

Central Service and Rural Affairs Group
Central Management Branch



Our reference:

Stella McArdle
Clerk to the Committee for Agriculture,
Environment and Rural Affairs
Room 243
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Private Office Assembly Section
Room 427, Dundonald House
Upper Newtownards Road
Ballymiscaw
Belfast
BT4 3SB
Telephone: 028 9052 5386
E-mail: Michael.oliver@daera-ni.gov.uk

Date 16 March 2021

Dear Stella,

Outcome of consultation on a proposal to amend the Horse Racing (Northern Ireland) Order 1990

I wrote to you on 30 April 2020 regarding the Department's plans to consult on a proposal to amend the Horse Racing (Northern Ireland) Order 1990 (the 1990 Order) regarding the beneficiaries to the Horse Racing Fund (the Fund).

Background to the Fund

The Fund was established in 1976 and is currently administered by the Department in line with the 1990 Order. The 1990 Order requires that Northern Ireland licensed bookmakers make an annual contribution to the Fund of an amount determined from time to time by the Department. The Fund is then intended to be used to assist the operation and development of the two racecourses at Downpatrick and Down Royal. Because of a change of management at the end of 2018, the new operator of Down Royal has not been eligible for support under the 1990 Order, as it is not specifically named in the legislation. Payments to the previous operator of Down Royal racecourse ceased from 1 January 2019. You will also be aware that payments to Downpatrick racecourse ceased while the Department sought a decision from the European Commission on an EU State Aid application for the continued operation of the Fund.

You will be aware from Minister Poots' letter to the Committee Chair dated 28 September 2020 that, following further analysis and legal advice, the Department subsequently withdrew the EU State Aid application on the basis that it was unlikely to receive a favourable outcome. In his letter, the Minister indicated that officials had commenced work to scope out a way forward, but a full policy review of the fund to establish a suitable replacement, which could take in the region of three years.

Following the end of the Transition Period, from 1 January 2021 EU State Aid rules no longer apply in relation to the Fund and it has been necessary to assess the compatibility of the Fund with the new UK Subsidy Control requirements. UKG guidance on the UK Subsidy Control requirements published on 31 December 2020 has allowed the Department to consider the consultation responses further in that light and to finalise its conclusions. The Department is now in a position to update the Committee on the outcome of the consultation.

Consultation

A targeted consultation took place during May and June 2020 on the proposal to add the new operator at Down Royal to the 1990 Order. During the consultation, officials met a number of interested parties to discuss the proposal.

The purpose of the proposed amendment is to enable resumption of payments as soon as possible to the two existing racecourses in Northern Ireland. While outside the scope of the main consultation about the specific proposal, stakeholders were also invited to provide comments in relation to the operation of the Fund more generally. It was intended to use any comments gathered on wider issues to inform the scope of a potential wider review of the Fund over a longer period.

Consultation Outcome

The Department received 10 substantive replies during the consultation period representing key stakeholders. Further comments were received recently from the operators of Drumbo Park, which the Department has also been content to consider. Most of those who responded were generally supportive of the specific proposal to amend the named beneficiaries to the Fund. Two stakeholders, namely the Governor and Freeman of the Corporation of Horse Breeders and Giant's Park C.I.C, qualified their general support for the proposal on the basis that the Fund should be open to others involved in horseracing. In its comments, Drumbo Park called for the legislation to be amended to enable support to be extended to greyhound racing.

Whether to extend the Fund to support horseracing in future beyond the two locations named in the 1990 Order, or to consider the point raised about support for greyhound racing in Northern Ireland, would require full consideration as part of a more comprehensive policy review. Such a review would also need to consider other issues raised during consultation, including for example in relation to online gambling. The timeframe for this work is longer term; it could not be completed and legislation amended within the current Assembly mandate.

The off-course bookmakers (including the NI Turf Guardians' Association - NITGA) did not support the proposal to include the new operators at Down Royal (Down Royal Park Racecourse Limited - DRPRL) as a beneficiary. They were concerned that the new operators are part of a "profit-taking" organisation and this differentiated them from the original named operators, which meant that the proposal was not a simple operability change as stated by the Department in the consultation. NITGA argued that the nature of DRPRL made it ineligible for the sort of support envisaged when the Horse Racing Fund was devised in the 1970s.

Bookmakers' representatives further argued that the legal status of an operator was fundamental to the Fund rules and therefore to the EU State Aid notification which the Department was progressing at that time in parallel to the consultation. NITGA set out a detailed analysis as to why it believed that both the Fund and the Department's proposal would not comply with EU State Aid rules.

Following the assessment of the new Subsidy Control requirements, the Department has concluded that it will be necessary to amend the 1990 Order to include DRPRL as a beneficiary so that the Fund is available to both current Northern Ireland racecourses and creates open and fair competition between the key actors. Making this change will be an essential condition for resuming payments from the Fund to the two racecourses.

Finally, the Department does not consider that being a profit-making organisation should, in itself, bar an organisation from accessing the Fund. The Department is content that a key aim of the 1990 Order was to provide support for horseracing at the two named locations. The legislation sets out how the Fund must be spent in support of horseracing at Northern Ireland's two racecourses.

The detailed summary of the responses received during consultation, along with the Departmental response, is attached at Annex A. Annex A includes a summary of comments received in relation to a wider review of the Fund. A full transcript of the comments themselves is attached at Annex B. As some of the comments received relate to matters that are the responsibility of the Department for Communities (DfC), the transcript has been shared with officials in DfC.

Final Policy

As set out the Department's response at Annex A, following consideration of the comments received and in light of analysis of the new UK Subsidy Control requirements, it is proposed to bring forward a Bill to that would amend the named beneficiaries to order to provide for payments to the new operator at Down Royal. This is in line with the proposal set out in the consultation.

In addition, the comments received in relation to a wider review of the legislation and support for horseracing will be used in scoping out that review.

Next Steps

The summary of the consultation comments and the Department's response, along with the transcript of the comments, will be published at <https://www.daera-ni.gov.uk/publications/summary-consultation-responses-amendment-horse-racing-northern-ireland-order-1990>. Stakeholders will notified of the outcome of the consultation.

Further to the consultation, the Minister intends to seek the agreement of the Executive Committee to the high-level final policy, as outlined above, and to progress primary legislation through to enactment to provide for payments to the operator at Down Royal and enable payments to resume from the Fund as soon as possible.

While the timescales are short, as this is likely to be a very small Bill it is hoped that, with the support of the AERA Committee, the Bill would complete its Assembly stages in this current mandate.

You may wish to bring this matter to the attention of the Committee. Officials are happy to deal with any queries that Members might have on the issues contained in this letter and are on hand to provide oral briefing to the Committee if that would be helpful

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Oliver'. The signature is fluid and cursive, with the first name 'Michael' written in a larger, more prominent script than the last name 'Oliver'.

Michael Oliver
Departmental Assembly Liaison Officer

Attachments

Annex A: Summary of consultation comments and Departmental response.

Annex B: Transcript of consultation responses.

Consultation on Amendment of the Horse Racing (Northern Ireland) Order 1990

Consultation Outcome

Summary of Responses and Departmental Response

The Department of Agriculture, Environment and Rural
Affairs

March 2021

CONTENTS

1. INTRODUCTION.....	3
1.1 BACKGROUND.....	3
1.2 THE CONSULTATION.....	4
1.3. UPDATE	6
2. LIST OF CONSULTATION RESPONDENTS.....	7
3. SUMMARY OF RESPONSES AND DEPARTMENTAL RESPONSE	8
3.1 PROPOSAL TO AMEND NAMED BENEFICIARIES	8
3.2 REGULATORY IMPACT	13
3.3 EQUALITY SCREENING	15
3.4 RURAL NEEDS IMPACT ASSESSMENT	16

ANNEX

OTHER COMMENTS.....	17
REFORM OF GAMBLING LEGISLATION	17
WIDER REVIEW OF THE HORSE RACING FUND	18

1. Introduction

1.1 Background

The Department of Agriculture, Environment and Rural Affairs (the Department) undertook a consultation on a proposal to amend the Horse Racing (Northern Ireland) Order 1990 (the 1990 Order), which is the legal basis for the Horse Racing Fund (HRF/the Fund).

The proposed amendment would amend the name of the beneficiaries of the Fund so that the current operators of Down Royal racecourse are eligible for support.

The Fund is made up from a levy collected from licensed bookmakers in Northern Ireland and was set up in order to provide financial support to horseracing at Northern Ireland's two racecourses at Downpatrick and Down Royal. Until 31 December 2018, the Fund was used to assist the operation and development of both Northern Ireland's racecourses. However, since then, as a result of a change in operator, the new operator of Down Royal has been ineligible for support from the Fund because it is not specifically named in the 1990 Order as a beneficiary. Therefore, while the levy continued to be collected from licensed bookmakers, the present operator of Down Royal has been ineligible for support from the Fund since they took over the management of the racecourse in January 2019.

A change to the 1990 Order would be necessary to enable the Department to make payments from the Fund to the new operator for use in support of horse racing at that location. In order to address this issue, and thereby meet the original aims of the 1990 Order, it is necessary to bring forward a Bill (primary legislation) at the Northern Ireland Assembly.

While the Department had been aware of this matter since January 2019, it was not possible to bring forward the necessary change in the absence of a fully functioning Assembly. A proposal to amend the 1990 Order to address

the issue set out above was the specific issue on which the Department sought stakeholder views during the consultation. Stakeholders were also invited to consider the regulatory, equality and rural impacts of this proposal.

1.2 The Consultation

The consultation on the proposal launched on 12 May 2020, and closed on 25 June. Notification of the consultation was sent to 215 individuals and organisations, including key interested parties, as well as s75 and other statutory consultees. Key interested parties included representatives of both off and on course bookmakers, representatives of the two Northern Ireland racecourses, and organisations with a more general interest in equine issues. The consultation was published on the Department's website at [Consultation on the Amendment of the Horse Racing \(Northern Ireland\) Order 1990](#) and on Citizen Space and was publicised on a number of occasions via social media. The consultation page on the Departmental website, which was viewed 340 times during the consultation, sets out more detailed background to the 1990 Order and the Fund itself.

As part of evidence gathering, officials offered key stakeholders the opportunity to discuss the proposal. Officials met a number of key industry representatives and in doing so explained the background to the consultation and set out the legislative process.

Eleven¹ written responses to the consultation were received, covering the different interests, including bookmakers, racecourse operators, Lisburn and Castlereagh District Council and those with a more general interest in equines. The majority of respondents supported, albeit some of this was qualified, the specific issue of amending the 1990 Order to deal with the issue of the named beneficiaries of the Fund. As set out below, two key stakeholders did not support the proposal.

¹ Drumbo Park's comments were received after the consultation formally closed, but have been included in this summary and response.

A list of all respondents is set out below. The Department is grateful to all those who took the time and effort to respond and to those whom we had the opportunity to meet, albeit remotely, during the consultation.

The consultation focused on the proposed specific amendment to the 1990 Order which would seek to make the legislation operable by amending the named beneficiaries of the Fund. While outside the scope of the consultation, the consultation did provide the opportunity for stakeholders to submit comments on the wider operation of the Fund and support for horse racing in Northern Ireland more generally. Such comments will be invaluable to the Department in helping to shape any wider review of the HRF in the future.

This document presents an analysis of the responses to the consultation with the Department's responses. The additional comments received that are outside the scope of the consultation are summarised in the Annex.

This summary seeks to reflect the general views offered but, inevitably, it is not possible to describe all the responses in detail. In line with the policy of openness, respondents were informed that their views would be made publicly available. Those wishing their comments to be treated confidentially were asked to make this clear. All other responses will be placed online, along with this document, at <https://www.daera-ni.gov.uk/publications/summary-consultation-responses-amendment-horse-racing-northern-ireland-order-1990>.

This document seeks to deal primarily with those comments relating to the areas for which DAERA is the responsible Department. However, given that some of the comments received relate to responsibilities of other Northern Ireland Departments, these comments are reflected in the document and, where necessary, the Departmental response sets out any actions that have been taken in relation to these points. This includes comments made with regard to a need for reform of wider gambling legislation, which is the responsibility of the Department for Communities (DfC); the Department has brought any issues of specific or mutual interest to the attention of officials in DfC.

Hard copies of this summary can be requested from:

HRF.Consultation@daera-ni.gov.uk

If you are unable to email and would prefer to arrange a hard copy by telephone, please call 028 9037 8558 to make the necessary arrangements.

1.3. Update

Publication of this summary and response could not take place until the Department had assessed the likely impact of the withdrawal of an EU State Aid application which was being progressed in parallel with the consultation. Following the end of the Transition Period, it has also been necessary to assess the compatibility of the Fund with the new UK Subsidy Control regime from 1 January 2021, before concluding the Department's response to the consultation.

2. List of consultation respondents

Responses were received from:

- Downpatrick Race Club.
- Down Royal Park Racecourse Limited.
- Equine Council NI.
- Giant's Park C.I.C.
- Governor and Freeman of the Corporation of Horse Breeders.
- Horse Racing Ireland.
- Lisburn and Castlereagh City Council.
- NI On-course Bookmakers Association (NIOCBA).
- NI Turf Guardians Association (NITGA).
- North West Bookmakers, trading as Ladbrokes (Ladbrokes).
- Run with Passion Ltd, trading as Drumbo Park (Drumbo Park).

3. Summary of responses and Departmental Response

3.1 Proposal to amend named beneficiaries

Six respondents were fully in favour of the specific proposal on which the Department consulted. Three stakeholders gave qualified agreement to the proposal. Two respondents were against it.

Many of those in favour, including representatives of on-course bookmakers (NIOCBA), Horse Racing Ireland, and the Equine Council NI noted the importance of making the amendment. It was also supported by Down Royal Park Racecourse Limited (DRPRL), Downpatrick Race Club and Lisburn and Castlereagh City Council. In supporting the proposal, DRPRL referred to submissions that it had made to the Department over the last year calling for the Fund to be made available to the operator of Down Royal without the need for the proposed amendment to the legislation. Horse Racing Ireland and Lisburn and Castlereagh City Council also asked that the 2019 and 2020 funds be paid to both Downpatrick and Down Royal.

The Governor and Freeman of the Corporation of Horse Breeders (the Corporation) and Giant's Park C.I.C gave qualified general support for the proposal on the basis that the Fund be amended to open funding to other enterprises involved in horseracing as well as specifically supporting horse racing at Down Royal and Downpatrick. The Corporation also noted that Covid-19 is likely to have a significant impact on income streams for the horseracing industry and bookmakers and the Department should consider this in its amendment to the 1990 Order. They also commented that the Corporation should not be removed from the 1990 Order as a result of the proposed amendment. Drumbo Park also commented on the impact of Covid-19 and called for the Fund to be extended to cover greyhound racing.

There was a significant sector, namely the off-course bookmakers, that was strongly against the proposal, as represented in the responses from the Northern Ireland Turf Guardians Association (NITGA) and Ladbrokes. The off-course bookmakers argued that the proposal was more than a technical amendment, as set out by the Department in the consultation, to ensure that

the legislation operated as it was initially intended in 1990. In the off-course bookmakers' view, the proposed amendment would be a significant departure from the original policy intent of the 1990 Order (and was therefore more than a simple operability fix). They stated that the aims of the 1990 Order were narrow and related only to the racecourse operators named at that time.

Both off-course bookmaker representatives noted that the background to the Fund provided by the Department as part of the consultation did not refer to the State Aid notification to the EU with respect to the Fund and that the consultation should not have issued while the application to the Commission was pending. NITGA commented that the proposal could potentially breach EU State Aid requirements and set out detailed arguments on this point, as well as wider concerns in relation to the Fund and its compatibility with EU State Aid, including that this was raised by NITGA as part of an earlier consultation about the level of the levy on licensed bookmakers.

The off- course bookmakers' main conclusion was that the new operator at Down Royal should not be eligible for support under the Fund, as it is part of a major multi-national organisation. They raised concerns that public money could be used to supplement a profit-making organisation, whereas the Corporation was "profit-making not profit-taking". The Corporation expressed similar concerns. NITGA also commented that previously, through the legislation, bookmakers had the opportunity to be represented on the Board of the Corporation and this would add another level of oversight with regard to spending of the funds. The Corporation also reflected on concerns about the nature of the new operators in relation to the need for adequate safeguards for the disbursement of money from the Fund.

Departmental Response

The Department notes the support from a number of stakeholders to the proposal.

The Department also notes the views of others who supported the proposal with caveats, as well as those who fully opposed the proposed amendment.

DRPRL supported the proposal, but argued that the Fund should be made available to Down Royal now (in advance of any change in the legislation). However, this is not possible, as DRPRL is not specifically named in the 1990 Order as a beneficiary of the Fund. Nevertheless, if the proposal on which the Department consulted was progressed, this would make both Down Royal and Downpatrick eligible for access to the Fund. The proposed legislative change would enable payments to recommence from the monies already collected.

The Department notes the Corporation's request to keep it named on the 1990 Order. The Department will consider this in drafting the Bill, but it is not clear as to how this could work if the amendment is made to add DRPRL as proposed in the consultation.

In terms of the concerns of NITGA and others that the proposal is a departure from the original policy intent of the 1990 Order, the Department is content that a key aim of the Order from the outset was to provide support for horseracing at the two named locations.

The Department notes the views of some stakeholders in relation to the validity of the current operator at Down Royal to be a recipient of support under the Fund on the basis that, in their view, it is a 'profit-taking' company. The Department does not consider that being a profit-making organisation should, in itself, bar an organisation from accessing the Fund.

In terms of disbursement of money from the Fund, the legislation sets out how the Fund must be spent in support of horseracing at Northern Ireland's two racecourses. The operators of the racecourses are required to demonstrate how the funding has been used against the statements they provide to the Department annually.

As regards expanding the Fund to additional racecourses and greyhound racing, the 1990 Order refers specifically to horseracing and the two existing racecourses at Downpatrick and the Maze. There are currently no other horse race courses. The potential for the development of other racetracks and

payments to greyhound racing is something that would be for consideration as part of a wider policy review of the Fund.

With respect to the proposal to have bookmakers statutorily represented on the racecourse Boards, the Department recognises this was provided for in 1990 with respect to the Corporation. It is understood this was required on the basis that the Corporation was not a registered Company. However, it is noted that there is no parallel statutory requirement for representation on the Board of Downpatrick. The 1990 Order includes other safeguards, but while this proposal will be considered in finalising drafting of the Bill, as with the current position at Downpatrick, it would not appear that this is appropriate given DRPRL is a registered company.

State Aid

A number of comments were raised in consultation responses in relation to the Fund and EU State Aid requirements.

In parallel with the consultation, the Department has been considering the implications of EU State Aid rules for the Horse Racing Fund. On 7 October 2020, the Department wrote to all those who had responded to the consultation to update them on the matter. The information provided in that communication is summarised below.

Payments from the Fund ceased to Downpatrick Racecourse from 2019 while the Department sought a decision from the European Commission on a State Aid application for the continued operation of the Fund. A State Aid pre-notification was sent to the EU on 31 December 2019. Following further scrutiny, including by the Department for the Economy, the UK Department for Business Energy and Industrial Strategy and the UK Mission to the European Union, the notification was formally lodged with the Commission in May 2020. However, following further analysis and legal advice, the Department concluded that the application was unlikely to receive a favourable decision from the EU. For that reason, the Department subsequently withdrew the State Aid application.

In summary, the shortfalls in meeting the criteria for obtaining EU State Aid approval related to meeting the objective of common interest; a key requirement in an assessment of compatibility of EU State Aid provision. This means that the measure must create a level playing field and fair and open competition.

Following the end of the Transition Period, EU State Aid rules no longer apply in relation to the Fund and it has been necessary to assess the compatibility of the Fund with the new UK Subsidy Control requirements that apply from 1 January 2021. UKG guidance on the UK Subsidy Control requirements published on 31 December 2020 has allowed the Department to consider the consultation proposal and responses further in that light.

In that respect, the Department has concluded that it will be necessary to amend the 1990 Order as proposed to include DRPRL as a beneficiary so that the Fund is available to both current Northern Ireland racecourses and therefore support open and fair competition between them. Making this change will be an essential condition for resuming payments from the Fund to the two racecourses.

The Department recognises that the potential for EU State Aid approval had been raised in previous correspondence with the Department, but at the time it was not believed that an application was necessary. As noted, when this position was reviewed in 2019, a notification for approval was progressed. While this was clearly an important matter which the Department had to consider in relation to the operation of the Fund, the named beneficiaries was not seen to be central to that notification at the time. Furthermore, in taking forward the initial stages to amending the 1990 Order (i.e. by way of undertaking a consultation), the Department planned to ensure that, if the Commission was to agree that the Fund was compliant with the then EU State Aid rules, the amendment could be progressed in a timely fashion. In addition, the consultation gave the Department an opportunity to consider any wider issues in relation to the Fund in scoping a longer-term review.

Wider Issues

A number of wider issues were raised in the consultation that are outside the scope of the proposed specific amendment to the 1990 Order. Such issues are recorded in the Annex and will be used in helping to scope any potential wider review of the HRF in the future.

Conclusion

Having considered all the comments provided, and other relevant matters, and in accordance with the principal aim of the 1990 Order to support horseracing at the two racecourses at Downpatrick and Down Royal, the Department does not plan any modification to the proposal outlined in the consultation.

Amending the 1990 Order as proposed will ensure that support is available under the Fund to both current NI racecourses and will enable the resumption of payments from the Fund.

3.2 Regulatory Impact

As part of the consultation, stakeholders were asked for their views on the Department's conclusion that there would be no potential economic impacts as a result of the proposed amendment to the 1990 Order, and that there would therefore be no impacts on the private, voluntary or public sector. The proposal sought only to amend the legislation to make it fully operable and thereby meet its original aim of assisting in the operation and development of both of Northern Ireland's horse racecourses.

The majority of stakeholders who responded to this question (five) supported the Department's conclusion. Some pointed to the value of the sector to the economy and to the investment that the new operator at Down Royal had already made since taking over its operation. Horse Racing Ireland (HRI) and

NIOCBA noted that failure to pay out from the Fund would result in a financial shortfall for the operators of Down Royal Racecourse.

The stakeholders who disagreed that the proposed amendment was only an operability fix, considered that the Department needed to carry out a full Regulatory Impact Assessment on the proposal. NITGA for example noted that the Department had not specifically enquired about the impact on bookmakers or Downpatrick racecourse prior to issuing the consultation and this was at odds with the Department's conclusions in the equality and rural needs documents that the change would bring additional benefits to the rural economy businesses.

Other comments made refer to wider issues that go beyond the potential impact of the proposed amendment itself. The Corporation drew attention to wider economic implications of the proposed amendment in relation to the current named operators not being 'profit-taking' organisations and ensuring that any profits are used for the benefit of the horseracing industry in NI. The Giant's Park C.I.C. commented that the 1990 Order as drafted and the proposed amendment would be a barrier to further development of the equine sector in Northern Ireland due to it being limited to supporting Downpatrick and Down Royal. Drumbo Park commented that if the Fund was not made accessible to greyhound racing, this would have a significant detrimental economic impact on sustainability of Drumbo Park and greyhound racing in Northern Ireland in general.

Departmental Response

The Department screened out the need for a full Regulatory Impact Assessment on the basis that the aim was to re-instate payments to Down Royal. As a result, both racecourses would in future receive broadly the same amount of money that they had typically received, and no additional burdens would be placed on bookmakers as the change would not affect the amount of levy. While some respondents agreed with this, others also pointed to the indirect benefits from re-instating payments for example.

Having assessed the comments received, the Department considers that there is nothing raised that would materially change the view that the proposed amendment would place no additional burden on business. Consideration will be given to whether it would be proportionate to undertake costing the indirect benefits in a full Regulatory Impact Assessment.

The Department notes the points made by Giant's Park C.I.C and Drumbo Park and these are addressed in the Annex below.

3.3 Equality Screening

As part of the consultation, stakeholders were asked for their views on the Department's conclusion that the proposal to amend the 1990 Order would have no impact on equality and human rights. The proposal sought only to amend the legislation to make it fully operable and thereby meet its original aim of assisting in the operation and development of both of Northern Ireland's horse racecourses; it does not represent a change in policy.

The majority (six) of stakeholders who responded to this question supported the Department's conclusion. Giant's Park C.I.C, commented that the current legislation, and the proposal to amend it, did not provide opportunities outside of the named geographical areas at Downpatrick and Down Royal.

The stakeholders who did not agree that the proposed amendment was only an operability fix, considered that the Department needed to revisit this matter in terms of equality and human rights considerations.

Departmental Response

As there was general support for the Department's position in relation to equality and no evidence was provided to the contrary, the Department does not plan to amend its conclusion on screening out the need for a full Equality Impact Assessment. The document has been updated in light of comments received during consultation, but as noted, this does not change the overall conclusion.

3.4 Rural Needs Impact Assessment

As part of the consultation, stakeholders were asked for their views on the Department's conclusion that the proposal to amend the 1990 Order would have no negative rural impacts. As above, the Department's conclusion was based on the view that the proposal sought only to amend the legislation to make it fully operable and thereby meet its original aim of assisting in the operation and development of both of Northern Ireland's horse racecourses; it does not represent a change in policy.

Most respondents (six) agreed that there would be no negative rural impacts as a result of the proposed amendment, and one (HRI) said making the amendment would provide key assistance to this particular rural activity. Drumbo Park commented that the racecourse would be important to the rural economy in terms of jobs and leisure.

Two stakeholders (representing the off-course bookmakers) strongly disagreed, stating that the Department had not demonstrated that this was the case, nor provided evidence to support its conclusion.

Departmental Response

The Department notes the comments and that they support the Department's conclusions in the draft RNIA that there would be a potential negative impact if the amendment was not made. The Department does not plan to amend the conclusion reached in the RNIA.

Annex

Other Comments

The purpose of the proposed amendment is to enable resumption of payments as soon as possible to the two existing racecourses in Northern Ireland. The comments summarised in this Annex do not impact directly on the key proposal on which the Department consulted.

As noted above, while the consultation focused on the proposed specific amendment to the 1990 Order in relation to the named beneficiaries of the Fund, the consultation did provide the opportunity for stakeholders to submit comments on the wider operation of the Fund.

Many stakeholders provided comprehensive comments and evidence in support of their comments during the consultation. While outside the scope of the specific proposed amendment to the legislation, these comments will be invaluable to the Department in helping to shape a wider review of the HRF in the future and will be considered in detail as part of any full review. The brief summary of comments below seeks to reflect the general views offered but, inevitably, it is not possible to describe all the responses in detail.

Reform of gambling legislation

There are linkages between the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 and the 1990 Order. Some of comments received relate to a need for reform of gambling legislation, which the Department has brought to the attention of officials in the Department for Communities (DfC).

A number of respondents (four) reflected that the current gambling legislation was out of date, particularly as it did not take into account online or telephone betting or the existence of online betting exchanges, and related only to betting on the racecourses and in betting shops. It was noted that this was out of sync with the rest of the UK and Ireland.

NIOCBA called for the bookmaker licence to be renewed every five years rather than annually in order to reduce the costs involved in renewal. They commented that the process of licensing is antiquated and indicated that technological solutions have been overlooked as a way of modernising the process.

Departmental Response

The Fund is collected from licensed Northern Ireland bookmakers, who obtain the licence under legislation that is the responsibility of the DfC, but that does not include online bookmakers or betting exchanges for example. An extension of licensing was one of the issues on which DfC consulted in 2020 as part of a consultation on regulation of gambling in Northern Ireland. DAERA has referred these comments to DfC and will be mindful of them in future discussions with DfC.

Extending the Fund beyond collection from the on-course bookmakers at the two racecourses and Northern Ireland betting shops (if licensing was extended) would require a fundamental review of the Fund and how any levy is calculated, interlinked with DfC's proposed review.

Wider review of the Horse Racing Fund

Funding of horse racing in Northern Ireland

Giant's Park C.I.C, the Corporation and NITGA commented that the landscape has changed substantially for both the racecourses and bookmakers since 1990 when the Order came into operation. Giant's Park C.I.C. in particular commented that perhaps a more collaborative view across the whole equine industry should be considered when it comes to how the equine sector might be funded. NITGA specifically commented that racecourses have access to more revenue streams, such as media rights, than was the case in 1990 and this should be reflected in how much money (levy) is collected for the Fund. They also commented that the difference in the rate of the levy between on and off-course bookmakers is

disproportionate. Horse Racing Ireland commented that funding of racecourses was not sufficient and that both racecourses have relied on support from HRI to continue offering races.

Departmental Response

These points would be considered as part of a wider review of the Fund, taking on board all the issues that have changed since 1990.

The amount of the levy

A number of respondents discussed the amount of the levy that bookmakers pay annually to the Fund. Some, such as Horse Racing Ireland (HRI), said the amount paid by betting shops should be increased as it was too low and did not take into account the increasing costs involved in staging racing, stemming from increasing regulation. HRI indicated that “at the very minimum” the flat rate should be increased. HRI also proposed that the levy should be changed from being a flat rate per shop to a rate based on turnover or gross margin. NITGA indicated that the difference in the rate of the levy between on-course and off-course bookmakers was disproportionate and the revenue generated by bookmakers from meetings was a small percentage of the levy paid.

Departmental Response

The 1990 Order provides for the Department to set a charge on bookmakers for the benefit of the Fund (with the approval of the Department of Finance, and after consultation with stakeholders) via subordinate legislation. There are no plans to review the amount of the levy imminently in advance of bringing forward any change to the 1990 Order.

Departmental responsibility for the Fund.

The Equine Council NI suggested that the review of gambling legislation should provide the opportunity to move the responsibility for the Fund to sit alongside responsibility for gambling and sport.

Departmental Response

The Department for Communities (DfC) is responsible for wider gambling legislation, and completed a consultation in late February 2020 seeking views on the regulation of gambling in Northern Ireland. The Department and the DfC work closely on all issues of mutual interest. The Department notes this comment and has also referred it to DfC and will be mindful of it in its discussions with DfC.

DAERA role in promotion of sustainable economic growth and the countryside

HRI commented that in its role in promoting sustainable economic growth and development of the countryside, the Department should be aware of the role that the horse industry plays and therefore ensure that it has a secure funding base.

Departmental Response

This comment is consistent with the themes for further consideration contained within the [Deloitte analysis of the NI equine industry](#), specifically infrastructure, which suggests would benefit from further investment and development. The Deloitte report also makes reference to the funding challenges faced by racecourses in NI compared to racecourses in ROI. Re-instating payments from the Horse Racing Fund would in the first instance go some way towards addressing that.

Consultation on Amendment of the Horse Racing (Northern Ireland) Order 1990

Consultation Responses

The Department of Agriculture, Environment and Rural Affairs

February 2021



Department of
**Agriculture, Environment
and Rural Affairs**
www.daera-ni.gov.uk

Sustainability at the heart of a
living, working, active landscape
valued by everyone.

Table of Contents

1	Introduction.....	3
1.1	Purpose of this document.....	3
2	List of consultation respondents.....	4
2.1	Responses were received from:.....	4
3	Responses	5
3.1	Downpatrick Race Club.....	5
3.2	Down Royal Park Racecourse Limited	6
3.3	Equine Council NI.....	8
3.4	Giant's Park C.I.C	9
3.5	Governor and Freeman of the Corporation of Horse Breeders.....	11
3.6	Horse Racing Ireland	13
3.7	Lisburn and Castlereagh City Council.....	16
3.8	NI On-course Bookmakers Association (NIOCBA)	17
3.9	NI Turf Guardians Association (NITGA).....	19
3.10	North West Bookmakers, trading as Ladbrokes (Ladbrokes)	31
3.11	Run with Passion Ltd, trading as Drumbo Park (Drumbo Park)	32

1 Introduction

1.1 Purpose of this document

The consultation focused on the proposed specific amendment to the 1990 Order, which would seek to make the legislation fully operable by amending the beneficiaries of the Fund named in the legislation. While wider issues with respect to the 1990 Order and support for horseracing in Northern Ireland more generally were outside the scope of the consultation, the consultation did provide the opportunity for stakeholders to submit comments on the wider operation of the Fund.

This document collates the comments received during the consultation.

A list of all respondents is set out below. The Department is grateful to all those who took the time and effort to respond and to those whom we had the opportunity to meet, albeit remotely, during the consultation.

In line with the policy of openness, respondents were informed that their views would be made publicly available. Those wishing their comments to be treated confidentially were asked to make this clear.

This document will be placed online at
www.daera-ni.gov.uk/consultations/

Hard copies of this summary can be requested from:
HRF.Consultation@daera-ni.gov.uk

If you are unable to email and would prefer to arrange a hard copy by telephone, please call 028 9037 8510 to make the necessary arrangements.

2 List of consultation respondents

2.1 Responses were received from:

- Downpatrick Race Club.
- Down Royal Park Racecourse Limited.
- Equine Council NI.
- Giant's Park C.I.C.
- Governor and Freeman of the Corporation of Horse Breeders.
- Horse Racing Ireland.
- Lisburn and Castlereagh City Council.
- NI On-course Bookmakers Association (NIOCBA).
- NI Turf Guardians Association (NITGA).
- North West Bookmakers, trading as Ladbrokes (Ladbrokes).
- Run with Passion Ltd, trading as Drumbo Park (Drumbo Park)¹.

¹ Drumbo Park's comments were received after the consultation formally closed, but have been included in this summary and response.

3 Responses

3.1 Downpatrick Race Club

Agree with the amendment to named beneficiary

Yes.

Agree with the Department's Regulatory Impact Screen

Yes.

Agree with the Department's Equality Impact Screen

Yes.

Any additional impacts not considered by the Equality Impact Screen

Not to our knowledge at present.

Agree with the Department's Rural Needs Impact Assessment

Yes.

Any additional impacts not considered by the Rural Needs Impact Assessment

Not to our knowledge at present.

Other Comments in Relation to the Fund

Currently organisations providing facilities for on-line and internet betting make no contribution to the fund.

We are pleased to note from today's email correspondence between the Department and our Director, Mr. Gerry Donnelly that:

"It is not possible to make retrospective amendments to the 1990 Order. The scheme is operated on a year-by-year basis and Down Royal will only be able to make an eligible claim to the Fund from the year the amendment to the 1990 Order comes into operation"

We do, however, fully support both Down Royal and Downpatrick having access to monies deposited in the Fund subsequent to its amendment.

3.2 Down Royal Park Racecourse Limited

Agree with the amendment to named beneficiary

Yes. The activities and significant investment carried out on site at Down Royal racecourse since the 1st of January 2019 by the new operator, Down Royal Park Racecourse Limited, are essentially the same activities as those carried out prior to that date and are the same as those considered appropriate upon the initial drafting of the Order.

The operator is continuing its investment and the maintenance of all such activities at Down Royal and is maintaining the track as the Premier racecourse in Northern Ireland. The track record of its team and the investment to date is evidence of this and a statement of its intent for the racecourse.

Agree with the Department's Regulatory Impact Screen

Yes. The amendment of the legislation to allow the functioning operator of a Northern Irish racecourse to access the funding will not have any economic impacts. Indeed, the failure to implement the proposal would create significant adverse economic impacts as such a failure would jeopardise the viability of thoroughbred horseracing in Northern Ireland along with the industry activity and jobs associated with Down Royal.

Thoroughbred horse racing is widely viewed as the shop front and the pinnacle of the Equine Industry. In Northern Ireland this is an estimated £170-212m industry with a 34,250 equine population, supporting an estimated 2,700-3,300 FTE jobs in livery/training, feed, transport. In addition to this an estimated 152,000 equivalent days are contributed by volunteers to the sector.*

*source: Deloitte – Analysis of the NI Equine Industry (2019)

Agree with the Department's Equality Impact Screen

Yes.

Any additional impacts not considered by the Equality Impact Screen

None that we are aware of.

Agree with the Department's Rural Needs Impact Assessment

Yes.

Any additional impacts not considered by the Rural Needs Impact Assessment

None that we are aware of.

Other Comments in Relation to the Fund

ADDITIONAL VIEW 1

The Horse Racing (Northern Ireland) Order 1990 levies a charge on bookmakers with the monies raised paid into a Fund (the Horse Racing Fund) to be used to support Northern Ireland's two racecourses at Down Royal and Downpatrick.

The logic is that bookmakers generally derive trade and profit from the content created by these racetracks and the betting industry should therefore make some financial contribution towards the racetracks' continuance and development. All those parties who apply under Article 8 or Article 16 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 for the grant or renewal of a bookmaker's licence, contribute to the Fund.

Remote or online bookmakers and online exchanges presently sit outside of the 1985 Order and make no contribution to the Horse racing industry in Northern Ireland despite representing a very significant, and increasing, share of the market. Although this is the case in Northern Ireland, it is not the case in Great Britain, ROI and other jurisdictions.

A Department of Communities Consultation on the Regulation of Gambling Northern Ireland was undertaken on proposed amendments to the 1985 Order and this Consultation closed on February 21st 2020. This sought inputs on a proposed more modern and flexible licencing framework including online or remote gambling (inter alia 3.3 therein).

We submit that additional legislation should be introduced to ensure that remote gambling operators make a fair contribution to the significant investment in and costs of the operation of Thoroughbred horseracing in Northern Ireland by contributing to the Horse Racing Fund. Failure to do this may eventually result in the objectives of the Horse Racing Fund not being able to be met due to a lack of available funds. We therefore request that any modifications to the Horse Racing (Northern Ireland) Order 1990 make allowance for the future inclusion of remote gambling operators' contributions to the Horse Racing Fund and that the Department of Agriculture, Environment and Rural Affairs consult with the Department of Communities with regards to any modification to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 which may be foreseen.

ADDITIONAL VIEW 2

During the period since 1st January 2019 the HRF has continued to accrue funds for use in respect of the objectives of the Order for both racecourses. These funds have not yet been distributed to Down Royal racecourse for the reasons outlined by the

Department. The operator of the racecourse has made submissions to the Department, in line with the legislation, but has had to cashflow the significant deficit in funding its operations and significant investment in the racecourse from other sources until the HRF is made available to it. The operator of the racecourse contends that the funds accrued in the HRF for the purpose of supporting the objectives of the Order at Down Royal should now be released to it in respect of the activities carried out by it since its commencement of operations at the racecourse, these activities being in line with the stated objectives of the HRF.

3.3 Equine Council NI

Agree with the amendment to named beneficiary

Yes. Down Royal Park Racecourse Limited commenced operations on 1st January 2019 having taken over the Racecourse from the Down Royal Corporation.

Their commitment to continue and improve the quality of racing at Down Royal and to provide enhanced facilities for both the paying public, race horses and their attending staff have already been recognised.

It is imperative that funding from the Horse Racing Levy should be made available to them and that the legislation should be amended accordingly.

This racecourse already plays an important part in showcasing the positives of Northern Ireland and should continue to be appropriately supported.

Agree with the Department's Regulatory Impact Screen

No comment provided.

Agree with the Department's Equality Impact Screen

No comment provided.

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

No comment provided.

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

Historically the administration of this fund has been the remit of the Department of Agriculture in its various guises. I would suggest that this remit is not a function of this Department but rather of the Department of the Communities (Sport N.I.). I am led to believe that the Executive is to review the Gambling Legislation which is very out of date in relation to the present legislation in G.B an ROI. I would see this as the opportunity to rectify this position.

3.4 Giant's Park C.I.C

Agree with the amendment to named beneficiary

Yes - Giant's Park C.I.C. supports the inclusion of Down Royal Park Racecourse under the Horse Racing Order 1990.

It is understood that both named previous statutory bodies receiving financial aid under the Horse Racing Order were profit making but not profit taking entities. The intention to open the Fund to a private commercial entity running a racecourse in Northern Ireland is welcomed by Giant's Park C.I.C.

Giant's Park C.I.C. development plans include an all-weather racecourse and training facility in the heart of Belfast, working alongside several other equine related disciplines and educational facilities. This is a project dedicated to improving both educational and employment opportunities for everyone in Northern Ireland, not just within the horseracing sector.

It is hoped that the continued success of both Downpatrick and Down Royal Park Racecourses will continue to build an industry that attracts people to the sport. The Horse Racing Fund is a vital part of this continued success and in ensuring longevity within the sport in Northern Ireland. Giant's Park C.I.C. ask that if the Fund is open to the private commercial operators currently running Down Royal Park racecourse that the Fund be amended to include the original two "not for profit" statutory bodies and any commercial operator of a racecourse in Northern Ireland that complies with the Regulations and checks under the Horse Racing Order.

The hardship sustained by both courses due to primary legislative change being required to allow a different operator to receive funds and being unable to receive funds under this legislation in 2019 and 2020 would be viewed as a barrier to trade for any future operator intending to establish a racecourse in Northern Ireland.

Agree with the Department's Regulatory Impact Screen

No. As stated above should the legislation be amended with the inclusion of a further named recipient, this would act as a barrier to trade for any other operator attempting to establish a racecourse in Northern Ireland.

Agree with the Department's Equality Impact Screen

No. Giant's Park C.I.C. is committed to improving educational and employment opportunities for all communities, background, and abilities within Northern Ireland. To redraft the legislation in such a way that Down Royal Park and Downpatrick Racecourses are the sole recipients of the Fund would preclude any future operator from creating this racing opportunity to people in the greater Belfast area, indeed any operator outside either the Maze or Downpatrick regions.

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

Yes.

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

The landscape of both the Horse Racing and bookmaking industries both in Northern Ireland and internationally have changed substantially since this legislation came into force. Post Covid-19 restrictions and regulations will have further impact on both industries.

The fund has provided a lifeline for the courses and going forward should ensure the continued development of the industry through improved health and safety, prize money levels and security and technical developments. Giant's Park C.I.C. development includes an all-weather racecourse, but it is not a stand-alone commercial operation. It is a collaboration of a number of organisations and educational institutions coming together to promote the benefits of horses in Northern Ireland, including working within the racing industry. Included will be several initiatives focusing on the well-being and mental health of those working with horses and also the benefits derived from horses to people.

Going forward it may be that the requirement on off-course bookmakers to be the sole contributors to the Fund is too onerous given the changes in their industry. If the Fund could be widened to allow for a more collaborative approach to include the wider equine sector in Northern Ireland it would alleviate the demands on the off-course bookmakers and allow the Department to look to other possible income streams for the Fund.

3.5 Governor and Freeman of the Corporation of Horse Breeders

Agree with the amendment to named beneficiary

The Governor and Freeman of the Corporation of Horse Breeders in the County of Down (the “Corporation”) generally support the admission of additional parties to the Fund, subject to some important considerations set out in response [in this section and the regulatory impact screening section below].

Until now, Downpatrick Race Club and the Corporation as the current named beneficiaries of the Fund, are and have always been non ‘profit taking’ entities thereby guaranteeing that any and all funding received by either of the parties would remain within the local horseracing industry.

The Corporation do fully appreciate, however, that the landscape of the horseracing industry in Northern Ireland has changed substantially since the introduction of the 1990 Order. Further, while we are in the infancy of understanding the global impact of COVID-19, the future environment in which the horseracing industry will operate as a whole is particularly uncertain. It must be expected that there will be significant consequences on income streams for not only racecourse operators but the racing and bookmaking industries as a whole. The Corporation believe it is imperative that the Department support these industries by ensuring that any amendments to the 1990 Order as a result of this consultation have due regard to that changing landscape and what the requirements might be to protect the future of the horseracing industry in Northern Ireland.

It is against this context and for the reasons set out herein that the Corporation are of the view that such a narrow amendment to the 1990 Order is not appropriate in the circumstances.

Agree with the Department’s Regulatory Impact Screen

No. While generally supportive of the admission of Down Royal to the Fund given that it now facilitates horseracing at Down Royal Park Racecourse, the Corporation is of the strong view that to do so without consideration of the wider economic implications could have considerable consequences. We address some of these, without limitation, below now:

1. The current beneficiaries of the 1990 Order are two entities formed under Royal Charter. Neither Downpatrick Race Club nor the Corporation are 'profit taking' entities and as such any profits realised by either entity in the course of the facilitation of horse racing is/was guaranteed to remain for the benefit of the horseracing industry in Northern Ireland.

2. Down Royal, the current operators of racing at Down Royal Park Racecourse, is a commercial private 'profit taking' entity. The Department's proposal to add Down Royal as a named statutory body to the exclusion of any other commercial enterprises who may at a time satisfy the qualifying criteria gives rise to particular concerns, and may be considered to be unlawful, from a competition law and a State Aid perspective. The Corporation would like to understand what analysis the Department has carried out in relation to these particular concerns.

3. The Department's current proposal is to replace the Corporation as a named beneficiary of the Fund. The Corporation are adamant however that given its unique objects and constitution both Downpatrick Race Club and the Corporation should remain as potential beneficiaries under the legislation and a new category of beneficiary should be created for any and all private entities (eg. Down Royal) which might meet the qualification criteria from time to time.

4. The Department has been very stringent and diligent in their supervision of the Fund to ensure that any and all claims by the named beneficiaries of the Fund fall strictly within the remit of the 1990 Order. It is imperative therefore that should the Fund be opened to Down Royal and/or any other private commercial entity that this robust oversight continues to ensure the long term interests of the wider horse racing industry in Northern Ireland.

5. If public funds are to be used for the furtherance of the commercial objectives of private commercial entities with access to the Fund, it will be important for all beneficiaries of the Fund that there is some guarantee of commitment (ie. time based?) from all beneficiaries of the Fund to the future of horseracing in Northern Ireland. In the event that such commitments are not upheld by any such private commercial entities, it will be necessary then for the Department to also consider what mechanisms shall be required to ensure a level of accountability for all beneficiaries in this regard.

Agree with the Department's Equality Impact Screen

Yes.

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

Yes.

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

Given the 'freezing' of the Fund while this consultation has been in progress, the detrimental impact which this proposed amendment to the 1990 Order has had upon both Down Royal and Downpatrick Race Club and by extension the horseracing industry here in Northern Ireland must be acknowledged.

The period of time that this consultation has taken must point to a need for the Department to ensure that any and all amendments introduced to the 1990 Order as a result must be 'future-proofed' insofar as it is reasonably possible for the Department to do so. The Corporation are of the strongly held view that the Department must consider making the Fund accessible for any and all entities who satisfy a set of understood and stringent qualifying criteria. This approach will help minimise the possibility that the adverse implications that have been felt by Downpatrick, Down Royal and the wider horseracing industry in Northern Ireland in this case are repeated.

3.6 Horse Racing Ireland

Agree with the amendment to named beneficiary

Yes. New operators have successfully continued racing at Down Royal and maintained prize money at previous levels. They have installed a new management team and by all measures have made a positive impact.

Agree with the Department's Regulatory Impact Screen

Yes. Failure to provide the funds as collected would result in a serious financial shortfall for the operators of Down Royal Racecourse and put its solvency in jeopardy.

Agree with the Department's Equality Impact Screen

Yes. The proposal will not have any substantial impact on equality for any Section 5 categories

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

Yes. The proposal will have no negative rural impacts, in fact it will help sustain an important rural activity which is generally labour intensive, environmentally sound and promotes trade between Northern Ireland and other countries.

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

Thoroughbred Horse Racing and breeding has a very strong tradition in Northern Ireland and provides much needed employment in rural areas. Trainers and riders from Northern Ireland have reached the top of their profession and have brought great credit to their country.

However the funding arrangements for horse racing in Northern Ireland and in particular those of the two racecourses at Down Royal and Downpatrick have for many years fallen significantly behind what applies in both the Republic of Ireland and in the rest of the United Kingdom.

At present, the return from the betting sector to horse racing through the Horse Racing Fund is less than 10% of that in the Republic and places the sector in Northern Ireland at a considerable disadvantage. It is also thwarting the development of this rural industry in the region.

Throughout the world there is a direct funding relationship between horse racing and betting, with taxes/levies on the latter used to fund the former. This is to address the "free rider concept" whereby racing provides the raw material for betting to take place. Generally these taxes are levied on turnover or gross margin as opposed to the per shop basis in Northern Ireland.

In Northern Ireland this relationship is weaker than in most other countries and furthermore, unlike the Republic of Ireland and the rest of the United Kingdom, there is no tax levied on online or internet betting.

Horse Racing Ireland is a commercial Semi-State body answerable to the Minister for Agriculture, Food and the Marine, and as a result of the funding deficiencies in Northern Ireland we provide funding up to 1.5m euro annually to racing in Northern Ireland.

Horse Racing Ireland participated in a public consultation process regarding the Horse Racing Fund (Charges on Bookmakers) Order (Northern Ireland) 2016 and considered that the outcome was a missed opportunity. We would urge you to give serious consideration to reforming the taxation on betting in Northern Ireland and its relationship with horse racing. It is hard to see why a significant rural agricultural industry should be disadvantaged in Northern Ireland, relative to other parts of the United Kingdom.

Through a positive funding structure in the Republic, the Irish Government has been able to develop a significant global industry which is the source of much inward investment and employment into the rural economy. In 2018, Deloitte estimated the value of the industry to the economy at approximately 1.9 billion euro per annum, with 29,000 direct and indirect jobs involved.

The same is clearly possible in Northern Ireland which has all the same natural advantages of climate, soil, people and tradition. All it needs is a more secure funding structure for the racing industry there.

The reality is that the betting sector has been under burdened in Northern Ireland for many years as evidenced by the significant premiums that have been paid for betting shops which have come on the open market.

There is also a concern that no taxation is being captured from online or telephone betting at a time when both the British and Irish Governments have introduced legislation to secure a contribution from this area.

All of this results in an industry in the North that is underfunded and has had to rely on assistance from outside agencies such as Horse Racing Ireland.

Furthermore, the funding structure takes no account of the higher costs of staging race meetings arising from the increasing level of regulation and compliance required of racecourses through both the Irish Horseracing Regulatory Board and through Health and Safety Legislation.

It could be argued that the potential of the entire industry, not just the racecourses, in Northern Ireland is being given a lower priority than the wellbeing of the betting sector. This is a rural industry in which Irish people have valued skills and which is a significant source of employment, exports and inward investment.

Horse Racing Ireland therefore makes the following recommendations in response to your request for consultation.

1. The funds collected and held for 2019 and 2020 should be paid over to Down Royal and Downpatrick,
2. At a very minimum, the rate charged per shop should be increased. This rate is still considerably below the equivalent rate per shop in the Republic of Ireland and the rest of the United Kingdom.

3. Consideration should be given to switching to a levy based turnover or gross margin as is the case in the Republic of Ireland and the rest of the United Kingdom, rather than a flat rate per shop.
4. Annual indexation in the future should apply to this rate as costs will be subject to inflation.
5. The anomaly that internet betting, which accounts for a rapidly increasing portion of overall betting, should remain untaxed in Northern Ireland needs to be addressed. This is a significant loss of revenue for the Exchequer and seems relatively straightforward to resolve.

The Northern Ireland Department of Agriculture and Rural Development website states that one of the aims of the Department is to "promote sustainable economic growth and development of the countryside". The horse industry is a perfect fit for this aim. It is a sector in which Ireland, and in particular Northern Ireland excels. It is environmentally friendly, labour intensive and an important source of export activity, inward investment and employment. What the industry in Northern Ireland desperately needs is a secure funding base and the opportunity offered by this consultation exercise should not be missed.

3.7 Lisburn and Castlereagh City Council

Agree with the amendment to named beneficiary

Yes. Down Royal Race Course attracted 45,000 visitors to the Lisburn Castlereagh City area in 2019 and it was expected to exceed this in 2020 prior to Covid-19. It is therefore considered a valuable asset to the tourism industry. Local accommodation providers, attractions and restaurants all benefit from the visitors who come to the race course.

As the only grade-1 horse racing course in N. Ireland it is imperative that this establishment is supported. The loss of the Horse Racing Funding has already had a detrimental impact to the core business and if not reinstated this loss will continue to impede the operation and its ability to support the funding of Grade-1 horse racing in the North of Ireland. With the absence of grade-1 racing status the number of visitors would likely drop significantly with consequences for the local tourist and services industry. It would also directly impact on Down Royal Park racecourse which employs around 400 people during meetings.

Agree with the Department's Regulatory Impact Screen

Yes. As the allocated funds are used to bolster the integrity, infrastructure and quality of racing at Down Royal Racecourse the proposed change to the 1990 Order is not expected to have any negative economic impacts.

Agree with the Department's Equality Impact Screen

Yes. LCCC agree that as the proposed change to the legislation does not change the aim of the original legislation, any new legislation will not introduce a change in policy and would have no substantive impact in general. The proposal set out at paragraph 3.2 [of the consultation document] will have no impact on, nor represent any opportunities to improve on, equality for any Section 75 categories. Nor does it impact on, or represent any opportunities to improve on, good relations between people of different religious belief, political opinion or racial group.

Any additional impacts not considered by the Equality Impact Screen

No.

Agree with the Department's Rural Needs Impact Assessment

Yes. As the proposed change does not change the aim of the original legislation no new policies will be introduced and therefore there would be no negative rural impacts.

Any additional impacts not considered by the Rural Needs Impact Assessment

No

Other Comments in Relation to the Fund

As no funds have been distributed to Down Royal Race Course in 2019 it is understood that funds have been accrued from the bookmakers levy. Should the legislative change be agreed it is request that consideration be given to distributing these funds to the Racecourse in light of the current COVID-19 pandemic and the detrimental effect this is creating. This fund will assist the Race Course in its recovery and in turn this will have a positive effect on the tourism industry in the surrounding area.

The additional funds would allow the Race Course to recover from the effects of COVID-19 more quickly. This recovery would bring visitors back to this area and assist with the economic recovery by supporting local accommodation providers, food and beverage establishments and tourist attractions.

3.8 NI On-course Bookmakers Association (NIOCBA)

Agree with the amendment to named beneficiary

Yes. The NI On Course Bookmakers Association supports this proposal. NIOCBA agrees that the funding arrangement for the two racecourses in NI should remain as it was for over the years until the ownership of Down Royal changed. The change of

ownership should not make a difference so Down Royal should continue to receive 12/22 and Downpatrick 10/22 of the Horse Racing Fund.

Agree with the Department's Regulatory Impact Screen

Yes. NIOCBA agrees that the proposal will have no economic impact. However should the amendment not be made there would be an unacceptable economic impact to Down Royal and the wider horse racing industry/community in NI.

Agree with the Department's Equality Impact Screen

Yes. Amendment will not have any equality impact.

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

Yes. Cannot see any rural impact either.

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

The legislation on Horse Racing/Gambling in NI is no longer fit for purpose. Unlike the rest of GB and the ROI it has failed to keep up with funding and technological developments. Funding arrangements in NI target mainly bookmaker offices and on-course bookmakers. However most gambling occurs on-line with remote bookmakers who make no contribution to NI Horse Racing Fund.

Bookmaker offices are closing at a rate of knots and it is suggested that as a result of covid-19, a third of all bookmaker offices will close leaving a future hole in the finances of the Horse Racing Fund.

Licensing arrangements are also antiquated. Technology has been overlooked despite many representations by NIOCBA over the last number of years. For on-course bookmakers the court cost of £243 pa is ridiculous. An on-course bookmaker only generally works at the 22 race meeting in NI pa i.e. 154 races in all. A Bookmaker office also pays a court cost of £243 pa but can take bets on worldwide Horse Racing, football, golf, English lotto, Irish lotto, greyhounds etc.

Betting exchanges-Hundreds of thousands of betting opportunities. Individuals can sit at home and be a bookmaker or a punter at Down Royal and Downpatrick race meetings. They pay nothing for this facility to Down Royal or Downpatrick or to the on-course bookmakers whose markets they rely on. Profits go to the betting exchanges who do not pay directly for this service to Down Royal or Downpatrick. On-course bookmakers pay £700 pa to Down Royal and £400 to Downpatrick in addition to the £99 paid as part of their licence arrangements to the Horse Racing Fund.

Please see further comments on the Department for Communities consultation on Gambling in NI which I submitted some time ago.

3.9 NI Turf Guardians Association (NITGA)

Agree with the amendment to named beneficiary

No. This consultation response is submitted on behalf of the Northern Ireland Turf Guardians' Association (NITGA). NITGA represents the interests of retail bookmakers (i.e. off course bookmakers) in Northern Ireland with a membership comprising large national operators, medium-sized regional chains, small independent and single shop operators. There are normally c. 295 betting shops trading in Northern Ireland and NITGA members account for approximately 280 of these.

NITGA disagrees with any amendment to the Horse Racing (Northern Ireland) Order 1990 ("the 1990 Order") to permit the current operator, Down Royal Park Racecourse Limited, to benefit from the Horse Racing Fund ("HRF").

It is accepted that any such legislative change will not remove the statutory requirement for off course bookmakers in Northern Ireland to pay an annual fee into the HRF. It is NITGA's view that, going forward, Downpatrick Race Club (referred to in the 1990 Order as "the Company") should be the sole beneficiary and the Department should disburse the fund to Downpatrick racecourse only.

Our reasons are as follows:

1. The proposed beneficiary is a purely commercial entity and the amendment represents a highly significant departure from the established policy.

NITGA does not agree that the proposed change of beneficiary is a minor revision to an existing policy. The policy intent of the 1990 Order is traceable back to the Horse Racing and Betting (Northern Ireland) Order 1976 ("1976 Order") and must be read in this context. The 1976 Order first established the HRF and regulated its operation and this was then superseded by the 1990 Order.

Beneficiaries are specifically named in both the 1976 and 1990 Orders and, for the purposes of racing in the vicinity of the maze (i.e. Down Royal racecourse), the

named beneficiary is the Governor and Freemen of the Corporation of Horse Breeders in the County of Down (referred to in the legislation as “the Corporation” and also known as the Down Royal Corporation of Horse Breeders). It is NITGA’s view that the 1976 and 1990 Orders were narrowly drafted with the express intention to preclude any expansion of the category of beneficiaries without amendment to the primary legislation and this naming of specific beneficiaries in such a manner is reflective of the clear legislative and policy intent. We do not accept that it can be correct to apply an interpretation that the effect of naming the beneficiaries as drafted was unforeseen or unintended. Any amendment of the beneficiaries should therefore be viewed as a highly significant departure from the established policy.

Off-course bookmakers were key consultees to the 1976 and 1990 Orders. It is NITGA’s understanding that there was not, at any time, any discussion or consideration of the prospect of another operator at Down Royal during the consultation and drafting of these Orders. This is to be viewed in the historical context dating back to 1685 when King James II issued a Royal Charter and formed the Down Royal Corporation of Horse Breeders and the Corporation assuming responsibility for racing taking place at Down Royal from the early 18th century. Both the Corporation and Downpatrick Race Club have consistently maintained a social enterprise ethos as “profit making, not profit taking” organisations, therefore profits have historically been reinvested back into the racecourses themselves.

Dublin based Merrion Property Group, the parent company of the current operator Down Royal Park Racecourse Limited, bought the racecourse lands in 2005 with the Corporation as a sitting tenant. The Merrion Property Group announced in April 2019 that it intended to assume management of the course in spite of objections from the Corporation which sought to agree a new lease and subsequently attempted to challenge the failure to agree a new lease by initiating proceedings in the Lands Tribunal (these proceedings were later withdrawn). During the summer of 2018, a NITGA representative met with Merrion Property Group. It was clear that on the basis of discussions with the Department, the Corporation and now NITGA, the Merrion Property Group had no expectation that it would be eligible to access the Horse Racing Fund under the 1990 Order when it assumed control of Down Royal racecourse. From 1 January 2019, Merrion Property Group took occupation of the Down Royal complex under the name of Down Royal Park Racecourse Limited.

NITGA met with Departmental officials in February 2019 and it was confirmed that Down Royal Park Racecourse Limited could not access the HRF due to the express provisions of the 1990 Order. At that meeting, it was confirmed that there was no prohibition in law to Downpatrick racecourse continuing to access the HRF as the only remaining beneficiary.

The Department will be aware that precedent exists for the funding of only one of the two racecourses in Northern Ireland. Prior to 1976, both racecourses received government assistance. Government policy was then amended and funding to Downpatrick was withdrawn and Down Royal was the sole beneficiary of the Horse

Racing Fund pursuant to the 1976 Order. Following consultation with the two racecourses and bookmakers, the 1976 Order was amended/the 1990 Order was drafted at that time, primarily for the purpose of including Downpatrick racecourse as a beneficiary.

We appreciate that the current DAERA Minister represents the Lagan Valley constituency where Down Royal racecourse is located and is keen to support that area. However, the proposed new beneficiary, Down Royal Park Racecourse Limited, is a private limited company that does not, to our knowledge, have a “profit making, not profit taking” approach to its business and is thereby highly distinguishable to its predecessor. NITGA views the proposal for a profit-making business entity of this form to benefit from public funds via the HRF as an improper alignment of the commercial interests of the new operator and the Department’s administration of the HRF. Such alignment underscores NITGA’s concerns that the HRF represents state aid affording an advantage on a selective basis and may be impermissible.

It is NITGA’s view that any amendment to the beneficiaries of the HRF should therefore require careful consideration to ensure that public funds do not provide unjust enrichment to the profits of commercial companies. The Department has failed to provide any satisfactory rationale or adequate information as to why the new operator should benefit from public funds to allow respondents to this consultation to reach an informed view or disabuse us of the concerns outlined.

2. HRF payments are suspended pending a state aid referral and there are currently no beneficiaries accessing funding.

On 9 January 2020, NITGA received a letter from the Department outlining that all payments from the HRF had been suspended as the operation of the HRF is likely to constitute state aid. The Department fails to make any reference to this within the consultation paper and it is NITGA’s understanding that the referral remains undetermined by the European Commission. It is our view that this consultation exercise is ill conceived and premature until such times as the outcome of the state aid referral is known. Further, the timing of this consultation alongside a state aid referral having the effect of suspending payments appears to unfairly favour the proposed new beneficiary and preserve Down Royal from incurring any ‘loss’ to the detriment of Downpatrick.

The Department’s expectation appears to be either: the HRF will constitute permissible state aid and progressing the proposed amendment will allow both racecourses to benefit by the time this is confirmed by the European Commission; or, in the alternative, the HRF is not permissible state aid and neither racecourse can benefit going forward.

3. Further state aid concerns

It was 2015 when NITGA first highlighted to the Department our concerns that there was a case to suggest that the HRF constituted state aid and was potentially in breach of European state aid rules by failing to meet the standards required (in written submissions to the Department's consultation on HRF charges). No state aid referral to the European Commission was made at that time.

As the Department is aware, state aid is any measure taken by a national authority which confers an advantage of any form whatsoever on a selective basis. Strict rules are thereby imposed by the European Commission to ensure aid is well targeted to address genuine market failures, avoid negative effects on competition and ensure that those who receive advantages enabled by the state will not become overly reliant on aid and will remain incentivised to innovate or make efficiencies. In the context of Brexit, it is noted that European state aid rules will continue to apply to Northern Ireland, and the Commission and the Court of Justice will retain their competence to deal with cases of state aid for as long as the Protocol on Ireland/Northern Ireland is in force. At minimum, state aid rules will remain in force in Northern Ireland until 31 December 2024.

NITGA understands the European Commission generally bases approvals on whether the state aid meets the principles of: proportionality (the minimum necessary to remedy market failure); appropriateness (the best way to address the failure); creating an incentive effect (really changing the behaviour of the organisation that receives it); and passing the balancing test (beneficial enough to outweigh any negative effects on competition).

It is to note that the HRF does not operate in a directly comparable manner and in the same factual context as the mechanisms currently in place in Great Britain and the Republic of Ireland to support horse racing.

NITGA is not privy to the contents of the referral made by the Department to the European Commission, however we trust that the following issues have been highlighted to the Commission accordingly:

a) Media Rights payments

It is our view that any market failure existing in 1976 and 1990 when the legislation was enacted was later corrected by the introduction of media rights payments (for the right to show broadcasts of racing in bookmakers' shops). Media rights payments are derived from off course bookmakers paying approximately £40,000 per shop annually. The two racecourses receive a significant income per annum (in excess of £1.2m in 2019) and the Department has access to details of historical media rights payment information from the accounts of both racecourses.

b) Off-course bookmakers receive only a nominal income from Northern Ireland horseracing.

Any "direct link" between the two Northern Ireland racecourses and off course bookmakers exists by virtue of the HRF itself – it is a one-way link imposed by statute and off course bookmakers realise no mutual benefit.

The Department itself acknowledged “the very limited income generated by bookmakers from horse racing here is a factor in fixing the off-course levy contribution rate” within its Regulatory Impact Assessment as part of the 2015 consultation on charges.

Our intelligence suggests that on average, income from the two racecourses represents between 0.15% - 0.4% of bookmakers’ total turnover. Between 2010 – 2014 when the temporarily increased HRF contribution of £2000 per shop applied, when the Horse Racing Fund contribution was subtracted from gross profits of betting transactions generated from the two racecourses, we estimate this resulted in an average loss of 49% over that five-year period.

c) Approximately 80% of all prize money in Northern Irish racecourses is won by horse owners from the south

According to Horse Racing Ireland (HRI) figures, approximately 80% of prize money from racing in Northern Ireland is won by horse owners from the Republic of Ireland. It is NITGA’s understanding that prize money is historically the primary use of the HRF by the two racecourses. Use of the HRF’s public funds to create prize pots for horse owners not based in Northern Ireland points to considerable leakage out of the local economy and clearly limits the extent to which any wider economic benefits can be enjoyed by local businesses as it cannot be argued that such revenue flows directly benefit the horse racing industry based in Northern Ireland. NITGA also notes that landlord and parent company of the proposed beneficiary is the Dublin based Merrion Property Group. No evidence has been put forward within this consultation paper to suggest that profits made by the new operator will be reinvested into Northern Ireland racing.

d) Full range of alternative income streams available to racecourses:

i. Media rights - income received by the racecourses (via off-course bookmakers) as noted above. At the time of the enactment of the 1990 Order, media rights payments did not exist at all.

ii. Grants from HRI (Horse Racing Ireland), the governing body of Irish racing. HRI has historically provided grants of 40% for development of the two Northern Ireland racecourses. For example, during the period 2008 to 2013 Down Royal received grant funding of £800k from HRI; and Downpatrick received £87,500 in 2019.

iii. Sponsorship – according to the 2019 HRI Factbook, 100% of races at Down Royal were sponsored in 2019. This includes current three-year commercial sponsorship deals with Ladbrokes and BoyleSport bookmakers which is independent of any contribution from the HRF.

iv. Racecourse profits – as noted, the current operator of Down Royal is now a purely commercial entity. Downpatrick racecourse remains “profit making, not profit

taking” therefore any profits are available for reinvestment back into their business for development purposes.

v. Commercial loan - it is perfectly possible for the racecourses to access secured loans at relatively competitive interest rates, particularly as both racecourse operators are landowners and can charge the land if necessary. NITGA is aware that Downpatrick racecourse was able to secure a commercial loan of £97k to purchase land associated with its track widening development and a further £135k to deliver the project. It can therefore be assumed that Downpatrick racecourse was suitably able to demonstrate its ability to repay the debt to the lender based on its financial position.

e) Notice to the Commission of the proposed change of beneficiary

Substantive alterations to an existing state aid require notification to, and clearance by, the European Commission. If it were the case that the 1990 Order was accepted as an existing permissible state aid, any substantial change could trigger a further referral to the European Commission. As noted above, it is NITGA's view that the proposed new beneficiary represents a highly significant departure from the established policy and does represent a substantial change capable of triggering a further state aid referral.

Agree with the Department's Regulatory Impact Screen

No. NITGA does not agree with the Department's assessment that there are no potential economic impacts in the proposal and there will be no impacts on the private, voluntary or public sector as a result of these changes when compared to the aims of the original legislation. It is NITGA's view that the Department has offered no convincing justification for this statement and has acted in error by considering the present proposal to have been screened from the need to carry out a Regulatory Impact Assessment.

Further, failure to conduct a Regulatory Impact assessment for the reasons outlined is inconsistent with statements made in the Department's other assessments as part of this consultation. Section A of the Equality Impact Assessment states “Amendment of the 1990 Order...will also have a small positive benefit for the rural economy, in terms of jobs, supporting horse racing and local tourism”; whilst at Section 2B of the Rural Impact Assessment states that no amendment to the current beneficiaries of the legislation “has the potential to have a small negative impact on the rural economy in that area, in terms of business, jobs and tourism”. No evidence is relied upon in either the Equality Impact Assessment or the Rural Impact Assessment to substantiate either aforementioned statement and it is our view that the onus lies with the Department to be proactive in seeking evidence of impact.

No effort whatsoever has been made to enquire as to the business impact on bookmakers or Downpatrick racecourse. It is our view that the Department should

demonstrate good practice by producing a Regulatory Impact Assessment even where it may consider the effects to be negligible. NITGA considers the absence of a Regulatory Impact Assessment thereby discloses a clear failing in the impact assessment process conducted and may result in relevant information being left out of account in the decision-making process.

Agree with the Department's Equality Impact Screen

No.

- Section A states: "No new policy will be introduced. The only proposed change to the 1990 Order will be to amend the name of the beneficiaries of the fund to ensure the current operators are eligible for funding. This will enable the HRF to operate as it was originally intended and in line with the policy intent of the 1990 Order."

NITGA does not agree with this assessment. As detailed in our response [to the proposed amendment to the named beneficiary section], it is our view that the proposed amendment of the beneficiaries should be viewed as a highly significant departure from the planned and established policy intent of the 1990 Order. We believe it is arguable that the proposed amendment is so significant that a new policy is essentially being introduced.

- Section A states: "Amendment of the 1990 Order will have a very narrow effect, simply allowing the new operators of Down Royal to be eligible for the HRF. However, it will also have a small positive benefit for the rural economy, in terms of jobs, supporting horse racing and local tourism."

NITGA does not agree with this assessment and considers the effect of the proposed amendment to be highly significant, as previously outlined. Further, no evidence is provided to support the alleged benefits. The specific factors by which the Department has evaluated the benefits has not been disclosed. No consideration is given to the possibility that any potential benefits are achievable without the ability of the proposed new beneficiary to access the HRF. NITGA considers that, if private commercial funds are available, greater scrutiny is required as to the need for public funds to be used in this manner by the proposed beneficiary.

- Section B states: "If the amendment was not made to the 1990 Order, there is the potential that the safety/experience of one set of attendees may be disproportionately affected if the operators are unable to access the fund."

NITGA does not agree with this statement and there is no evidence relied upon by the Department to support this. The function of the HRF in relation to safety is "assistive" only. Failure to access the HRF does not in any way absolve a racecourse operator from ensuring full compliance with statutory safety requirements. Further, there have not, to our knowledge, been any concerns raised as to the safety of attendees since the current operator assumed control of Down Royal on 1 January 2019.

The use of the fund for general purposes of enhancing customer experience generally is not a permissible use of the HRF under article 3 of the 1990 Order.

- Section C fails to identify any Human Rights implications, in particular, Article 1 of Protocol No.1 to the European Convention on Human Rights which states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The imposition of a charge under article 9(1) of the 1990 Order plainly constitutes an interference with the right of bookmakers to peaceful enjoyment of possessions. The current proposal seeks to change the beneficiaries of that charge and this clearly required to be identified in a screening exercise, in order that a substantive assessment might be properly conducted.

NITGA understands that interference may be lawful where the interference pursues a legitimate aim which is in the public interest, and where there is a reasonable relationship of proportionality between the means employed and the aim in question. Such a relationship of proportionality is, however, questionable in the present circumstances: it is relevant, for example, that off-course bookmakers are acknowledged to derive a very limited income from horse racing in this jurisdiction and, further, it is the intention of the proposed amendment to allow a wholly private commercial company to benefit from the HRF. The Department does not disclose any apparent consideration as to the financial positions in which the racecourses sit, nor to the relevance to media rights payments of £40,000 per shop annually (in order to screen racing broadcasts in bookmakers' offices) made annually by bookmakers, to the benefit of the racecourses.

- Section D concludes that there are “no impacts” and that no EQIA is necessary.

NITGA views such a conclusion as plainly in error due to the failure to consider the potential adverse effects on human rights at all, and specifically consideration as to whether the private commercial nature of the proposed beneficiary offends the public interest and proportionality requirements. We consider that the Equality Impact Assessment is thereby deficient.

Any additional impacts not considered by the Equality Impact Screen

The Equality Impact Assessment fails to consider any equality impact from the perspective of bookmakers or Downpatrick racecourse. It is our view that the onus lies with the Department to be proactive in seeking evidence of impact.

Agree with the Department's Rural Needs Impact Assessment

No.

- Section 1E states: "No new policy will be introduced by the proposed legislation. It will only ensure the established policy intent of the 1990 Order, which provides for the Horse Racing Fund in support of the two racecourses, can be fully met."

NITGA does not agree with this assessment. As detailed in our response in the proposed amendments to the named beneficiary section, it is our view that the proposed amendment of the beneficiaries should be viewed as a highly significant departure from the planned and established policy intent of the 1990 Order. We believe it is arguable that the proposed amendment is so significant that a new policy is essentially being introduced.

- Section 2B states that the new operator's inability to access the Horse Racing Fund "has the potential to have a small negative impact on the rural economy in that area, in terms of business, jobs and tourism"

No evidence is provided to support the alleged negative impact. The specific factors by which the Department has evaluated the impact has not been disclosed. No analysis of Down Royal Park Racecourse Limited or its performance to date has demonstrated that failure to access the Horse Racing Fund would have any negative financial impact.

Information in the public domain demonstrates that the current operator at Down Royal has been able to operate with success without receiving contribution from the HRF.

i. Sponsorship - according to the 2019 HRI Factbook, 100% of races at Down Royal were sponsored in 2019. This reflects the timing of the new operator assuming control of the racecourse from 1 January 2019 onward and was also reported in the Belfast Telegraph (10 December 2019) "Down Royal's new management is rounding off its first year in style by celebrating a 100 per cent success rate in race sponsorship...featuring over 20 brand new sponsors". The Department will be aware that both racecourses have historically failed to attract appropriate levels of commercial sponsorship comparable to other Irish racecourses and this information is available in historical information available to the Department or held by HRI.

ii. Increased prize money – according to the Irish News (7 October 2019) the new operator has increased the level of prize money in its first year of operation despite receiving no contribution from the HRF: "The new management team at Down Royal racecourse have confirmed that next month's Festival of Racing will have the richest racing purse in the history in the north."

iii. Increased income streams – Merrion Property Group confirmed to the Belfast Telegraph (May 2018) its intention "to vastly intensify the usage of this unique asset

and thereby realise its true potential". For example, the operator is currently promoting drive-in entertainment experiences at Down Royal on 7/8 August 2020. The Department will be aware that historically Down Royal made limited use of its facilities outside of the 12 annual race meetings.

iv. Increased investment – the Belfast Telegraph (10 December 2019) also reported the investment strategy of the new operator "With a five-year investment strategy in the pipeline, the overarching objective is to provide memorable and sociable experiences for groups, businesses and sports people alike."

- Section 3D states: "no negative impact is envisaged as a result of these changes"

As above, there is also no evidence relied on by the Department to suggest that the failure to make the proposed change would result in any negative impact. The Department has not, for example, considered the impact on Downpatrick racecourse which is now competing in a limited market against a purely commercial entity.

- Department states in section 5B "The proposed amendment of the 1990 Order is being consulted upon to correct an issue that was unforeseen when the original legislation was drafted".

As discussed [in the proposed amendments to the named beneficiary section], NITGA does not accept that it can be correct to apply an interpretation that the effect of naming the beneficiaries as drafted was unforeseen or unintended. It is our view that the 1976 and 1990 Orders were narrowly drafted with the express intention to preclude any expansion of the category of beneficiaries without amendment to the primary legislation and this naming of specific beneficiaries in such a manner is reflective of the clear legislative and policy intent.

Any additional impacts not considered by the Rural Needs Impact Assessment

The Rural Impact Assessment fails to consider any equality impact from the perspective of bookmakers. It is our view that the onus lies with the Department to be proactive in seeking evidence of impact.

Other Comments in Relation to the Fund

1. No analysis is undertaken in the consultation document as to whether the Horse Racing Fund is fit for purpose in relation to its original legislative intention.

The proposed amendment to change the beneficiary is the first proposed change to the primary legislation in 30 years. This highlights a range of issues as to the whether the Horse Racing Fund remains fit for purpose.

The consultation document notes at page 8: "a charge on bookmakers to support racecourses dates back to 1961. It was first introduced in Great Britain (GB) to offset

the decline in race day revenue (gate receipts), following the introduction of legislation which meant that people wishing to place a bet on a horse race no longer needed to attend the racecourse.”

The Northern Ireland position was somewhat different, and the 1976 Order did not in fact have the same underpinning principle, particularly as it did not seek to incorporate both racecourses.

As outlined [in the proposed amendments to the named beneficiary section], there are a range of developments since the legislation was last amended in 1990, to include:

- i. Media Rights payments;
- ii. Off-course bookmakers receive only a nominal income from Northern Ireland horseracing;
- iii. Approximately 80% of all prize money in Northern Irish racecourses is won by horse owners from the south;
- iv. Full range of alternative income streams available to racecourses, to include: media rights; grants from HRI; sponsorship; racecourse profits; and commercial loan.

2. Historically disproportionate and discriminatory burden on off-course v on-course bookmakers

The current rate of £1,123 per shop contributes some £365,000 to the HRF (there are currently c. 325 bookmaker shop licences in Northern Ireland; normally c. 295 of these are trading bookmaker shops). Contributions to the HRF are based on the number of licences. No recognition has been given that off-course bookmakers “pay twice” due to media rights; and our intelligence suggests that on average, income from the two racecourses represents between 0.15% - 0.4% of bookmakers’ total turnover.

By contrast, on-course bookmakers currently pay £99 per annum resulting in a contribution of approximately £10,000 which, put in context, covers the administrative costs of the Department paid out of the Horse Racing Fund (approximately £7000 per annum). According to the HRI Factbook, in 2019 on-course betting totalled: €1,328, 285 at Down Royal and €718,629 at Downpatrick.

In 2015, the Department proposed to reduce the on-course bookmakers contribution to £50 in specific recognition that on-course bookmakers were “paying twice” further to the pitch fees for Down Royal and Downpatrick of £800 and £400 per annum respectively.

It is wholly irrational that on-course bookmakers, who benefit immeasurably more from the operation of the Northern Ireland racecourses than off-course bookmakers, are not required to make a higher contribution to the HRF.

3. No assurance is provided in respect of future rates and allocation of the HRF

HRF contributions are not part of the present consultation. It was repeatedly stated by both racecourses, verbally and in writing between 2014 and 2018 that the viability of both racecourses was under threat if the off-course bookmaker contribution did not increase to a minimum of £2,350 per shop annually. At one stage the Northern Ireland Horse Racing Group (NIHRG) proposed £4,374 per shop annually. No evidential basis was ever provided to support such allegations and the racecourse accounts did not support such a contention. In 2015, the rate reverted to, and has remained at, £1,123 per shop annually without any resulting impact on racecourse viability.

The HRF beneficiaries are required to submit to the Department a statement of their proposed budget and expenditure annually, and the Department considers this statement and makes payments as are appropriate for the purposes of prize money, integrity services or health and safety. No significant level of detail has ever been provided to NITGA about the Department's scrutiny process of the racecourse proposals.

4. Limited representation and oversight of the HRF by off-course bookmakers

The 1976 Order provided for off-course bookmakers to be represented on a "Committee of Freemen of the Corporation" which provided some oversight as to the use of the HRF. This provision was removed in the 1990 Order and off-course bookmakers have had no opportunity for oversight as to the use of the HRF at Down Royal racecourse since. NITGA currently has one member on the board of Downpatrick Race Club.

5. Future of the retail betting industry in Northern Ireland

NITGA awaits the outcome of the Department for Communities consultation on the future of gambling in Northern Ireland which could have significant economic implications on the operation of retail bookmaker shops.

All businesses are currently impacted by COVID-19, including off-course bookmakers. At the time of writing (25 June 2020), retail betting shops in Northern Ireland remain closed with no prospective date for reopening announced by the Northern Ireland Executive despite the reopening of all other retail businesses having taken effect or been timetabled; the resumption of sporting fixtures; and the reopening of betting shops elsewhere (e.g. betting shops in England reopened on Monday 15 June). At this time, the local betting industry is concerned that the ongoing closure of betting shops will ultimately result in shop closures and job losses as customers increasingly move to their business to competing online providers.

It is to note that, as the 1990 Order places a statutory obligation on off-course bookmakers pay their annual HRF contribution as a condition of licence renewal, off-course bookmakers have incurred a full year charge despite the closure of retail

bookmaker shops for at least one quarter of the year, the cancellation of c. 50% of race fixtures in this year's racing calendar to date, and the present suspension of disbursements from the HRF. The next HRF payments are due by September 2020. These monies effectively sit in trust until such times as the Department resumes disbursement of the HRF.

NITGA's comments [for the regulatory and equality impact screens and rural needs impact assessment] remain valid in relation to the wider issues identified [in this section].

Further impacts cannot be ruled out, particularly until the business recovery from the current health pandemic can be assessed and the outcomes of the Department of Communities review of gambling law in Northern Ireland and the Department of Agriculture, Environment and Rural Affairs state aid referral are known.

3.10 North West Bookmakers, trading as Ladbrokes (Ladbrokes)

Agree with the amendment to named beneficiary

No. North West Bookmakers, trading as Ladbrokes, do not agree with the proposed amendment to the Horse Racing (Northern Ireland) Order 1990.

While we consider the levy payment system to be outdated, we fully accept the statutory requirement for us to pay an annual fee into the HRF and will continue to do so. However, we are very concerned about this funding being used to subsidise another fully commercial business such as the new operators of Down Royal. We do not believe this was the intention of the original legislation.

The challenges we face at this time bring this more complicated relationship into focus. Despite other retailers being permitted to reopen, at the time of writing bookmaker shops in Northern Ireland remain closed. We have had no income from the 18th March, retain most of our fixed costs and yet we are still legally required to potentially subsidise another commercial profit making business through the distribution of the HRF. To further complicate matters we are now aware that HRF payments are currently on hold pending the outcome of a referral to the European Commission in regard to state aid concerns. Although a comprehensive history of the HRF is provided in the background information to this consultation, this highly relevant matter is not mentioned. We are most concerned by this omission and believe that it may undermine the integrity of the consultation. Also it is pertinent to question the timing of the consultation. Why not wait until the result of the referral is known?

Agree with the Department's Regulatory Impact Screen

No. We do not agree that "the proposal simply seeks to amend legislation with the intention of making the legislation fully operable and meeting its original aim

assisting in the operation and development of both of Northern Ireland's horse racecourses". We believe that the original aim of the legislation was to support the named bodies whose intention was to reinvest all profits from the operation of the racecourses to further develop horse racing in Northern Ireland. Down Royal Park Racecourse Ltd are not obliged to reinvest and have not stated their intentions in this regard. Therefore a Regulatory Impact Assessment may be required.

Agree with the Department's Equality Impact Screen

No. We do not agree with the conclusion "that the proposed change to the legislation does not change the aim of the original legislation."

Any additional impacts not considered by the Equality Impact Screen

No comment provided.

Agree with the Department's Rural Needs Impact Assessment

No. We do not agree with the conclusion "that the proposed change to the legislation does not change the aim of the original legislation."

Any additional impacts not considered by the Rural Needs Impact Assessment

No comment provided.

Other Comments in Relation to the Fund

North West Bookmakers, trading as Ladbrokes, fully support the views of our trade association NITGA in this matter.

3.11 Run with Passion Ltd, trading as Drumbo Park (Drumbo Park)

Agree with the amendment to named beneficiary

Yes. Horse Racing and Greyhound Racing are both recognised as economically important industries in the UK & ROI. In GB and ROI support to both industries is provided through a levy on off-course bookmakers. In GB, through the Horserace Betting Levy (mentioned in 2.2 above) and the British Greyhound Racing Fund. In ROI, through the Horse & Greyhound Racing Fund. In NI, only Horse Racing receives support.

This is inequitable and anti-competitive because both industries are in direct competition with each other for customers, participants and staff.

The remit of the Fund should therefore be extended to include Drumbo Park Racecourse and the operator of Drumbo Park (currently “Run with Passion Ltd”) should be named as a beneficiary of the Fund.

Agree with the Department’s Regulatory Impact Screen

No. The essential role of Drumbo Park has been recognised by the DFC Minister Deirdre Hargey agreeing to designate Drumbo Park is a stadium of national importance (following Down Royal’s designation at the end of 2020) following a submission to DFC on 12 November 2020 which sets out the reasons for the national economic importance of Drumbo Park to the Greyhound Racing Industry. A copy of the submission is attached.

Drumbo Park went out of business in early 2019 and is now operated by the former staff. The high fixed costs of running the racecourse makes the operation of Drumbo Park very challenging.

If the Horse Racing Fund in Northern Ireland continues to support just Down Royal and Downpatrick racecourses and not Drumbo Park racecourse (unlike the arrangements in GB & NI) this will have a significant detrimental economic impact on the sustainability of both Drumbo Park and the greyhound racing industry in Northern Ireland which is estimated to support around 500 (mostly rural) jobs and contribute around £10 million annually to the NI economy.

Agree with the Department’s Equality Impact Screen

Yes.

Any additional impacts not considered by the Equality Impact Screen

Greyhound Racing is and always has been (even during the dark days of NI’s recent history) a cross-community activity that promotes good relations between people of different racial groups, religions and political beliefs.

It also provides entertainment and employment for men and women of all different backgrounds and ages including the over 60s. Many of those people would suffer mental health issues without Drumbo Park.

Including Drumbo Park in the HRF would therefore promote equality for section 75 categories.

Agree with the Department’s Rural Needs Impact Assessment

Yes.

Any additional impacts not considered by the Rural Needs Impact Assessment

Drumbo Park racecourse supports around 500 (mostly rural) jobs. The racecourse is located in a semi-rural location in the Green Belt and Lagan Valley regional Park. Many of its participants and customers on race nights come from a rural background, including young farmers clubs

Including Drumbo Park in the HRF would therefore support the rural economy, rural jobs and an important leisure outlet for the rural population.

Other Comments in Relation to the Fund

Please see comments above.