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Dear Nick

**ADDITIONAL INFORMATION RELATING TO THE HORSE RACING (AMENDMENT)  
BILL**

Thank you for the memo to Members of the AERA Committee copied to the Department on 25 June 2020, in which you set out a number of questions raised by the Committee following receipt of oral and written briefing from RaSe in relation to the Horse Racing (Amendment) Bill. The Bill Team has considered the questions raised and responses are provided below. I trust that this is helpful.

***Can the Department please provide an update on any plan(s) to undertake a review of the scope and function of the Horse Racing Fund to include possible consideration of extending this to operators of greyhound racecourses and/or changes in the flat rate of levies on bookmakers?***

In relation to any wider review of the Horse Racing (Northern Ireland) Order 1990 (the 1990 Order) and the Horse Racing Fund (the Fund) itself, it should be noted that there are related matters that are outside DAERA's responsibilities that are fundamental to any review and any such changes. The Committee will be aware that the licensing of bookmakers who pay into the Fund is under legislation that is the responsibility of the Department for Communities (DfC) – and that legislation does not currently include remote/online bookmakers. No legislative changes are planned by DfC in this regard in the current mandate and, given the relationship between the Fund and licensing of bookmakers, it is not practical to make major changes to the Fund or the 1990 Order, until that issue is fully considered.

However, DAERA is currently scoping what preparatory work can be done in advance of ***Sustainability at the heart of a living, working, active landscape valued by everyone.***

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any review of licensing by DfC. Officials hope to brief the Minister in the next few weeks on proposals for preparatory work that could usefully be done, and will update the Committee in due course.

***Can the Department please confirm that it has reviewed the functioning of the Horse Racing Fund in terms of compliance with subsidy requirements as set out in the UK-EU Trade and Co-operation Agreement (TCA)?***

The Fund has been assessed against the current guidance for the UK Subsidy Control regime, which in effect is derived from Article 3.4 of the subsidy control chapter of the Trade and Continuity Agreement with the EU. On the basis of the assessment, officials are satisfied that the Fund can be considered to be a subsidy, and as a result, it has been further assessed against the six Subsidy Control principles under [UKG guidance](#).

The six principles are:

- Subsidies should pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns.
- Subsidies should be proportionate and limited to what is necessary to achieve the objective.
- Subsidies should be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided.
- Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.
- Subsidies should be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means.
- Subsidies' positive contributions to achieving the objective should outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

The Department is content that the Fund achieves a reasonable degree of compatibility with most of these principles, with the exception of the penultimate one, which required further consideration. To meet this principle, the Fund has to be assessed against its effect on open and fair competition within the sectors that it affects. To this end, the Department has concluded that the Horse Racing (Amendment) Bill is required, and will need to be enacted, before any payments from the Fund can be made. As the Committee is aware, the Bill will amend the legislation to update the named beneficiary at Down Royal, and will therefore ensure all current players in the horseracing market have access to the Fund.

Once this is done we will be content that the Fund complies with the current guidance to a level of defensibility.

***Can the Department please outline under what sort of circumstances it would seek***

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***to utilise the regulations to amend the definition of a “horse racecourse operator” as set out in the legislation?***

This delegated power would only be used to change the named operator at any of the two existing racecourses/locations. This will remove the need for primary legislation for such a change, should it arise again in the future. Importantly, it will avoid a repeat of the situation where the Fund is effectively inactive for a long period. As the delegated power will amend primary legislation, Regulations would be subject to the draft affirmative procedure, and therefore allow adequate Assembly scrutiny of any change.

This power could not be used to extend the Fund beyond the two current horse racecourses. To do so, we believe, could only be considered as part of a wider review.

***With regards the proposed change to enabling racecourses to submit financial/expenditure plans to the Department jointly, can detail be provided on what the practice has been hitherto with regards submission of budgetary plans and what is the rationale for allowing joint submissions?***

The requirement to submit a statement of budget and expenditure (a statement) is not new. However, the drafting of the 1990 Order is not clear as to whether it requires a statement from each racecourse on its own or together, and could be interpreted either way. The provisions in clause 2 of the Bill simply seek to clarify that the racecourses can submit them either way.

Historically, the statement/s were submitted together under the umbrella of the Northern Ireland Horse Racing Group, acting on behalf of the two operators (albeit, in effect, there were two separate statements under one cover sheet). In 2019, when it became apparent that Down Royal would not be eligible for support due to the change of management, Downpatrick submitted its own statement, albeit in the end the Department was unable to consider it due to the EU State Aid rules in place at the time. Therefore statements have been submitted both jointly and separately in the past.

In terms of rationale, the Bill simply seeks to make it clear that either option is legitimate. This would mean that should one operator not be able, or not wish for any reason, to submit a statement, the other would still be able to seek funding. On the other hand, should the racecourses wish to work together, then the Bill will not preclude that either.

This is not a change to the current provision as it simply rolls forward the current position, but removes any potential ambiguity in the drafting.

***The Committee notes that omission of Article 3 paragraph 6 from the 1990 Order will remove the ability of the Irish Turf Club (now defunct) to access payments from the Horse Racing Fund. Can the Department please confirm if:***

- The Irish Turf Club ever was allocated payments from the Fund?***
- Consideration was made to changing the named beneficiary in respect of the Irish Horseracing Regulatory Board that has superseded the Irish Turf Club?***

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Article 3(6) of the 1990 Order allows the Department to pay out directly to the Irish Turf Club (ITC) for prize money paid 'up front' and in advance of claims, which are otherwise made retrospectively.

However, the ITC has not existed since January 2018 when it, along with the Irish National Hunt Steeplechase Committee, set up the Irish Horse Regulatory Board (IHRB) as the regulatory body for horseracing in both RoI and NI.

There is no record, certainly over the last 10 years and perhaps longer, of this provision ever having been used. It is unclear if it has ever been used, and instead, prize money is included in the statement of budget and expenditure submitted to the Department by the racecourse operators each year, and is paid retrospectively with the rest of the claim. Neither the racecourses, nor IHRB, have sought to avail of this provision since IHRB was set up.

For these reasons, the Department did not include a reference to IHRB in the Bill. The Department is simply taking the opportunity to remove what is in effect a redundant provision, which does not impact on the named operators' scope to submit claims for prize money as they have done historically.

I trust the responses to the Committee's queries provide the necessary clarification and will assist the Members in their consideration the Bill. Officials remain on hand to address any further queries arising during the Committee's scrutiny of the Bill, and can also provide any further clarification on the issues discussed above as necessary.

I would be grateful if you could bring this to the attention of Committee Members.

Yours sincerely



**Michael Oliver**  
**Departmental Assembly Liaison Officer**

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