



HOUSE OF COMMONS

Regulatory Reform Committee and Delegated Powers and Regulatory Reform Committee

Oral evidence: Draft Legislative Reform (Horseracing Betting Levy) Order 2018, HC 1756

Wednesday 21 November 2018

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Watch the meeting

Members present:

Delegated Powers and Regulatory Reform Committee: Lord Blencathra (Chair); Lord Flight; Lord Jones; Lord Lisvane; Lord Moynihan; Lord Rowlands; Lord Thomas of Gresford; Lord Thurlow; Lord Tyler.

Regulatory Reform Committee: Graham P. Jones; Mr Kevan Jones; Conor McGinn; Stephen McPartland.

Questions 1-84

Witnesses

[I](#): Lord Lipsey.

[II](#): 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.

Examination of witness

Witness: Lord Lipsey.

Chair: This is a public joint meeting of the House of Lords Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee. We are here to take evidence on the draft Legislative Reform (Horserace Betting Levy) Order 2018. Welcome, Lord Lipsey. Thank you for your written evidence. This is a formal evidence gathering session. It is on the record and is being webcast live. A verbatim note is being taken, which will be put on the public record in printed form and on the parliamentary website. A transcript will be circulated for the correction of any minor errors. I ask all members of the Committee to declare any interest they might have in relation to the Committee business. I remind colleagues from both Houses that these will be published in the report.

Conor McGinn: In the interest of full transparency, I own a share in a number of racehorses. Although it does not meet the threshold for the register of interests, given what the Committee is discussing, it is appropriate to declare that. I am also the chairman of the all-party parliamentary racing and bloodstock industries group, along with my friend the hon. Member for Tewkesbury (Mr Robertson).

Q1 **Chair:** Thank you. Lord Lipsey, please make a short opening statement and declare any interests you may have as well.

Lord Lipsey: Thank you very much for inviting me. I have two very remote interests. One, as a member of the Starting Price Regulatory Commission. I am happy to be cross-examined on that, but you won't be much enlightened. Two, I am a racehorse owner. Indeed, Clondaw Rigger—owned partly by the Lord Burns, the Lord Donoughue and myself—runs in the 3.20 pm at Wincanton tomorrow. May I briefly introduce Dan Tench of Olswang sitting behind me? He and his colleague David Zeffman, who are by common consent the leading gambling lawyers in the country, first alerted me to the difficulties with this order. He has continued to help with advice entirely on a pro bono basis. I also apologise for the absence of my co-conspirator on this, Philip Davies, MP, who has a Select Committee in the Commons. It is worth noting that he is with me on this, because this is not a party issue, nor is it one House or the other. The concern about this order is cross-party and cross-House.

Only yesterday, the House of Lords Constitution Committee published its report on delegated powers. To give the flavour: "It is essential that primary legislation is used to legislate for policy and other major objectives." Let us look at this order in light of that. In my view, it is a subterfuge. It has been adopted by the Executive to do something it wants to do without the bothersome business of introducing primary legislation. If we let it through, we will be opening the floodgates for Government Departments ignoring the Government's own guidance to officials and



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doing all sorts of things without due parliamentary scrutiny. Henry VIII, you should be living at this hour.

My evidence is before you. As you will see, I believe that the order flirts with—indeed, in my view it fails—some of the tests set by the 2006 Act, but that is not the real thrust of what I am saying to you.

My submission is that, taken together, these features of the order make it wholly inappropriate to use the LRO procedure to push it into law, and I am cheered by the conclusions of the Lords Committee on its first examination, where it said that it had concerns, not only about the 2006 Act test but about whether an LRO was an appropriate way to bring about such far-reaching and controversial changes.

I will just make one point. If there was an LRO before you that abolished HMRC and its ability to collect taxes, and substituted for it a privatised firm, would that go through as an LRO? I do not think the question needs answering. This is tax being put in the hands of another body, without proper parliamentary scrutiny.

I should also say, and I am sure you know this, that there is nothing unprecedented about turning this round. I spent a few interesting minutes the other day reading about the draft Regulatory Reform (Registration of Births and Deaths) Order 2004, which was turned down, as it required primary legislation. I hope that my evidence will convince you that this order either needs primary legislation or should not be made at all.

I am a layman in this matter. It has been midnight oil over the last week or two, not many years of study, that brought me to this conclusion, so there are limits on the degree to which I can assist the Committee, but I would be delighted to be helpful in any way I can.

Chair: Thank you very much, Lord Lipsey. Mr McPartland.

Q2 Stephen McPartland: Thank you, Chair, and good morning Lord Lipsey. Lord Lipsey, in your evidence you argue that the draft order puts important features of the levy scheme—for example, the 10% rate of levy—outside parliamentary scrutiny. However, changes to the levy, including the 10% levy, were subject to scrutiny when the Houses approved the Horserace Betting Levy Regulations 2017, which, among other things, introduced the 10% levy. Given that, on what basis are you arguing that key features of the scheme are being taken outside parliamentary scrutiny?

Lord Lipsey: You are quite right, Mr McPartland, and I am grateful for it—of course the order was scrutinised. In fact, I think I spoke in the debate on it in the Lords. However, a 90-minute debate about an issue of this magnitude and importance is really not proper scrutiny. An order of this magnitude and importance requires the full gamut of Second Reading; Committee Stage; Report; in the Lords, Third Reading is significant; and Royal Assent. That is the procedure.



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As I say, I spoke in that debate. I would have spoken a great deal had there been primary legislation on the Floor of the House. I had to compress my remarks and the issues I raised to a very few. That is why I think that it would be a good idea if we had primary legislation on this, which, among other things, would enable the Government to justify this 10% imposition on punters.

Q3 Stephen McPartland: So, is your key objection to the use of the LRO that the Government are trying to use secondary legislation to overturn a piece of primary legislation?

Lord Lipsey: I think it is inappropriate use of an LRO; that is one feature of it and that is quite true, but it is altogether inappropriate, because it is far too big for an LRO.

I want to be absolutely clear about this. I am against the thing on substance—I have never made any secret of that—but my concern is entirely procedural. I would not have spent the time on this if it was just a matter of whether we have a levy or not, on which there are two views possible. It is entirely procedural and it is because, after nearly 50 years of working in or around these Houses, I think it absolutely important that there should be a zealous defence by its Members and others of the rights of Parliament.

Q4 Lord Rowlands: You have mentioned a couple of times that this is controversial. One of the tests, or one of the considerations that one has to make about whether to proceed by an LRO, is how politically controversial, or how controversial in Parliament, it is. Based on your knowledge and the discussions you have obviously had, how controversial is this particular order, in terms of the number of people who feel as strongly as you, or are you and Mr Davies just two lone voices?

Lord Lipsey: Let's face it, most Members of Parliament won't take a view on this matter at all. I have had many years in racing politics, including as chair of the Shadow Racing Trust, director of the Tote and chairman of the British Greyhound Racing Board. I have had many years in racing and betting and that is why it particularly struck me.

Having said that, I did circulate a note of this to the all-party parliamentary group on racing and bloodstock—one chair is here and another chair, who I think is sitting behind me. I had a large number of Members coming up to me to say, "You are quite right about this. This really is a poor policy." It is controversial. I am not saying we are right about it. That is not a matter for today. I am just saying that there is a genuine division of opinion which, if I may say so, runs strongly among the Members of these Houses who know most about racing.

Q5 Lord Rowlands: So you think that it is sufficiently controversial as to justify not proceeding via an LRO.

Lord Lipsey: I do not rest my case on that point alone because I have made seven others, I think, but I do believe that is one reason why it is completely inappropriate.



Q6 Chair: Lord Lipsey, could I ask you about the test of reducing a burden? You state in your evidence that the Government have not produced convincing evidence that the reform will reduce any burden and you refer to the alleged savings set out in the de minimis assessment. Section 1 of the 2006 Act applies if a proposed order removes or reduces a burden. A burden includes among other things a financial cost or an administrative inconvenience. In your submission, you question the cost savings of the proposal but do not mention the Department's other argument that the order would reduce administrative inconvenience. Is it your case that the order would not reduce administrative inconvenience?

Lord Lipsey: Yes. I focused on cost because that is what the DCMS focused on. I did not want to bore the Committee by going on about everything. Administrative cost as an inconvenience is very difficult to get a complete handle on this without hearing from the levy board and the Gambling Commission, and both bodies have their lips sealed about this because it is Government policy and they dare not say anything about it.

In my view, any administrative inconvenience saved would be trivial and almost certainly illusory. It amounts to little more than having to send two emails containing a particular set of information rather than one. I should say, however, that the transition costs—the administrative inconvenience of transition—are quite considerable. We have at the moment the quite extraordinary situation where the Gambling Commission cannot pay itself for preparatory work to implement this. Instead it has had to go round with its cap in hand to the levy board and ask them to pay for its preparations. If that is not an inconvenience, I have not seen one readily in my life.

More generally, it is clearly not the directing intention of the LRO to reduce or remove administrative burdens. The directing intention is to effect a transformation in the way the levy is collected, as part of the Government's desire to get rid of the levy board. We can go into—it is not relevant—why they might want to do that so passionately, but it really is not about reducing administrative burdens, and I do not believe that it would.

Q7 Lord Moynihan: Lord Lipsey, I turn to the subject of taxation. In doing so, I thank you, both in writing and in your opening remarks, for addressing this important issue. Section 5(1) of the 2006 Act states that a draft order cannot "impose, abolish or vary" taxation. The draft order does not change the levy itself but the mechanism for its collection and application. I understand that it is your case, none the less, that the draft order is in breach of section 5(1) that states that an order cannot "impose, abolish or vary" taxation. I would be grateful if you could elaborate on that point for the benefit of the Committees.

Lord Lipsey: The levy is a tax in legal taxonomy. There is no question about that, and I am so advised. You cannot separate how a tax is collected from the tax itself. There are considerable considerations, for example, about confidentiality in tax collection, which has quite rightly meant that Parliament has been extremely careful in the way it deals with



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tax matters. It goes back to the beginnings of our history, when Parliament was asserting its control over kings and queens by asserting control over taxation. I am not saying this is the biggest change in the world; I am saying that where tax is involved and you are empowering somebody to collect tax, as this law undoubtedly does, it should require primary legislation. If I could repeat the point, would you allow HMRC to be given to Capita? No.

- Q8 **Lord Moynihan:** So your argument is that moving any tax collecting role wholesale from one entity to another by statutory instrument would be inappropriate?

Lord Lipsey: I think it would be inappropriate, but it is also, I am advised, unprecedented.

- Q9 **Stephen McPartland:** Lord Lipsey, you used the example of a particular company collecting tax. That company will already collect tax on behalf of HMRC in the form of national insurance and employment tax, so how do you effectively distinguish that from the levy itself?

Lord Lipsey: The fundamental powers for that derive from statute. What I am objecting to is this being done on the basis of an LRO that has not had parliamentary scrutiny.

- Q10 **Conor McGinn:** Lord Lipsey, you come before the Committee with an incredible and very long pedigree in horse-racing, and when you speak about these matters with great authority, people listen. I fear we disagree on the substantive issue, but I read your evidence with great interest and it raised some important points, so it is good that we have the opportunity to speak about those today. You said that you think the new racing authority will have a strong prejudice in favour of spending on prize money for rich owners; I suspect that would be bad news for both you and me. How do you make that assertion, given that there is a requirement for the designated body to apply the levy specifically for the purposes of "the improvement of breeds of horses", "the advancement or encouragement of veterinary science or veterinary education", and "the improvement of horse racing" generally in new section 338O, for the designated body to consult on its strategic plan in another new section, for it to publish an annual report and for the Secretary of State, in designing a suitable body, to ensure at the outset that it commands the respect of persons involved in horse-racing, the bloodstock industry, and veterinary science and education?

Lord Lipsey: It is nice to be cross-examined by a fellow owner and punter, so thank you very much, Mr McGinn. I do not know quite where to begin with that very fair question. Perhaps I will begin with personal experience. I was chair of the British Greyhound Racing Board and sat on the British Greyhound Racing Fund, which was responsible for distributing the proceeds of the voluntary levy on bookmakers. I had the devil's own job persuading it to spend all the money on welfare, which was the priority because greyhounds were being shot out of hand, and not on prize money. Indeed, at one stage the owners on the board were arguing to me that prize money was in fact spending on welfare, because the richer they



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were, the more they could pay their trainers and the more the trainers could spend on looking after the dogs. That was a body on which the owners were very much a minority as the pro-prize money lobby, because most of the members were racecourse promoters who could have some sympathy with me. We got there in the end.

At the moment, I think the levy board already spends far too much on prize money. Two thirds of levy board expenditure is on prize money, and it has precisely the same set of rules laid down for what it is to spend money on as is in this new order. It does not choose to. It chooses to spend a bit of it for window dressing on those sorts of things, and the rest of it goes on prize money, which is, if I may be allowed a colourful phrase, picking punters' pockets to feed rich owners and trainers. That makes it controversial for me, but I believe, for the reasons I have explained to you—thank you for all you said about my experience in racing—I know how these bodies work in practice.

- Q11 **Lord Jones:** Lord Chairman and Lord Lipsey, you leave me at the starting gate when it comes to racing. Plumpton, Chester and Goodwood are the only courses I have ever been to, and I was never successful. But Lord Chairman, permit me to ask a question on proportionality. Lord Lipsey, you argue that the draft order is disproportionate and entrenches a whole new levy system. However, you have also argued that most of the order simply consolidates existing legislation governing the levy. Do you think that there is any inconsistency between those statements?

Lord Lipsey: Not really, although I can see why you might think there is. The word I used was "entrench". The issue is not that this is new stuff; the new stuff, as you say, is relatively small in quantity. It's that this whole system will be erected and set in law by this order, and I think—I may be wrong—that will make it harder in the future, when we get a sensible Secretary of State, a sensible Minister and a sensible Government, to change the thing. It's at the margin, but as I say, I'm resting that bit of the case on "entrench".

It does contribute, however, to my view that this is a controversial piece of legislation to be done by order. The very point you make could be argued over on the Floor of the House and in Committee with amendments. With an order, we've got 90 minutes to agree this damn thing; we won't have time to go into fine items of that character. It will just be a very general debate and then the Government will get its way.

- Q12 **Lord Jones:** I did note that your opening statement was shot through with conviction and I wonder, having heard the remarks, whether you are confident that what you are proposing would be backed by the racegoer—the ordinary man and woman who attend a racecourse.

Lord Lipsey: I don't suppose many people in the average betting shop have applied themselves to the use of the levy, and I don't want to get drawn into the substance of the case. I think they ought to know what it is proposed will be done with their hard-earned money and they ought to



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know that Parliament has scrutinised it in detail and either assented to or dissented from it.

Lord Jones: Good luck at Wincanton!

Lord Lipsey: Thank you very much.

- Q13 **Lord Thomas of Gresford:** You imply that the racing authority will have a larger proportion of rich owners than the greyhound board, of which you were chairman. What is the basis for that? And may I say that it's 20 years since I owned a racehorse myself?

Lord Lipsey: I'm sorry. Strangely enough, there's a thing referred to as the designated authority here. It doesn't exist, although its chairman has been appointed. We know what its composition will be. There is one independent chairman, a former Conservative Minister for Sport, Sir Hugh Robertson. The remaining representatives on the board are representatives of the BHA—I won't go into my views as to how the BHA tends in practice to operate, which I've observed over many a year—the Racecourse Association—under this measure, the more prize money that is provided out of levy, the less they will have to put up out of their own pocket—and some mysterious thing called The Horsemen's Group, which includes owners and trainers. Well, owners get the prize money except for the 10% they have to give to trainers. So to me, it is—

- Q14 **Conor McGinn:** I'm sorry—jockeys and stable staff are included in it, too.

Lord Lipsey: Yes; I don't want to exaggerate the case. At the moment, there are three representatives of the Secretary of State on the levy board; I think they can be relied upon to take an objective view of where the money should be spent. There are also three representatives on the levy board of the bookmakers, who are collecting this money and therefore might be thought to have a right to have a say in it. Certainly in the greyhound case, bookmakers were an extremely strong influence in enabling me to get more money spent on welfare and less on prize money, because they spoke up for that procedure.

- Q15 **Lord Thomas of Gresford:** Just for clarity, what proportion do you say are rich owners who are liable to divert the funds, as you would put it, into prize money?

Lord Lipsey: Look, every month when I get my training bill, I realise everybody who is an owner is rich, because it costs, as Mr McGinn knows, a formidable amount. All owners are, by the standards of these things, rich. You do not find many poor people able to own a share in a racehorse.

- Q16 **Lord Thomas of Gresford:** I am still trying to find out what you say is the proportion of rich owners who will have a majority to divert the money into prize money.

Lord Lipsey: I hope I explained that perhaps "rich owners" is an oversimplification. Racing in general, or at least the ruling powers within racing, have an interest for it to go to prize money. They have been able to get a lot of it to go to prize money—two thirds, as I say, even under the



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levy board regime—and I suspect that after a couple of years, or three years of gap for this to settle down, you will find still more money being spent on subsidising prizes.

Lord Thomas of Gresford: Can I put it in a different way?

Lord Lipsey: Please do.

- Q17 **Lord Thomas of Gresford:** What proportion of the racing authority do you say would have an interest in diverting the money to prize money as opposed to spending it on welfare and the other aims? If you cannot answer that, that is fair enough.

Lord Lipsey: I cannot tell you what—I do not have a crystal ball to read the future. All I have is many years of experience of observing the way in which racing tends to prioritise the spending of money.

- Q18 **Lord Thomas of Gresford:** So it is a fear more than actual fact.

Lord Lipsey: Well there can't be fact, without a crystal ball.

- Q19 **Lord Flight:** You are arguing that if this legislation went through, the key thing is that all Government Departments would have a green light to extend the scope of LROs. Have you encountered any other situations where there have been attempts to extend the scope of LROs or to interfere with them to this end, or is this a unique initiative?

Lord Lipsey: I am sorry if there is a slight exaggeration in this, but I was a journalist before I was in this House so I can never resist a colourful phrase. The Lords Committee made its reservations the first time it came before it. I can tell you that next morning in Whitehall there will have been a note round saying "Beware, we have to be careful." There was a whole Report from the Constitution Committee yesterday, saying there is a grave risk of abuse of delegated powers. I cannot quote it absolutely offhand, but in effect the Constitution Committee says that people are always looking round for precedents on this sort of thing. Sorry, to get it nearer to right—it says that Government Departments are always thinking "What can we get through Parliament? What can we get away with, with Parliament?" That is why I, and I hope you, feel that it was worth giving attention to what, on the great scale of things, is a relatively minor thing. We are here with a bigger task than getting the right system for the levy. We are here to protect Parliament.

- Q20 **Mr Kevan Jones:** Can I now turn, Lord Lipsey, to the role of the Gambling Commission? Your argument is that the Gambling Commission has no statutory powers to collect the levy, or it does not need or want the power; but the new part 17A of the Gambling Act 2005 introduces a draft order to give the commission powers. So what evidence have you got that the Commission does not need or want the powers?

Lord Lipsey: I am not saying that it wouldn't have the powers under this order. Clearly, it would. All I am saying is that it is a very peculiar extension of powers. The Gambling Commission has its three statutory objectives: protecting children, avoiding crime—and I can't remember



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what the third one is, but there are the objectives. This lies way outwith what it was set up by statute to do, and I think you can't just start adding things on to bodies that exist because it happens to be convenient to do so—or you shouldn't do so without primary legislation. I don't know—I haven't spoken to the Gambling Commission: I doubt if they welcome this piece of work. They have an absolutely major task, which is highlighted in our newspapers every day of the week, of getting a hold on gambling, regulating it properly and making sure we have a legitimate gambling industry. Collecting levy is so remote from that task that I cannot think that they would welcome having it.

Q21 Mr Kevan Jones: But you have no evidence for that. That is just your opinion.

Lord Lipsey: As I said to the Committee earlier, neither the Gambling Commission nor the levy board will talk about this—for reasons I understand, because they are around the Ministers. I am only offering my judgment, as a reasonably connected person in this whole field, as to what their view would be were they free to express it.

Q22 Mr Kevan Jones: I understand that, but are there any practical reasons why they could not take on this function with the proper resourcing?

Lord Lipsey: No. It is fine to do it. Transitionally, it will be messy, especially as online gambling has only recently come in and they have to decide how to cope with this, but I am sure they will manage.

Q23 Lord Rowlands: I think you have more or less answered this next question, but I am going to give you a chance to answer it again. It is about why you consider this draft order to be of constitutional significance, especially when the whole idea of the LRO procedure is, subject to statutory conditions, to exercise a kind of Henry VIII power. That is what the LRO is about. Why is this one in particular more constitutionally significant than other LROs that have gone through?

Lord Lipsey: On the whole, I support the LRO procedure, appropriately used for minor administrative and financial savings. This ain't that. As I have tried to argue in my evidence, this is something much, much bigger than that. When the Legislative and Regulatory Reform Bill was before Parliament, it was highly controversial. The Government had to give way on a number of points, and I can remember the debates at the time. We did not like Henry VIII powers, and we as parliamentarians only agreed to them because we felt they would be narrowly used for savings that we could not make otherwise. I agree with that.

I think, if you start doing this kind of thing, you will find that there is a reaction against it, which endangers the whole LRO procedure. You will get everybody looking at every single one to see, "Are they doing one of those levy jobs on this? Are we being deluded?" Your Committee, no doubt, would stand firm against it—your Committees, I should say, Chairs—but that would be what would be liable to happen. I do not think it should be a matter of controversy. Sorry, this may be an opinion, but I think it is best that the LRO procedure is only used in cases where it is clearly



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appropriate, so that it is not lost to us for cases where it is clearly appropriate. Once you start using it for things that are, in my view, inappropriate, you denigrate the whole procedure.

- Q24 **Lord Rowlands:** About three dozen orders have gone through since its inception. Do you think this one is exceptional, in respect of the others that have gone through?

Lord Lipsey: Well, I defer to the Committee, because I have not seen any of the other orders. As I say, I only started working on this a couple of weeks ago. Having gone through the tests, having taken a view—and the Committee took a view last time, including on the basis of the evidence I submitted to it—I think it is wholly inappropriate in this case.

- Q25 **Chair:** Colleagues, any other questions for Lord Lipsey? No? In that case, May I conclude? Do you think, Lord Lipsey, that the draft order could be amended to meet some of your concerns, or in your view, is it fatally flawed?

Lord Lipsey: It is fatally flawed. I mean, it could be amended to produce a better policy, frankly—for example, by changing the nature of the designated body—but that would not impact on my fundamental theory that this is inappropriate for this purpose. I should just finally say that there were one or two questions I was asked that I have not replied to. If on consideration, Chair, it was felt that it would be helpful if I gave a supplementary memorandum on those, I could talk to your—

Chair: Please feel free to write in as soon as you can, perhaps in answer to some of the questions Lord Thomas asked.

Lord Lipsey: They were all very good questions, and all deserve very good answers, if I can manage it.

Chair: We would like to get that supplementary memorandum expeditiously, if we may, so we can come to a conclusion. Thank you very much for giving evidence today, Lord Lipsey. We are very grateful.

Lord Lipsey: Thank you for inviting me.

Examination of witnesses

Witnesses: Mims Davies MP, Julie Carney, James Perkins and Harry Navanayagam.

- Q26 **Chair:** Good morning Minister and officials, and welcome. Thank you, Minister, in particular, for coming to give evidence. You have only been in post for 16 days.

Mims Davies: Yes. It feels much longer—I mean shorter!

- Q27 **Chair:** Hopefully not like an eternity after this morning's session. I must say, when I was a junior Minister, if I found after 16 days in post that I was coming to appear before a Joint Select Committee of the Commons and Lords, I would have found an excuse to leave the country, so I think



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you are being incredibly noble.

I advise that this is a formal evidence-taking session. It is on the record and is being webcast live. A verbatim note is being taken, which will be put on the public record, in printed form and on the parliamentary website. The transcript will be circulated for correction of any minor errors. I note that in addition to your responsibilities for sport and gambling, Minister, you are also the Minister for loneliness, but I am glad that you have officials with you today, so you are not on your own. If you would introduce your officials, we can start on the questions.

Mims Davies: Yes. We have Harry, who has the legal remit and will help me on this. We have Julie, who has been briefing me non-stop about gambling and whose official title is much higher than I can probably remember.

Julie Carney: I am head of gambling and lotteries.

Mims Davies: James, can you remind everyone of your title, because I do not know it after 16 days?

James Perkins: I lead on horserace betting at DCMS.

Q28 **Chair:** I believe you have an opening statement, Minister.

Mims Davies: I have, if I may. I am really grateful for the opportunity—even if it is only 16 days in—to respond to your questions. Horseracing, as we know, is a significant contributor to Britain's economic and sporting success, providing over 17,000 jobs, mainly in rural areas, and over 6 million of us will enjoy a day out at the races each year. That is why the Government are committed to supporting our world-leading racing industry and ensuring it can continue to prosper.

Last year we acted to extend the levy to online bookmakers, following a period of steady decline in income. As a result, statutory receipts have almost doubled, reaching £95 million last year. As part of the reforms, we have vastly simplified the levy and we have fixed the rate in legislation, thereby ending the annual negotiation. We introduced an exempt amount, meaning that no bookmaker pays a levy on their first £500,000 of profits on racing. In making those changes, we removed the need for the annual levy scheme, which set out the rate, including the complex system of discounts. Those who enjoyed reading the last levy scheme will remember that it was over 20 pages long. As a result, the number of bookmakers liable to pay the levy has fallen from more than 600 to less than 50, and the potential for disputes over the calculation has vastly reduced. The levy board's role has therefore diminished. It now has just 10 members of staff, including the chief executive, and the board comprises seven members. We believe that the legislative reform order will build on those changes, provide opportunities to streamline the administration of the levy, and therefore reduce the burdens on all those affected.

The bookmakers will no longer be required to make payments and provide information to two separate organisations. The Gambling Commission will



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be better placed to rule out operators who have low profits on racing, therefore reducing the unnecessary reporting, and the Association of British Bookmakers have welcomed that point in their response to the Government's consultation. Racing will have greater freedom to organise fixture planning and funding, also reducing duplication—for example, the processes relating to the fixtures and funding can now be merged.

I fully appreciate the Committee's role in scrutinising the draft order before us and considering whether it meets the statutory tests. For the racing industry, this is the last piece of the jigsaw in terms of the important reform, so of course we have fully looked at those statutory tests. I am absolutely confident that the changes meet these tests—we will find out whether you agree this morning—and, as I set out, the burdens will also be reduced.

The racing industry set up the racing authority to take on the role of designated body, and it has strong support to do that across the sector. There is no opposition within the betting industry, and one of the largest bookmaking trade bodies has also welcomed the potential of the Gambling Commission to reduce the burdens for the smaller operators and expressed confidence in the commission's ability to administer the levy effectively.

I firmly believe that this is absolutely the right thing to do for racing and for the betting sectors, and that the LRO is the right way to bring it forward. These important changes are something that the industry is waiting for.

Chair: Thank you very much, Minister.

Q29 Stephen McPartland: Good morning, Minister. How achievable are the potential savings of £0.24 million, and what assessment will the Government make of the effectiveness of the new body in achieving those savings?

Mims Davies: The reforms are not just about the financial savings. As I set out in my opening statement—thank you for allowing me to do that—they are about reducing the administrative burdens and making the levy process more efficient. The levy is now a more simple process, and therefore there is the scope to make those savings going forward. It is in the racing authority's interests to keep those costs at a minimum in order to retain confidence in the sector. There may not be huge sums straight away but over time I think, because it is wanted by all parties, those savings will come.

Q30 Stephen McPartland: In your estimate of the potential savings, the Government figures are predicated on acceptance of the figures provided by the shadow racing authority. There is a lack of comparable data from the current levy board on a decision not to reflect potential savings—

Mims Davies: I think what we are looking at is a transitional mode, and we need to reflect that in what we set out. The exact ability to predict those savings is a little more difficult to pin down, but we have been open



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about that in the assessment. Going forward they have an opportunity to review what needs doing, and to look at staffing and the costs to meet their needs. They know that that is what they need to achieve. I feel confident that, as I say, over time those savings can come.

- Q31 **Stephen McPartland:** On that point, you have not considered the savings identified if the levy board just did the status quo. Those figures do not seem to exist.

Mims Davies: We have not included the levy board's estimate for the potential savings because the figures do not include the potential savings; they reflect the transitional period. Hopefully we are trying to balance expectations with the reality.

- Q32 **Mr Kevan Jones:** I am not sure what a transitional mode is—that is a new one on me—but are you saying that this is a target that they will have to meet and that Ministers will review, or is it an aspiration? What is it?

Mims Davies: We have left that open for the next year and will look at that. They are aware that this is one of the conditions of change. Ultimately, it goes back into the industry. Nobody wants to come in and cause themselves more cost; they are ultimately there to put more back into the industry that they are supporting.

- Q33 **Mr Kevan Jones:** Yes, but that does not give me a great deal of reassurance. One of the predications of this piece is that it is going to save money. From your point of view in the Department, is it going to be an aspiration, or is it actually going to be a target that they will have to meet?

Mims Davies: We have the economies of scale from working with the Gambling Commission, which hopefully will ultimately mean that the operational needs can be met and the staffing can be reduced. I think ultimately everybody knows what they are in the room to do, which is to support the racing industry, and to be in a position to do that by reducing the costs. Ultimately, that goes back into the industry, which is in everybody's interests. Of course, it will be a smaller group of people deciding how it works out going forward.

- Q34 **Mr Kevan Jones:** So it is an aspiration, rather than a target?

Mims Davies: I think everybody is aware that this is the right thing for racing. I think it should be a target and an aspiration. We have the opportunity to come back and look at that if it is not being achieved.

- Q35 **Mr Kevan Jones:** Would it not be better to fix a target now? It cannot be both an aspiration and a target; it is either one or the other. Although I accept that savings can be made, there is always a danger—as I understand from all the organisations that I have ever been involved in—that you have the aspiration but end up not meeting it. Unless there is actually some force that says, "This is what is going to happen," you could find yourself in a situation in which either it costs more or no savings are made at all. You therefore come back to the question that



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some people are asking: why do it?

Mims Davies: There are two points here. One is about the savings and reforms together. We are looking at reducing the burdens and we are looking at the savings, and hopefully the two should come together.

Q36 **Mr Kevan Jones:** I am talking about the savings at the moment; I accept some of the issues around the burdens.

Mims Davies: The Government's estimate to reduce the potential savings acknowledges the difficulty of accurately predicting the future costs. However, the board's costs are shown every year. They will be transparent, and we have chosen to use actual figures in this conversation, rather than hoping, based on estimates. As I say, I don't think the huge savings will come straight away, but we also need to retain some of the expertise and knowledge of the previous board. Going forward, that could be thinned down.

Q37 **Conor McGinn:** Minister, would it be right to say that the significance with respect to finances is more that for the first time, the levy is applied online and offline, on course in the UK and offshore, which will bring a £50 million increase into racing? It is not just about saving the projected £240,000; it is actually about having all the various component parts of racing brought together. Isn't that what you would want to stress?

Mims Davies: The reason I said that I felt this was firmly the right thing to do was that everybody is behind this, whether that is because they have seen the benefit of the income coming in, because they have seen that the way of negotiating the levy is simpler, or because they only have to deal with the Gambling Commission. There is something in this for everyone; hence the fact that there is no opposition from anyone. They wanted to see it come forward.

Conor McGinn: My point is more that the savings of £240,000, which it says would be put back into racing and applied through the levy, actually pale into insignificance when there is going to be an additional £50 million going into the levy.

Mr Kevan Jones: Sorry, but everyone is in favour of motherhood and apple pie. It is irrelevant that everybody wants this. It is about what the arguments for it are. I accept what my colleague says about the extra revenue coming in, but one of the justifications was that this was going to save money on administration. All I am asking is what that is based on. I have to say that what I am hearing from the Minister is that it is an aspiration. Why has it not been put there as a target to be met? Otherwise, we could be sitting here in two or three years' time with no savings having been made at all. If that is one of the key arguments, it should be more robust than what I am hearing, because I am not convinced, on the basis of what has been said by the Minister, that this is actually going to be met.



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Mims Davies: There are four areas of benefit that I can see, and that I would expect to bring savings. The bookmakers will no longer be required to make payments and provide information to two separate organisations.

- Q38 **Mr Kevan Jones:** I am sorry, Minister; I accept all that, but here we are talking about an administrative cost. I accept all the other savings, but if the Government are actually arguing that this is going to save money—it may well do; I am not suggesting that it will not—it needs to be more robust than the aspiration I am getting from what you are saying.

Mims Davies: The board will be smaller. As we have heard, there is an opportunity to come back to this if it—

- Q39 **Mr Kevan Jones:** Can I ask a question, then? Why have you not put this as a condition? I accept that there will be transitional costs that you might not meet in the first year. Why are you not saying, “In year 2 or year 3, you will have to make this”? If it is just left loosely as an aspiration, as you say, there is a possibility it might not be met. I accept that you have said you will come back and review it later. For you or your successor, no doubt this will be off your radar screen by then. Why not put in now that there is a target that has to be met now?

Mims Davies: I think the proposals strike the right balance between allowing racing the freedom to distribute their funds and reduce their costs, and allowing the Government the right statutory purpose and oversight.

- Q40 **Mr Kevan Jones:** What is to stop you now, as a Minister in the Department, saying, “We recognise that there will be costs from the transition, but in year 3, these efficiencies have to be met”?

Mims Davies: We have retained powers to act where there are concerns.

- Q41 **Mr Kevan Jones:** Can I ask why you are not writing that in now, saying, “We accept that there will be transitional costs, so you might not be able to meet it in year 1 or 2, but in year 3, this has got to be met”?

Mims Davies: I think I have been quite clear in saying that there may not be huge sums straight away, but over time, those savings will come. If that is not the case, we have the opportunity to intercede.

- Q42 **Mr Kevan Jones:** I am sorry, but you are not answering the question. Why is that not being put in now, while we are discussing this, rather than having a review power later on?

Mims Davies: I think the line here is that there is a strong belief by everyone in the sector that this is the right thing to do. We have reserved the right to get back involved if that is not the case.

- Q43 **Mr Kevan Jones:** Minister, I do not dispute that. I accept what my colleague has just said about some of the other benefits of the legislation, but in reorganisations, my experience is that if you are not careful and clear about the savings right from the beginning, the savings in the end disappear or somehow cost you more. Why are you not putting that in now, if that is one of the justifications for doing it? I do not understand



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why it is so difficult to say to the new board, for example, "By year 3, you have to have made these savings."

Chair: We may have flogged this horse hard enough. I am quite happy to take a note from you, Minister.

Mims Davies: We will have to agree to disagree here. My absolute belief is that it is in the racing authority's interest to keep these costs to a minimum in order to retain the confidence of the sector and make clear that it is not just moving people and processes around. If that is not the case, we will need to go back and look at this. As I say, there will hopefully in time be savings, but at the moment we have to ensure that that is focusing people's minds, and that is in the industry's hands. We have the opportunity to go back in.

Chair: That is a legitimate hope. Mr Kevan Jones' question was about why it is not written in as a target. I am happy to take a note on that from you and officials in due course.

Mr Kevan Jones: May I have one more flog?

Chair: Yes.

Q44 **Mr Kevan Jones:** Is there any reason why that cannot be done?

James Perkins: It would be quite difficult to set a target, given that the levy income fluctuates year on year. It could go up in the future by a significant amount. In the legislation, we have a requirement for the designated body to retain the confidence of the sector. If administration costs rise, there will clearly be some disquiet within the industry, so there is an inbuilt incentive there with the confidence provision.

Q45 **Mr Kevan Jones:** I am sorry, but if you have rising levies, there is the possibility of a reason why you should not make more efficiencies. The question is very clear: is it possible to write as a target now that these savings are going to be made?

Mims Davies: I will happily take that as an action—as something to look at—because I feel that my colleague feels that I need to do so, but I reiterate that keeping the costs to a minimum is in the interests of the broader sector, and I would hope that that would keep the authority straight-facing on that as well. It will have to publish this, it will have to be clear, and ultimately, if it chooses to take more money, it will have to explain why.

Q46 **Lord Lisvane:** Minister, I realise that you are very new to this portfolio, but I wonder whether I can tap into the corporate memory, as it were. Did you consider using primary legislation to achieve the aims of this LRO?

Mims Davies: I will be completely honest and say that I have not considered it, but I have looked at this as an appropriate vehicle, because until quite recently I was the Whip in the Department, so I had to look at whether I thought this was an appropriate way to bring in the changes to



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the administration and to look at the burden. For me, it does feel like the right way of delivering for the sector.

- Q47 **Lord Lisvane:** Forgive me, Minister, but that is a subsequent judgment. What I was really asking was this: when the policy was formulated in the Department, there were obviously choices to be made about the vehicle. Was primary legislation one of those choices?

Julie Carney: We would have taken advice from our lawyers on what the appropriate vehicle was when we were developing the policy, and they identified an LRO as an appropriate vehicle for this type of reform, and for the reform in this instance. The lawyers—it was not Harry at the time, but different lawyers—would have considered the full range of vehicles.

- Q48 **Lord Lisvane:** Fine. You are phrasing this in conditional terms. I am taking it that this was seriously considered, and the view was taken that it should be not primary legislation, but an LRO. Is that correct?

Mims Davies: I think for what we were looking to achieve for the industry, this was the most suitable vehicle.

- Q49 **Lord Lisvane:** Right. Can I just get an idea of the genesis of this? When did the policy come forward? In other words, when were these decisions taken about the vehicle that would be used? Just ballpark dates.

Mims Davies: The reforms were first announced in the Budget in 2016, and the transfer of the responsibility for enforcing the levy to the Gambling Commission was raised then. The agreement was brought forward in January 2017, and the industry welcomed it. The previous Minister sent a write around at the end of August looking to do this through the LRO, with the explanatory document.

- Q50 **Lord Lisvane:** That is very helpful, thank you. The LRO would transfer functions from a statutory body to a non-statutory body, which we assume will be the racing authority. Did you consider making that body statutory?

Mims Davies: Sorry, we have got so many bits of paper here. Let me just have a look.

Chair: Minister, your officials with longer knowledge of this—

Lord Lisvane: Absolutely.

James Perkins: The purpose of the reforms is to reduce burdens on the industry. One of the primary ways we see that happening is through handing over responsibility for spending the levy to the racing industry directly, so that it has control. The idea there is that the industry knows best what its needs are. We have chosen to go down this route to designate a body, and racing has put forward the racing authority as that organisation. We need to go through a process, subject to the passage of this legislation, to confirm that we are happy that the racing authority meets all the legislative criteria, but—

- Q51 **Lord Lisvane:** I can quite understand that, but when you are designating,



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you have a choice of an informal designation, in effect, which is what the LRO will do, and a statutory designation, which would have other effects—for example, making it open to freedom of information, I would imagine.

Mims Davies: We are jumping around my answers here, so here we go. In terms of the delegated body, we have looked at whether it would be the racing authority. We are looking to retain some of the experience and knowledge. It would also give us a chance to focus on those potential savings and hopefully allows us to reduce costs at the same time. I think there was something else you raised that I may have missed.

Q52 **Lord Lisvane:** I mentioned FOI at the end of the question.

Mims Davies: We are working with the authority in terms of the transparency expectations. There are a number of safeguards in the legislation that ensure that the authority will be open and transparent. I will speak to Sir Hugh Robertson, the chairman of the racing authority, shortly. The legislation will require the authority to consult on a strategy to spend and publish all their detailed accounts. As we said earlier, it will need to retain the confidence of the levy beneficiaries in order to distribute those levy funds. There needs to be sufficient oversight, as you rightly point out. We do then have the mechanism to review the authority and to suspend payments, or to replace the authority, should it not meet the transparency requirements.

Q53 **Lord Rowlands:** Was it not a manifesto commitment to abolish the Horseracing Betting Levy Board?

Mims Davies: You have stumped me on that one, I must say.

Q54 **Lord Rowlands:** I have reason to believe that it was. It was a manifesto commitment to abolish the board.

Julie Carney: No, not in the last manifesto.

Mims Davies: Was there a follow-up? Are you concerned about moving the pieces around the chess board?

Lord Rowlands: No, I am concerned about whether, if it was a commitment of that kind, an order of this kind was appropriate, or whether you should have sought primary legislation.

Mims Davies: As I say, I wasn't aware of it being a manifesto commitment, and the officials seem to agree. We can absolutely double down on that.

Q55 **Lord Rowlands:** It is not an insignificant change. We are abolishing a board that was established by statute. We are giving additional functions to a commission that didn't have any remit of this kind when it was originally approved by Parliament, and you are using this order as a means of doing that. Is it because, frankly, you wouldn't be able get a Bill through even if you wanted to, because the Government's overcrowded legislative programme would make it impossible, so you are using this as



a last resort, rather than it being an effective means?

Mims Davies: I appreciate and understand the question. The 2006 Act that you refer to says that it can be used to replace one statutory body with other, where that is done to remove or reduce burdens.

The LRO has two functions: to reduce the burdens and to make the amendments to primary legislation without the need to introduce a Bill. The reforms to the levy that passed through Parliament last year reduced the role of the levy board. We were proposing abolishing the board and keeping its remaining functions, moving forward. We looked at it carefully to make sure that we struck the right balance between supporting racing and distribution of the levy, and statutory purposes, in order to make sure that the Government do have oversight.

I don't agree that we wouldn't get this through, because this is wanted and supported by everybody. There is a need for us to effect this, and this Committee is of course making sure that we are doing it in the right way. I strongly believe that this is the right way to deliver for racing.

Lord Rowlands: We can question whether you are doing it in the right way.

Julie Carney: We worked with lawyers on the LRO tests. We did not see anything in there that suggested that if something had to be a manifesto commitment, you couldn't use an LRO. In this case, it wasn't a manifesto commitment. We looked at the test about reducing burdens and the guidance that surrounds the legislation that brought in the LRO, which is a vehicle for amending primary legislation without the need for primary legislation. That is the purpose of an LRO.

We have looked closely at the tests in arriving at this as the relevant vehicle. As the Minister said, the decision was made some time ago, before anyone could have predicted any difficulties about carrying through primary legislation right at this point in November 2018.

- Q56 **Lord Tyler:** My later question follows on so well from my colleagues Lord Lisvane and Lord Rowlands, I wonder if I might come in here. Minister, the Department's memorandum at 2.24 says: "The Government is minded to designate the Racing Authority as the designated body". That is absolutely critical to everything we have been discussing with you. Can you or your officials explain the curious title that has been given to this body? First, those who are not followers of the sport of kings, but perhaps of greyhounds, motor racing or athletics might say, "Why is it 'the racing authority'?" Secondly, and more importantly in this context, why "authority"? Clearly, this is not a statutory authority. For the reasons that have already been mentioned, as it is not a statutory authority, it will not be subjected to the requirements of the freedom of information legislation. Those to whom you have been referring as having been consulted so far are people within the industry. What about the media? What about the general public? What about Members of Parliament? It will not be subjected to the same transparency regulations as the present



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regime. What was the reason for the Department concurring with that particular recommendation? I take it that it was not the idea of the Department that it should be called the racing authority.

Mims Davies: It wasn't, was it? I think James has some history on this, so I will let him enlighten you.

James Perkins: It wasn't. As the Minister said, we made the policy decision to split the levy functions, to reduce burdens. As part of that, we are handing control directly over to the racing industry. The racing industry has come together, and put forward and constituted the racing authority. The member organisations of the racing authority include the racecourses, the horsemen—including all of the stable staff, jockeys, etc.—and the British Horseracing Authority, which is the governance and regulatory body for British racing. That is a wide consensus of parties within racing who would support the racing authority.

In addition to that, the racing authority is engaging with the veterinary groups and the breeding groups, who are levy beneficiaries. In responses to our consultation, we saw support from those organisations in the veterinary and breeding sector. It is for the industry to have set up the body and it is for the industry to ensure that it retains the confidence of all of the levy beneficiaries. Of course, as part of the designation process, the Minister, as she mentioned, is meeting with the racing authority, and we want to be certain that the authority has the confidence and support of the sector before we hand over responsibility.

Mims Davies: I've a couple of things to add. The racing authority is in the process of setting up a veterinary subgroup, which will ensure that the levy can continue to support the equine projects and the breeds of horses. Note that the new board will not have a member of the betting industry.

Q57 **Conor McGinn:** Why is that? It is their money.

Mims Davies: I think to try to keep the separation very clear.

Q58 **Conor McGinn:** A good argument for creating this structure was that you have had a 200-year-old unique relationship between betting and horseracing, so why do you want to keep it separate?

James Perkins: Obviously, the levy has been simplified a lot. The bookmaker representative on the board was there as part of the annual process for agreeing the levy schemes, which is no longer the case following the reforms last year. We have the statutory requirement for the designated body to have to consult with the betting industry. So their input, as payers of the levy, is valued. We have ensured in legislation that they will continue to be able to input.

Mims Davies: I think there is a strong incentive to engage, but it feels that a mix of the whole of the sector is right. We need to ensure that the proposals retain both sides: the contributors and the beneficiaries. That will be what I set out to work with Sir Hugh Robertson to achieve.

Q59 **Lord Tyler:** Sorry, I have to go back. Both of you have been referring to



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the sector within the industry. There is no transparency as far as the wider public are concerned, indeed, the racegoing public, let alone those from the media who take an interest in it or Members of Parliament. The transparency is now reduced from the current situation to the proposed situation—you must agree.

James Perkins: Respectfully, I don't think I would agree. There are quite robust transparency requirements in the legislation, so the designated body is subject to quite strict reporting requirements. It must prepare a statement of accounts, which must be audited by a qualified auditor, and the Secretary of State may direct the form of those accounts. The accounts have to include every single levy transaction, the amount and the beneficiary. That's in the legislation, so there is quite wide transparency over the use of funds. In addition, there is an annual report that the designated body must produce, and that must also report back against its strategic plan, which was in the consultation at the start of the year with the betting industry.

Mims Davies: There are safeguards in the legislation to ensure that they are open and transparent. The mechanism is also there to suspend any payments where there are problems, and also to replace this body if necessary. I hope that we have a mix of measures to reflect all the different players in this field.

Chair: I call Mr Kevan Jones.

Q60 **Mr Kevan Jones:** I am sorry; it is not open and transparent at all. I would agree with Lord Tyler that it is a step backwards. If you're not going to be subject, for example, to freedom of information requests—which they are not—all the warm words in the world about transparency can be written into a policy. It's how they are put into effect. I know Lord Lisvane has left now, but we didn't get an answer about why this vehicle is being used rather than primary legislation, although Lord Rowlands touched on it. Possibly the Government, thinking about legislative time, thought it would be easier doing it this way than on the Floor of the House. You're shaking your head, but what were the reasons for doing it? What were the options looked at, for example, for primary legislation? I came to this Committee today thinking that I would support this. Having seen the performance today—not necessarily from you, Minister, because I accept that you're new, but I don't think you're being ably assisted by your civil servants—I am now minded not to support it, to be honest.

Mims Davies: Well, I think that's an unfortunate situation, because this is something that the industry wants to see.

Q61 **Mr Kevan Jones:** I'm not really interested in what the industry wants. We are not here to be the promoters for any vested interest, whether it's the racing industry or any other industry. What we need to ensure is, first, the legislation has proper scrutiny, and secondly, that what we put in place, as Lord Tyler said, represents not just the industry and helps the industry thrive, but actually protects the public as well. If you just keep saying everyone in the industry is in favour of it, that won't wash with



me.

Mims Davies: Are you saying there are some protections that the industry or racegoers do not have?

Q62 **Mr Kevan Jones:** I'm sorry, but the entire thing you've said so far—I'll not go back on to the issue about the efficiency savings, Chair. You have now got a situation where you can't really describe why this vehicle is being used, and this vehicle is what this Committee has got to decide. Secondly, we are now asking about—Lord Lisvane raised the issue—some of the concerns: for example, the move from a statutory body to a non-statutory body. We have not yet heard a great reason as to why that is being done, apart from the fact that you're going to build into this thing warm words around consultation and everything else like that. I'm sorry, but there is a big difference between the protections of statutory provision and warm words. Frankly, once an organisation comes into being, it will be just warm words.

Mims Davies: I understand there is concern about the proposals and whether they strike the right balance between allowing freedom to distribute the funds between the statutory purposes and Government oversight. I understand that. But the transparent requirements on the racing authority, as we have heard set out, are very clear. They must consult on their strategy to spend and retain the confidence in the sector. The purpose of this LRO is because we can, I believe, show that the levy is able to reduce the burdens on legislation. This is a way of making amendments without the need for primary legislation.

I have tried to come up with practical examples of why this meets the test for an LRO. Bookmakers will no longer have to make payments to provide information to two separate organisations. We have got the Gambling Commission who are best placed to help reduce reporting requirements. We heard that there are significant changes on smaller bookmakers, and that is positive. The racing industry will have the opportunity, as I said, to reorganise their fixtures, planning and funding and stop the duplication that has been happening. Of course, there is the opportunity for administrative savings and being able to be more focused in supporting the industry. The strong support in the industry is there and this is transformational. I believe this is the right way for achieving for the whole of the industry. I understand the point that we are not here as a mouthpiece for the industry but the reality is that there has been a lot of change here and less opportunity for disputes.

Therefore, the role of the levy board has been reduced and this is a process to support the changes to deliver for the sector. It is important to our communities and we should listen to the changes and responding to that as a Government. The LRO is a way that we are looking to deliver.

Mr Kevan Jones: I don't have a direct racing interest with studs or anything like that but I have a lot of constituents who like to gamble each week. I see my main role as protecting their interests. I do not see anything you have said today that helps having the robust role in

protecting them. That is one of the problems with what you have come forward with.

I accept the reason that you did not put this forward as parliamentary legislation because of Government time and the scrutiny that Lord Rowlands argued for. I have to say that I have serious doubts about using this mechanism to put through this legislation.

- Q63 **Lord Tyler:** Could I take this a step further? You are quite right to say that it is important to ensure that listening is being effectively undertaken. That takes us to the issue of consultation. What consultation will there be ahead of the designation of the racing authority for administering the levy? Why does the new schedule 15A in the Gambling Act 2005, which is page 13 of the draft order, not include statutory consultees in relation to designation of this body?

James Perkins: I think we would say the designation process allows us to designate a body that is representative of the levy beneficiaries. Obviously, that could include the veterinary sector. We just don't think it is necessary to include a statutory consultation.

- Q64 **Lord Tyler:** That takes us neatly on to the issue of the veterinary profession. In 2019, in your memorandum, the designated body must represent the interests of one or more of those involved in horse racing, veterinary science or veterinary education or breeding of horses and must "command the confidence of all those groups". That is not very evident, is it?

Why does the proposed new section 338P (Strategic Plan) of the Gambling Act 2005, which is page 9 of your draft order, require the designated body to consult bookmakers and betting exchange providers but not, for example, veterinary professionals? You are not even fulfilling your own promise.

Mims Davies: The sub-group is being set up at the moment and the levy will continue to support the equine veterinary projects and the breeds of horses. If the body fails to engage appropriately in the future with the beneficiaries and subsequently loses confidence in one or more of the levy beneficiaries that could result in a Government review of the designated body.

I believe there is a strong incentive for that body to ensure that the appropriate engagement happens across the sector, and that the Government does not have to consider it necessary to require such consultation in formal legislation. But the Secretary of State may take into account factors when determining whether the body is suitable to administer the levy.

Of course, we all want to be satisfied that that body will be properly engaged with all the relevant parties. Again, this is about delivering the levy for the industry, and ensuring that it works and that they have confidence. I would like to think that is broadly reflective of what we have asked.



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- Q65 **Lord Tyler:** Why not build that in? It is in your memorandum; why not put it there? It is like Mr Jones's concern about aspirations. If something goes wrong, you can do something about it later. Why not put it in now?

Mims Davies: That's correct, but there is no need to do that now. We are introducing a requirement for the authority to maintain the confidence of the sector and the other beneficiaries. They are doing that by recognising the importance of the projects and looking at that sub-group. They will have a voice that they didn't have previously.

- Q66 **Stephen McPartland:** On that point, my understanding of the way the legislation is written is that, at the moment, the requirement exists only when considering who to designate. It doesn't exist after you have designated them.

James Perkins: Sorry, could you clarify that?

- Q67 **Stephen McPartland:** At the moment, the way the legislation is currently written, the ability and requirement to retain the confidence of the industry exists only when you are considering who to designate. It does not exist once they have been designated.

James Perkins: I don't think we would agree with that. Our review clause allows the Secretary of State to review a body if he no longer considers it to be suitable. For a body to be suitable, it must retain the confidence of the sector.

- Q68 **Stephen McPartland:** On that point, then, can you confirm that under paragraph 1(3)(b) of new schedule 15A, the only requirement is to consider the issue at the point of designating the authority? There is no statutory requirement to retain it.

James Perkins: I may have to come back on that point.

Mims Davies: That is a very clear point that we can't answer at the moment. Thank you for raising that. It may be something that we need to look at.

- Q69 **Chair:** Send us a supplementary memorandum on that point.

I have Mr McGinn to come in on this point, but can I ask a question on the veterinary side? I was concerned to read the submission of the British Equine Veterinary Association, the Veterinary Schools Council and the Association of Racecourse Veterinary Surgeons, who said that they were generally supportive, but they had some deep concerns, particularly on the last question—"Do the proposals remove any unnecessary protection?" They said that "the proposals remove a necessary and important element of protection for the horse, namely the obligation to invest in its health through veterinary research and education. The British public cares deeply about animal welfare, and any real or perceived compromise to racehorse welfare has the potential to substantially reduce public support." Are they right?

Mims Davies: One of the issues we are hearing very clearly this morning is about the veterinary oversight. 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—hence the sub-group. That will be addressed, and I am happy to take that to the new chair as something this Committee feels very strongly about. It is absolutely right that we are clearly focused on making sure the veterinary sector and the horses are well looked after. There is no current requirement to do that, and we are trying to replicate what is already there as closely as possible through this process. The sub-group allows a future focus on that.

Chair: Mr McGinn?

Q70 **Conor McGinn:** I regret very much how this Committee session has turned out this morning. I feel that racing has been done a great disservice. I say that to you gently and kindly, Minister. I welcome you to the post, and I hope you find time to visit Haydock park in my constituency. You would be very welcome to make it the first course that you visit. This is an issue of huge importance to British racing. The significant, substantive transfer of the ability to spend, identify and fund areas of racing to racing itself is a wholly positive thing, but I don't think that case has been made well here this morning.

Sadly, we have simultaneously conflated a lot of issues around racing that are not directly related to this LRO, and looked at quite peripheral issues. Minister, racing is the country's second-largest sport. It should be an integral component of your brief and what the Department does. It is a complex, contradictory industry. People talk about vested interests, but 6 million people went racing in this country last year. Racing has an annual expenditure of £3.4 billion; it contributes £300 million in tax; over 17,000 people are employed full time in the industry; and £11.5 billion is bet every year. So this is not an insignificant matter that we are talking about.

Let me say at the outset that I support what the Government are trying to do; I always have done. As the chairman of the all-party parliamentary group on racing and bloodstock industries, I think it is absolutely vital that we bring together all of the component parts of racing into one authority. I don't see any discrepancy in what we are trying to do in racing with, for example, what is done in football, where you have the Football Association as the overarching regulatory body. So this is a wholly positive development and I am genuinely sad that that case has not been made better this morning.

I just want to pick up on a specific point around something contained in the LRO, which is about the betting liaison group, because something significant has changed since this was initially proposed. Your predecessor, Minister, gave me an assurance that in terms of the predicted loss of high street bookmaker shops envisaged by the industry, and I accept fully that there is debate about the figures that the Association of British Bookmakers has produced, but none the less taking the ABB at its word, it says a significant number of shops will close and a significant number of staff will be made redundant. That will potentially have a very detrimental impact on racing.



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Now, your predecessor said she would work with racing through the transitional period to ensure that there was no loss to racing and that racing would not be affected by any reduction in high street bookies, and of course all of the other added parts to the relationship between betting and racing.

That transitional period has been brought forward a further six months, to April. That is a very short space of time. So, in terms of getting this order through and in terms of those assurances given to racing about any mitigation of the consequences it would suffer as a result of the closure of high street bookmakers, what have your Department and your officials been doing on that? And what discussions have you had with racing since the Government unilaterally announced last week that it would bring forward the reduction in the maximum stake?

Mims Davies: We have committed to bring forward a review if there is—

Q71 **Conor McGinn:** Why not just say it? If you have written it, you can say it.

Mims Davies: I would like to come on to something that actually I would like to say, because I had a lot of things that I wanted to say this morning. It hasn't actually been the positive—

Conor McGinn: I hope that I have allowed you to say some of what you wanted to say.

Mims Davies: You have done, Mr McGinn, and I thank you for that opportunity.

So we have committed to bring forward a review if there are any significant changes to racing as a whole and we encourage racing to come forward on that—absolutely.

The message I was trying to strike with my initial note this morning is that I believe these proposals strike the right balance between allowing racing the freedom to distribute funds, to acknowledge the changes that have been going on within the industry and the positivity that it brings, and also hopefully to have the absolutely in-line statutory purposes there, whereby Government have the right oversight. But it also allows the authority to set out how it wants to move forward, and we must make sure that we work to retain the confidence of the sector, to make sure that those published accounts are there and that transparency is there, and so that positivity remains in the sector.

Hopefully, I have shown that there are practical benefits for the industry of bringing this forward, with the opportunity to organise their fixture planning and funding, to avoid duplication, to work with the Gambling Commission and to make administrative savings. And as the whole of the industry, as you pointed out Mr McGinn, supports the proposals about reducing the burdens of the sector, considering all of the challenges within this sector, and I freely admit that with a new portfolio there are a lot of challenges in this sector in different areas, which the Government need to have sight, management and understanding of.



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So I absolutely accept your point and I understand that we should be making the positive case that this LRO will build on the changes in the sector and it will streamline the administration of the levy. And that levy change should not be underestimated. The levy was an administrative burden; it was a difficulty within the sector. And actually we have moved into a very good place with that.

Q72 **Conor McGinn:** And you'll undertake to sit down with racing and betting as soon as possible, to discuss the impact of bringing forward the announcement?

Mims Davies: This was not the first conversation I expected to have on the broader point of racing—far from it. But we must explain why this is the right thing to do for the industry. It does not mean that we are in the pockets of anyone. We are just delivering on what is expected, and what we have made commitments to do.

Conor McGinn: With your indulgence, Chair, I feel very passionately and strongly about racing and the positive contribution that it makes, not just to my community in St Helens but to communities across the country. We are here this morning to discuss very specific provisions around racing and the levy, and why they are transformative for the industry. It is right that they go through a proper parliamentary process, but what I would not want to be lost this morning, when there will be so many thousands of people involved in racing watching this, is the pride, joy and excitement that is British racing, the hugely positive contribution that it makes to this country, and the positive contribution it makes to the reputation of Britain abroad. It has my support; I suspect the industry has huge support from people right across both Houses of Parliament and all parties in Parliament.

This morning is about getting the legislation right and making sure that it has proper scrutiny. I would not want anyone in racing to think that in any way their reputation or motivation had been impugned. They have huge respect and support right across both Houses.

Chair: I am sure, Mr McGinn, that the punters out there are as excited about the debate in this Committee as they are about the 12.30 at Newmarket today. Is there any betting on the outcome of this Committee?

Conor McGinn: I think there are rules against that, my Lord.

Q73 **Lord Rowlands:** Following the previous contribution, let's just remind ourselves that our task as a Committee is to discuss the process, not the policy. That is fundamental. It is not about whatever is good or wonderful about racing and these reforms. It is about whether the proposed process is the right and proper one.

Something has struck me, the more we have discussed the anomalous role and nature of this racing authority, which apparently has still not been designated. We have had a letter pleading from the chairman of this designated body already. I do not quite know where or at what position the body is. We have heard a lot about Government oversight. What



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parliamentary oversight will there be over this authority?

Mims Davies: I think we need to go back to some of the points that I made. We have looked carefully at striking the right balance between transferring the responsibility for the levy to the industry, and the conditions and safeguards attached. There are robust transparency requirements set out on the racing authority. The body must consult on its strategy to spend. It must retain the confidence of the sector and publish detailed accounts. We are retaining the powers to act where there are concerns. There is a mechanism to review—

Q74 **Lord Rowlands:** You have explained that to me. I understand that, but how could Parliament be certain that these things have been done properly? What process will there be that will allow Parliament to have oversight, and to check whether all the promises, assurances and transparencies are actually happening? At least the levy board was statutorily responsible to Parliament.

Mims Davies: What we are trying to do here is abolish a statutory regime and amend the current regime to remove and reduce the burdens on affected parties. If you want to call me or any future Minister back to Parliament to answer that, we are absolutely happy to do that.

Q75 **Lord Moynihan:** First, Minister, many congratulations on taking on the best job in Government—although you might not think so today. On the question of taxation, I really want to focus on our responsibilities, and look at the efficacy of the process against primary legislation. What is your response to the argument that the order is in breach of section 5(1) of the 2006 Act, which states that an order cannot “impose, abolish or vary” taxation?

Mims Davies: I feel confident that I can just about answer that one, and thank you for the kind welcome. It is absolutely right that this be scrutinised. We have heard about the power and influence that this wonderful sport has on our local communities, and what it does for them. It is absolutely right that we get this right through the right processes.

During the passage of the Legislative and Regulatory Reform Act 2006, taxation was defined as the compulsory levying of money for state revenue. The horse-racing betting levy does not amount to state revenue; the levy funds do not enter the Consolidated Fund, so we believe that the levy should not be classed as tax for these purposes.

The draft order does not propose to vary the rate or scope of the horse-racing betting levy. There are no provisions at the moment to increase or decrease the levy rate; what is set out in the draft order is only for the administration of the levy. In the context of the 2006 Act, Lord McKenzie of Luton defined the term “taxation” in this way: “For these purposes, taxation is the compulsory levying of money for state revenue”. We do not believe that matches what is being done in this case.

Lord Moynihan: Minister, your officials say that they took advice from lawyers prior to the determination following the LRO procedure, as



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opposed to primary legislation. There are many who would disagree with what you have just said. Maybe it would be helpful to the Committee if you or your officials could think of any example where a Government have moved a tax-collecting role—which is clearly what this is—wholesale from one entity to another by statutory instrument. If they cannot immediately respond to that, it might be helpful to the Committee if you were able to write to us as soon as possible on that subject.

Chair: Lord Flight, are you trying to catch my eye?

- Q76 **Lord Flight:** Could I very much second what Mr McGinn had to say? I am sure that the reforms will be very positive for the industry, but the fundamental issue that has almost been skated over is why an LRO has been used, rather than primary legislation. The answer given has been that there was not time for primary legislation. In truth, is that the simple reason, or are there other reasons for using an LRO?

Mims Davies: Picking up on the previous point, we feel very clearly that the point that I made is appropriate. We will look at that and undertake to do it, but we believe that this meets the test, and that is why we have brought the LRO forward in this way. Picking up on Lord Flight's point, this LRO is to build on changes and provide a streamlined administration of the levy, therefore reducing the burdens on those affected. Ultimately, we believe that it meets the test of an LRO. There is no annual negotiation of the levy, and there is no large oversight in the way that there was before, because it has been streamlined down and the associated costs and burdens will be reduced. Therefore, it is felt that in this case, in order to deliver on commitments, this is the right procedure.

- Q77 **Stephen McPartland:** Finally from me, Minister, given the fact that the shadow racing authority has been established, and that the case for this LRO from the Government side is based on the racing authority being the body that creates all the benefits that you are pushing for, why was the racing authority not identified on the face of the LRO?

Mims Davies: My understanding is that in order to futureproof the legislation, having that on the front of the Bill would be unhelpful, because the Secretary of State may be able to come in where any confidence is lost and any changes occur. If any future body fails to appropriately meet the test, there will hopefully be an opportunity for us to engage with that and make sure that, in the future, that can be dealt with.

- Q78 **Lord Thomas of Gresford:** Do I understand you to say that the racing authority does not appear on this instrument because there is a possibility that the Ministry might step in and change it to somebody else—to another authority? Is that what you are saying?

Mims Davies: It's called a designated body.

- Q79 **Lord Thomas of Gresford:** So you could designate another body under this LRO?

Mims Davies: If it does not meet with confidence or meet the tests, or if there is any future problem, such as some of the things that have been



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described this morning, and the Secretary of State feels that this body is not delivering in the way that it should, there is an opportunity to come in and change it. As we said earlier, if there is any specific, large change in the area, we are able to come back in and have a look at matters.

- Q80 **Lord Thomas of Gresford:** That is a very wide power, isn't it? The case you have to meet is that the racing authority or the designated body may contain interests that push the distribution of funds in a particular way. It has been suggested that because of the way in which the industry is constructed, rich owners will push the money towards improving prizes, at the expense of, for example, veterinary science and research. That is the case that you have to meet, and now you are telling us that this method of procedure will permit the Minister to step in and change it to some other designated authority that we have never heard of.

Lord Tyler: Or to change its title.

Mims Davies: We are transferring the responsibility and requirements to the racing authority as set out, and the body must consult on its strategy to spend—that is very clear—and, of course, maintain the confidence of the sector and publish detailed accounts. We are rightly retaining the powers to act where there are concerns. There is a mechanism to review the designated body, to suspend payments, and to replace the body if necessary. The underlying intention of the Government's proposal is that if any confidence is lost in the way that you describe, my Lord, the Government is able to hold them to account.

Lord Thomas of Gresford: And you think an LRO is the appropriate vehicle for this, do you?

- Q81 **Mr Kevan Jones:** Can I pick up on that? It gives huge powers to the Government to change things. I think his lordship raises an interesting point. Like Mr McGinn, I'm not anti-gambling or anti the industry, but the more we have looked at this today, the more I think that there are huge implications from the things being covered by this Committee, using this method, which I think will be used in future for other legislation. This would have been a great subject for a full debate in both Houses. Giving this power to a future Secretary of State, basically without Parliament having any remit to change things, is huge; this is a huge power that has come forward today. The more I listen to comments about the implications, the more I think these things should be part of primary legislation, so that they can receive the full scrutiny of the House. That is not being anti the industry. I came here with an open mind; I have been convinced the other way by your performance, Minister—and, I have to say, your not good support from your civil servants today.

Mims Davies: If we needed to change the body, we would need to consult on that, and we would undertake to come to Parliament. If the levy purposes change and there is no confidence in that, the legislation requires the authority to consult on its strategy to spend, and to publish detailed accounts and a report—

- Q82 **Mr Kevan Jones:** Minister, I'm sorry, but can I just stop you again? I



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know it's a modern trend to add consultation to any legislation. Consultation means absolutely nothing. There is a difference between that and being able to change something and have it subject to Parliament's say-so. I'm sorry: you can have all the consultation in the world, but consultations never take place, in my experience, unless you know the outcome before you set them off.

Mims Davies: I do believe there is the right oversight here, and we have retained the Secretary of State's power to act, should there be concerns. As I set out at the outset, there is no benefit here for the authority not to fit with its protocols and what it is looking to achieve, because ultimately it is meant to be supporting the industry and retaining its confidence. If that is in doubt, we have an opportunity to come in and review.

Q83 **Chair:** We are almost at the end of our evidence session; thank you, Minister. I have a couple of questions for officials, who will have a longer institutional memory in the Department than you. Was consideration given to making the designation subject to parliamentary scrutiny, and if so, why was the view taken not to require parliamentary scrutiny?

Mims Davies: I think I need to go back to my initial points. We believe that this meets the test for an LRO, and it is absolutely right that it should be scrutinised this morning. I am grateful for the opportunity—although I am not feeling it right now—to make the case. The balance that we are trying to strike here is about delivering on commitments that we have. There are transparency requirements, and there is the opportunity to act, as required. This authority will have the freedom to distribute funds in line with its statutory purposes, and the Government, I believe, retains adequate oversight.

Q84 **Chair:** Thank you, Minister. Let me draw the Committee to an end with a final question. This is certainly not for you, Minister; it was long before your time. This is for your officials who have a longer memory of this. I am reading an article from the *Racing Post* of 8 January 2018: "Good news for racing as big supporter Matt Hancock named Culture Secretary...one of the sport's staunchest supporters in parliament...whose West Suffolk constituency includes Newmarket". Actually, he rode a horse at Newmarket and won a charity match. The article goes on to say that they are expecting great things from the Minister, who is highly supportive of the industry. Was this policy driven by the personal preference of the previous Secretary of State?

James Perkins: The consultation on the use of a legislative reform order was launched in December 2017, which I think predates that article.

Chair: Thank you.

Mims Davies: Let me finally say that on 20 August, the previous Minister set out the reasons for the LRO and made what I believe was a very clear case for this. I believe that we meet the tests for using this process to deliver on this commitment to the industry, and to distribute the levy appropriately.



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Chair: Thank you, Minister. You have made a very gutsy and robust case for the policy this morning. Our Committees will have to consider whether the process is correct. We may or may not agree with you and your officials on that, but it was a sturdy and robust defence from a new Minister of the policy you are advocating. I am very grateful to you for coming before us this morning and dealing with some fairly tough questions from old parliamentary hands. Thank you very much.

Mims Davies: Thank you.