned by statute both in terms of Levy reform and replacement by a different statutory system.

Policy outcomes

* 1. There is no preferred option at this point. The Government wants to use this consultation to help develop a practical solution to the question: what would be the best statutory funding mechanism to support the common interests of the betting industry and the sport of horseracing?
	2. This consultation is about a solution bespoke to betting and horseracing. The Government has no plans to create a model that would apply to all sports.
	3. Nor is the consultation about increasing, or decreasing, the amount of money going from betting to racing, currently via the Levy. This is properly a matter for negotiation between betting and racing. Our underlying policy objective is to find a modern model which works for all parties, reflecting what the Levy has evolved into. The Government believes that such a system should meet the criteria set out in the table below:

| **Criterion** | **Description** |
| --- | --- |
| Fair | The system should:* create level playing fields – between large and small betting operators; between land-based and offshore betting operators; between large and small racecourses; between racecourses and horsemen. We do not want to incentivise anti-competitive behaviours.
* facilitate genuine negotiation between betting and racing on quantum and expenditure.
 |
| Sustainable | The system should be:* future-proofed so that it can adapt to developments in the betting and racing industries, and provide certainty to enable both betting and racing to plan ahead.
* robust, transparent (as far as is possible in a commercial environment), efficient, and proportionate.
 |
| Enforceable | The system should offer effective enforcement mechanisms available to all parties to prevent any party breaching their obligations. |
| Legally sound | The system should comply with UK and EU law. |
| Remove Government | We are consulting on two statutory options for a system, so the Government would have to be involved to the extent that it passed the legislation. But beyond that, the Government wants to be as far as possible removed from any direct involvement in activities that take place under the legislation. |

**Q.1: Do you agree that the criteria set out in paragraph 3.11 are correct? Should any other criteria be taken into consideration?**

1. Option 1 - Levy reform

**Introduction**

* 1. Reforming the Levy is a genuine option: the fact that elements of the Levy have been criticised in some quarters does not mean that they could not be reformed to address the issues raised. The existing Levy system is described in Chapter 2, paragraphs 2.1- 2.17.

**Features for consideration in reforming the Levy**

 *Extending the Levy to offshore remote operators*

* 1. The Government launched a technical consultation on the mechanics of extending the Levy to offshore remote operators on 26th June: this is the element of the current system that is arguably the most in need of reform given its inherent unfairness. We have asked for views on amending the definition of “bookmaker” in the 1963 Act to align with the licensing regime established by the Gambling Act 2005 (as amended by the 2014 Act), and existing custom and practice of the HBLB. In practical terms this means liability to pay Levy will extend to all gambling operators that hold an operating licence from the Gambling Commission and take bets from British customers on British Horseracing. The extension consultation also seeks views on the make-up of the Bookmakers’ Committee in a post-extension environment.
	2. We are not repeating these technical questions in this consultation but are seeking views on wider reforms.

*Comparator models*

* 1. Levy Schemes are relatively complex with a number of different payment categories, which are recommended each year by the Bookmakers’ Committee. Other jurisdictions take a different approach, the most relevant comparator model being that which operates in France in respect of online horserace betting[[4]](#footnote-4).
	2. The French model has three key features relevant to this consultation:
		+ operators pay a levy fixed in law;
		+ the levy is a flat-rate of approximately 5.6% of turnover; and
		+ the set percentage is based on the common interest that the PMU (Pari Mutuel Urbain) and the competing operators of online horse‑race betting attach to the organisation of horse races on which bets are taken.

**Q.2: Are there any advantages in introducing some or all of the features in paragraph 4.5 into the British Levy system?**

**Q.3: What modifications might need to be made to any or all of these features for them to work in a British context?**

*Levy Board*

* 1. Any reform of the Levy should consider changing the composition of the Levy Board to ensure that it reflected new circumstances. Options for change could include:
		+ Removing or reducing Government Appointed Members;
		+ Removing or reducing the number of betting and/or racing appointees;
		+ Removing appointments by the Jockey Club; and
		+ Ensuring an equal representation from betting and racing

**Q.4: Who should sit on a reformed Levy Board? What impact would the presence or absence of a Bookmakers’ Committee make to your proposals?**

*Bookmakers’ Committee*

* 1. If membership of the Board was recast, there would be an opportunity to review the Bookmakers’ Committee, and the relationship between the Bookmakers’ Committee and the Board. Currently the Levy Board can only accept or reject any recommendation for a Levy Scheme made by the Bookmakers’ Committee: this means there is no formal negotiating forum set out in the Levy Board’s constitution.

**Q.5: Could the Bookmakers’ Committee be recast as a negotiating forum including representatives from both betting and racing and, if so, who should sit on it and how might it operate?**

 *Levy Schemes*

* 1. The Levy system currently follows informal guiding principles based upon the “needs of racing” and bookmakers’ “capacity to pay”. The Government is seeking views on whether these guiding principles should be replaced by a concept of the “value” of British horseracing to punters (and hence betting operators). .

**Q.6: Should Levy rates be based on a concept of “value”? If so, how should that value be set and should that concept be articulated in legislation?**

**Q.7: Should Levy schemes continue to differentiate between different classes of bookmaker and, if so, what should the differentials be and how would you set them?**

**Q.8: If the principles of “need” and “capacity to pay” were to be retained, how should they be defined?**

* 1. The 1963 Act provides that there has to be an annual Levy Scheme process to confirm an agreement, even if it is rolled over from the previous year. This does not prevent multi-year arrangements but the inflexible requirement that there should be a formal, annual decision militates against betting and racing being able to develop plans together over a longer period providing both with greater certainty over the expected levels of income and expenditure. The Government could deal with this inflexibility by conferring an additional function on the HBLB to determine each Levy period. If it was felt that this function should not be completely open ended then a maximum length could be set.

Q.9: Should the Levy Board be given the freedom to determine the length of each Levy period? If so, should a maximum scheme time be set?

* 1. Currently, the deadline for the Board to accept any Levy Scheme recommended by the Bookmakers’ Committee is 31 October, since a 1981 Order sets this as five months before the next scheme year. The Levy Scheme agreed by 31 October has to be promulgated by 31 March in the following year and begins on 1 April. Alterations could be made to the calendar, such as aligning Levy schemes with the calendar year or bringing forward the date by which a Levy Scheme has to be accepted by the Levy Board.

**Q.10: Is there a case for making changes to the existing Levy Scheme calendar and, if so, what changes would you make and why?**

* 1. Currently, published Levy schemes focus on what is being paid by betting operators but not in any detail what they are getting for their contribution. It might better reflect the mutual interest of both betting and racing if a published scheme set out what was to be delivered – not exactly a commercial contract but as close to one as could be developed within a Levy framework.

Q.11: Should published Levy Schemes set out what will be delivered with the funding?

*Determination*

* 1. This section considers options for dealing with the Determination process in the event that Levy rates were not fixed in law and some form of negotiating process was retained.
	2. If the Government was to retain a statutory framework based on the existing Levy, we would wish to replace the role of the Secretary of State in determining the terms of a Levy scheme with a non-political independent arbitration process or some other form of dispute resolution. We could do this by conferring an additional function on the HBLB to appoint an independent arbitrator or similar to determine the terms of an upcoming Levy scheme where they have not been able to approve such terms themselves.

**Q.12: Do you agree that determination by the Secretary of State should be replaced by independent arbitration arranged by the Levy Board? Are there other alternatives?**

* 1. There are a number of potential methods of arbitration. An HBLB-appointed independent panel or expert could, for instance, determine the terms of the Levy Scheme to have effect for the following Levy Period. Alternatively, the panel or expert could consider submissions provided by the parties and make their own determination of an appropriate Levy scheme, as has happened with Secretary of State Determinations.

**Q.13: If an independent panel or expert was to replace the Secretary of State in determining a Levy scheme, how should they be appointed and what form of arbitration should they use?**

*Audit*

* 1. To ensure that bookmakers’ Levy returns are correct it has been suggested that the HBLB should be given the power to audit the Levy return of a bookmaker if so required. At the moment, the Levy Board relies on Forms of Declaration from gambling operators accompanied by a Report from an Independent Accountant. However, appropriate data safeguards would need to be put in place for the betting operators, and we would not want the process to prove unduly onerous either for them or the Levy Board.

**Q.14: How necessary would it be for the HBLB to be given the power to audit the Levy returns of betting operators and what safeguards would need to be put in place?**

*Betting data*

* 1. Certain betting data is provided by some operators for use by HBLB. Analysis of such data helps direct the distribution of Levy proceeds in efficient ways that benefit future Levy yield. To help further target Levy distribution, the HBLB could be given an additional function to facilitate the provision of more comprehensive betting data, for instance by requiring them to ask bookmakers for it as part of their Levy returns, and then nominate an independent aggregator to process it, before making it available, for example, to the Betting Patterns Working Party. There would, however, need to be safeguards to ensure that such data collection was not an onerous or complicated expansion of the current Levy arrangements and that commercially sensitive data was protected.

**Q.15: What benefits would there be in the HBLB collecting additional betting data, should it be mandatory for betting operators to provide such information, and what safeguards would need to be put in place?**

**Q.16: Should parties other than the HBLB have access to additional betting data and, if so, why?**

*Distribution*

* 1. Currently, distribution lies in the hands of the Levy Board but the Department would be interested in seeing whether there could be an appropriate alternative distribution mechanism. Any alternative to distribution by the Levy Board would need to incorporate safeguards to ensure that public funding was spent in accordance with Government accounting rules.

**Q.17: How might distribution be organised if it was not undertaken by the Levy Board and what might be the benefits of any change?**

**Q.18: If the Levy Board did not distribute the Levy how what safeguards could be put in place to ensure that rules on public expenditure were followed?**

*Other issues*

* 1. We are not aware of any other issues that should be considered in relation to potential Levy reform but are happy to receive any views on anything we may have missed.

Q.19: What other issues should we consider in relation to potential Levy reform? Are there any other proposals you wish to being forward?

1. Option 2 - a new statutory framework

**Introduction**

* 1. Option 2 is inevitably less developed than Option 1 because, at this point, the only certainties, if the Government was minded to pursue this option, are that:
		+ arrangements for the transfer of funding from betting to racing would be underpinned by statutory provisions requiring all betting operators licensed by the Gambling Commission to enter into an agreement with racing in order to be able to take bets legally on British horseracing, if they wanted to;
		+ the solution would be bespoke to betting and horseracing. The Government has no plans to create a model that would apply to all sports;
		+ The state would have no part in the agreements reached by betting and racing – so there need be no statutory organisation to collect and distribute funding.
	2. The Government has no pre-existing picture of what any statutory system that might replace the Levy might look like in its details, so this consultation asks a number of questions about the issues that any proposed replacement would raise.

**Components of a new statutory framework**

*Statutory underpinning: “rights” or “regulation”?*

* 1. A bespoke model would need to be based on an effective statutory mechanism which would enable betting and racing to agree, following negotiation, what was to be paid to racing and what betting would get in return. Looking at examples from France and Australia, the bespoke statutory underpinning could be based around one of two models:
		+ Regulatory. In this model, bets could not be taken on British Horseracing unless the betting operator was authorised by the governing body (i.e. the British Horseracing Authority) to do so. Non-compliance with the system would be a criminal offence. This model operates in Australia (e.g. authorisation to obtain access to “race fields” data).
		+ Rights-based. In this model, a property right, directly enforceable by the owner of the right, would be vested in a racing “product”. This would mean that betting operators would be unable to take bets on British horseracing unless granted a licence by the rights owner. This model operates in France (the “right to offer bets”). The issue of rights ownership is addressed in paragraph 5.4.

**Q.20: Should any statutory replacement for the Levy be based on a rights or regulatory model? Are there any other statutory alternatives?**

*Rights ownership*

* 1. If the Government was to establish a rights-based system, legislation would need to be clear about the “product” that the right was vested in and, consequently, the “owner” or “owners” of that right. For example, should the right be vested in individual race meetings or the overall fixture list?

**Q.21: If the Government was to establish a rights-based system, in what “product” should any right be vested and what legal entity, or entities, would “own” that right, and why?**

*Negotiating process and price setting*

* 1. The Government would welcome worked examples to illustrate what the negotiating and price setting process might look like under either or both models described above. Worked examples should be detailed enough that they explain as a minimum:
		+ Who negotiates and how – for example, might there need to be multi-layered negotiations starting with general parameters or heads of terms moving through to individual contracts?
		+ Scope for negotiation – to what extent would there be a true negotiation or would negotiation be round the edges of a set pricing “scheme”? Would other payments (e.g. media payments) be taken into account?
		+ Setting prices – how would the value of the authorisation or licence to take bets be established?
		+ Scope of terms and conditions – in particular whether or not there should be any controls on bet types.
		+ Arbitration mechanisms –would there be a need for a new arbitration mechanism to resolves disputes at the negotiating stage?

**Q.22: What could the negotiating process look like and what should be covered in the terms and conditions?**

*Competition*

* 1. We would like to hear views about the extent to which the negotiating process should be established in law to address concerns about anti-competitive behavior. For example, the law could set out the scope of any contract; how the fees were to be calculated (e.g. turnover or profits); level of fees (e.g. setting a minimum price).

**Q.23: Should protections beyond those offered by existing competition law be incorporated in legislation to counter potential abuse of dominance and anti-competitive agreements and, if so, what should those be?**

*Distribution*

* 1. The legislation setting up a Levy replacement would be silent on how any funding raised would be distributed: the contracts signed by betting operators with racing would naturally set out what racing was to deliver and, therefore, the funding purposes. However, given that it is possible that there could be high-level negotiations over broad terms and conditions it would not be unreasonable to expect that they would set out what betting would receive for the aggregated payments.

**Q.24: Should any standard terms and conditions include overall deliverables or KPIs which would need to be met by racing? If so, what should these cover?**

**Q.25: What organisation would collect and distribute funding?**

*Enforcement*

* 1. Enforcement arrangements would need to be in place to handle situations where:
		+ a betting operator, or racing, did not deliver according to the terms and conditions of the signed contract; and
		+ a betting operator chose not to sign a contract to be authorised to take bets on British horseracing but nonetheless did so.

**Q.26: What enforcement arrangements do you think would need to be in place?**

*VAT*

* 1. Levy payments do not currently attract VAT because payments are specifically not made for any “supply”. Without knowing the precise shape of any statutory replacement for the Levy it is difficult to say at this point whether or not it would attract VAT and advice would need to be taken from HMRC if the Government chose to go ahead with this option and once some of the details had been worked up.

**Q.27: What impact do you think a Levy replacement incurring VAT would have on the quantum raised under a new system?**

Chapter 6: Fit with policy criteria

**Introduction**

* 1. This Chapter seeks to establish whether, in broad terms, there is any significant distinction between the two Options when they are set against the policy criteria described in paragraph 3.11. Clearly a full assessment cannot take place until we have detailed worked up models for evaluation following this consultation.

**Fair**

* 1. Both options would be fair in that all betting operators taking bets on British horseracing would be contributing: there would level playing fields between large and small betting operators; between land-based and offshore betting operators, and whatever the betting mechanism.
	2. However, there are risks attached to Option 2 which could encourage anti-competitive practices if there were insufficient safeguards to stop this happening. These safeguards might be as much about locking in incentives for both betting and racing as preventing anti-competitive behaviours.

**Q.28: What is your view of the potential fairness of each Option?**

**Q.29: Does either Option have any particular implications for small and micro-businesses?**

 **Sustainable**

* 1. Both options could be designed to be sustainable in the sense of being able to adapt to developments in the betting and racing industries, and provide certainty to enable both betting and racing to plan ahead. The cost-effectiveness of any Option could be calculated only when there was a detailed model to work with.

**Q.30: Which Option do you think has the potential to be the most cost effective overall and why?**

 **Enforceable**

* 1. Although the enforcement mechanisms might be different in each case, both options are equally capable of being enforced.

**Q.31: Do you agree that both Options are equally enforceable?**

 **Legal**

* 1. The main legal concerns are ensuring that any statutory replacement for the Levy is compatible with EU law, including (but not limited to) state aid rules. As far as state aid is concerned, we believe that Option 1 could be acceptable as long as it met the Commission’s requirements for transparency and fairness – particularly if it took the Government even further out of the picture. We currently believe that Option 2 should not engage any state aid issues.

**Q.32: Do you agree with our assessment of the legal position?**

 **Remove Government**

* 1. If the HBLB was given the power to engage an independent expert or panel to handle determinations then the Secretary of State’s role in determining Levy Schemes would drop away. While this would help remove the Government further from involvement in the funding of horseracing, Option 2 has the potential to remove the Government the furthest by taking out the HBLB as an intermediary. This would have the consequence that any sums raised under Option 2 would not be classed as public funds.

**Q.33: Do you agree that Option 2 has the potential to remove the Government furthest from involvement in the funding of horseracing?**

Chapter 7: Next Steps

7.1 We will continue to engage with stakeholders during and after the consultation period as we develop the Government’s response.

7.2 The published response will set out what the Government intends to do and how it intends to implement any changes.

Chapter 8: Summary of questions

**Policy Objectives**

**Q.1: Do you agree that the criteria set out in paragraph 3.11 are correct? Should any other criteria be taken into consideration?**

**Levy Reform**

**Q.2: Are there any advantages in introducing some or all of the features in paragraph 4.5 into the British Levy system?**

**Q.3: What modifications might need to be made to any or all of these features for them to work in a British context?**

**Q.4: Who should sit on a reformed Levy Board? What impact would the presence or absence of a Bookmakers’ Committee make to your proposals?**

**Q.5: Could the Bookmakers’ Committee be recast as a negotiating forum including representatives from both betting and racing and, if so, who should sit on it and how might it operate?**

**Q.6: Should Levy rates be based on a concept of “value”? If so, how should that value be set and should that concept be articulated in legislation?**

**Q.7: Should Levy schemes continue to differentiate between different classes of bookmaker and, if so, what should the differentials be and how would you set them?**

**Q.8: If the principles of “need” and “capacity to pay” were to be retained, how should they be defined?**

**Q.9: Should the Levy Board be given the freedom to determine the length of each Levy period? If so, should a maximum scheme time be set?**

**Q.10: Is there a case for making changes to the existing Levy Scheme calendar and, if so, what changes would you make and why?**

**Q.11: Should published Levy Schemes set out what will be delivered with the funding?**

**Q.12: Do you agree that determination by the Secretary of State should be replaced by independent arbitration arranged by the Levy Board? Are there other alternatives?**

**Q.13: If an independent panel or expert was to replace the Secretary of State in determining a Levy scheme, how should they be appointed and what form of arbitration should they use?**

**Q.14: How necessary would it be for the HBLB to be given the power to audit the Levy returns of betting operators and what safeguards would need to be put in place?**

**Q.15: What benefits would there be in the HBLB collecting additional betting data, should it be mandatory for betting operators to provide such information, and what safeguards would need to be put in place?**

**Q.16: Should parties other than the HBLB have access to additional betting data and, if so, why?**

**Q.17: How might distribution be organised if it was not undertaken by the Levy Board and what might be the benefits of any change?**

**Q.18: If the Levy Board did not distribute the Levy how what safeguards could be put in place to ensure that rules on public expenditure were followed?**

**Q.19: What other issues should we consider in relation to potential Levy reform?** **Are there any other proposals you wish to being forward?**

**New statutory framework**

**Q.20: Should any statutory replacement for the Levy be based on a rights or regulatory model? Are there any other statutory alternatives?**

**Q.21: If the Government was to establish a rights-based system, in what “product” should any right be vested and what legal entity, or entities, would “own” that right, and why?**

**Q.22: What could the negotiating process look like and what should be covered in the terms and conditions?**

**Q.23: Should protections beyond those offered by existing competition law be incorporated in legislation to counter potential abuse of dominance and anti-competitive agreements and, if so, what should those be?**

**Q.24: Should any standard terms and conditions include overall deliverables and KPIs which would need to be met by racing? If so, what should these cover?**

**Q.25: What organisation would collect and distribute funding?**

**Q.26: What enforcement arrangements do you think would need to be in place?**

**Q.27: What impact do you think a Levy replacement incurring VAT would have on the quantum raised under a new system?**

**Fit with policy criteria**

**Q.28: What is your view of the potential fairness of each Option?**

**Q.29: Does either Option have any particular implications for small and micro-businesses?**

**Q.30: Which Option do you think has the potential to be the most cost effective overall and why?**

**Q.31: Do you agree that both Options are equally enforceable?**

**Q.32: Do you agree with our assessment of the legal position?**

**Q.33: Do you agree that Option 2 has the potential to remove the Government furthest from involvement in the funding of horseracing?**

1. “Gross profit” is defined as “the aggregate of amounts which fall due to a bookmaker during a levy period in respect of bets made with him, less the aggregate of amounts paid out by that bookmaker in the levy period by way of winnings to persons who made bets with him, save in the case of a Bet-broker where it means the amounts that the Bet-broker charges in relation to bets entered into via the bet-broker and in the case of a betting exchange where it means the amounts that the betting exchange charges the parties to all bets entered into via the relevant betting exchange, in each case whether by deduction from winnings or otherwise, and save that this definition shall not apply in respect of bets placed on point-to-point, harness racing or trotting events.” Source: HBLB Fifty-Third Levy Scheme published March 2014. [↑](#footnote-ref-1)
2. R(William Hill Organisation Ltd) v Horserace Betting Levy Board & Ors [2013] EWCA Civ 487 [↑](#footnote-ref-2)
3. Source: *The Economic Impact of British Racing 2013* – Deloitte) [↑](#footnote-ref-3)
4. For more detail about the French model see Section 8 of the European Commission State aid decision of 13 June 2013 at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:014:0017:0034:EN:PDF> [↑](#footnote-ref-4)