

# 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

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## **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.

Eleven<sup>1</sup> 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.

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<sup>1</sup> 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 NIGTA 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.