EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (HORSERACE BETTING LEVY) ORDER 2007

2007 No.

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order makes provision with respect to the Horserace Betting Levy Board ("the Levy Board") and the levy payable to the Levy Board under section 27 of the Betting, Gaming and Lotteries Act 1963 ("the bookmakers' levy"). The Order saves provisions of that Act which relate to the Levy Board and the bookmakers' levy. The Order also makes provision to ensure that action can be taken under the 2005 Act against a betting operating licence holder where there is a repeated failure to pay the bookmakers' levy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Gambling Act 2005 ("the 2005 Act") establishes a new system of regulation of all gambling in Great Britain, other than the National Lottery and spread betting. As part of this process the existing legislation relating to gambling, including the Betting, Gaming and Lotteries Act 1963 ("the 1963 Act"), is to be repealed.

4.2 The Order is concerned with ensuring that the Levy Board and the bookmakers' levy will continue to be able to operate and to have effect on and after 1 September 2007 when betting will begin to be regulated under the 2005 Act instead of the 1963 Act. To this end the Order saves the following provisions of the 1963 Act connected with the Levy Board and the bookmakers' levy:

- section 24 which establishes the Levy Board to assess and collect monetary contributions from bookmakers and the Horserace Totalisator Board;
- section 25 which sets out the general powers and functions of the Levy Board;
- section 26 which provides for the establishment of a Bookmakers' Committee which is given functions with respect to the determination of the levy;

- section 27 which provides for an annual scheme with respect to the bookmakers' levy and for bookmakers to be under a duty to make payments to the Levy Board in accordance with the scheme;
- sections 28 and 29 which make further provision with respect to the assessment of the bookmakers' levy; and
- section 30 which provides for payments to be made by the Horserace Totalisator Board to the Levy Board.

4.3 In saving section 28, the Order modifies subsection (10) of that section. Amongst other things, section 28(10) of the 1963 Act makes it an offence for a person who is a member, officer or servant of the Levy Board to disclose, without a bookmaker's consent, information acquired by the Board about the bookmaker in the exercise of its functions. This Order saves and modifies section 28(10) so that it does not prevent the Levy Board from passing on information to the Gambling Commission for use by it in the exercise of its functions (including in particular information provided to the Gambling Commission in connection with a review and possible revocation of an operating licence for non-payment of the bookmakers' levy).

4.4 The Horserace Betting Levy Act 1969 makes further provision about the bookmakers' levy. Section 4 of that Act contains a regulatory mechanism to deal with the situation where a bookmaker repeatedly fails to pay the levy. Under section 4 the Levy Board is entitled, where a bookmaker is applying for the renewal of their bookmaker's permit under the 1963 Act, to object to the renewal on the grounds of the bookmaker's failure to pay the levy. Where the authority responsible for determining the application for renewal is satisfied that the bookmaker is in default, it must refuse the application. This Order modifies the provisions of the 2005 concerned with the review of operating licences to provide an equivalent regulatory mechanism to that in section 4 of the Horserace Betting Levy Act 1969. In particular the Order provides a mechanism for reviewing and revoking operating licences where the holder has repeatedly been in default of their levy payments.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for the Department for Culture, Media and Sport, Mr Richard Caborn, has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Horserace Betting Levy) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The purpose of the Levy Board is to apply the bookmakers' levy for three statutory purposes:

- The improvement of breeds of horses;

- The advancement or encouragement of veterinary science or veterinary education;
- The improvement of horse racing.

7.2 The Government announced its intention to abolish the Levy Board and the levy mechanism in March 2000, on the basis that the horseracing industry was confident that a commercially based alternative funding mechanism was available. Provision was made for the abolition of the Levy Board in the Horserace Betting and Olympic Lottery Act 2004 and the Gambling Act 2005.

7.3 However, the Government recognised that a European Court of Justice ("ECJ") ruling in November 2004 cast serious doubt over the sport's ability to enforce substantial payments for the use of its data and, as a result, the viability of the proposed replacement funding model.

7.4 As a result of this ECJ ruling and the recommendations of the Future Funding of Racing Review Group the Government announced in December 2006 that the bookmakers' levy, and therefore the Levy Board, should be retained until such time as a secure alternative commercial funding arrangement can be identified.

7.5 We intend to repeal Part 2 of the Horserace Betting and Olympic Lottery Act 2004 (which provides for the abolition of the levy system) in due course, to ensure that Parliament may be permitted to debate such a measure in light of the prevailing circumstances at the time.

7.6 The purpose of this Order is to make provisions for the continuing operation of the Levy Board following the implementation of the 2005 Act on 1st September 2007.

7.7 This Order allows the Levy Board to continue to carry out its functions and address its three statutory purposes, set out above.

7.8 Under the 2005 Act, the Gambling Commission issues operating licences to bookmakers. This replaces the system under the 1963 Act under which bookmakers were required to hold bookmaker's permits. Under this system, the relevant authority could refuse to renew bookmaker's permits if the Levy Board provided evidence that a bookmaker had failed to pay the bookmakers' levy.

7.9 Article 3 of this Order allows the Levy Board to continue to take a role in the review and revocation of licences. The Order provides that the Gambling Commission must carry out a review of an operating licence if notified by the Levy Board that the holder of the operating licence has failed to pay the levy for at least three months. It also requires the Gambling Commission to revoke the licence if they are satisfied that this is the case and if they receive written confirmation from the Levy Board that they want the licence in question to be revoked.

8. Impact

8.1 The Order will have no impact on industry or the voluntary sector and there is therefore no Regulatory Impact Assessment attached to this memorandum.

9. Contact

Eleanor Van Heyningen at the Department of Culture, Media and Sport (tel: 020 7211 6473 or e-mail: eleanor.vanheyningen@culture.gsi.gov.uk) can answer any queries regarding the instrument.