

HORSERACE BETTING LEVY BOARD
GUIDANCE NOTES FOR OPERATORS
FOR LEVY PERIODS BEGINNING 1 APRIL 2021

10 South Colonnade, Canary Wharf, London, E14 4PU

SECTION A: GENERAL PROVISIONS

1. Introduction

The Horserace Betting Levy Board ("the **Board**") is a UK statutory body required by primary legislation to collect a statutory Levy ("the **Levy**") from bookmakers and betting exchange providers. These notes provide guidance relating to the assessment and collection of monetary contributions from Operators, with reference to the provisions in the Betting, Gaming and Lotteries Act 1963 ("the **1963 Act**") and the Horserace Betting Levy Acts 1969 and 1981 as amended by The Horserace Betting Levy Regulations 2017.

These notes use the term "**Operator**" to refer to bookmakers and betting exchange providers liable to pay the Levy, including those required to hold remote operating licences within the meaning of the Gambling Act 2005.

A bookmaker is defined in s29B of the 1963 Act as a person who carries on the business of; (a) receiving or negotiating bets, or (b) conducting pool betting operations.

A betting exchange provider is defined in s27C(1) of the 1963 Act as the person who provides facilities in the course of a business for one person to make a leviable bet with another person.

This Guidance is subject to revision and reissue from time to time and this version relates to the period from 1 April 2021 and will be effective until replaced. It is aimed at providing practical assistance to Operators. Operators should in the first instance refer to the relevant legislation, which sets out the statutory requirements regarding payment of the Levy. This Guidance should be read in conjunction with that legislation. It is intended to be no more than a practical aid to understanding that legislation and cannot be relied upon in its own right.

The various examples provided in this Guidance are not exhaustive and are only intended to be illustrative. If the Guidance does not expressly cover a particular scenario, it is still possible that Levy is payable. Operators should refer to the terms of the legislation in the first instance in considering their levy liability.

2. The Horserace Betting Levy

The Levy is charged at the rate of 10% of the amount by which an Operator's profits (calculated in accordance with s27A of the 1963 Act) on leviable bets for the Levy period exceed the exempt amount of £500,000. A leviable bet is defined in s.29A(1) of the 1963 Act as a bet which relates to horseracing in Great Britain and is made by a person (whether in person or remotely) who is in Great Britain when the bet is made.

3. Levy exempt amount

The exempt amount in s.27D of the 1963 Act is £500,000 per Levy period regardless of how long during the Levy period an Operator has been operating. Where an Operator has been at any time in the Levy period, or is, a parent or subsidiary of another Operator (within the meaning of ss.1161, 1162 and Schedule 7 to the Companies Act 2006) the group is entitled to a single exempt amount between them for the Levy period. The group may allocate the exempt amount between them as they think fit and are required to notify the Horserace Betting Levy Board as to the allocation. Where there are changes in corporate structure during the Levy period it is for the group companies to determine the allocation of the exempt amount between them and notify the Board accordingly.

4. Operators and liability to pay the Levy

The Horserace Betting Levy Regulations 2017 extended the Levy to all Operators who take bets related to horseracing in Great Britain as a bookmaker (including pool betting and spread betting operators) and/or as a betting exchange provider. This includes those who are required to hold remote operating licences (within the meaning of the Gambling Act 2005) from the Gambling Commission.

SECTION B: PAYMENTS ON ACCOUNT

5. The relevant legislation includes provisions allowing the Board to require Operators to make payments on account of the Levy in advance of final assessment to it. The Board considers advance payments to be helpful from the perspective of its own arrangements and for Operators who can spread payments throughout the year. Accordingly, the provisions of the Horserace Betting Levy Act 1981 apply. Amongst other provisions of that Act, section 4(2) requires that, if the amount paid on account of the Levy in any Levy period exceeds the assessment to Levy in that period, the Board shall repay the excess to the Operator concerned.

6. Notice of Determination of Advance Payment

Amounts due as a payment on account in advance of final assessment will be notified to the Operator in a Notice of Determination of Advance Payment, which will also show the date on which the Advance Payment falls due to be made.

7. Basis of advance payment

Each Operator shall be required to make an Advance Payment determined in accordance with Table 1 below.

Table 1

	PERIOD OF TRADING	ADVANCE PAYMENT
(i)	Operator who commenced trading on his own account prior to the current Levy Period	An amount determined by the Board who may, in connection with making their determination, consider such information and undertake such consultation with other persons as the Government-appointed members of the Board may think fit. Where the Operator subsequently provides the Board with the information required for the purposes of his assessment under the Levy period, then all the provisions of paragraph 13 shall

	PERIOD OF TRADING	ADVANCE PAYMENT
		apply in relation thereto.
(ii)	Operator who commenced trading on his own account during the Levy Period.	<p>An amount determined by the Board by reference to the estimated level of leviable bets which will give rise to a liability to the Levy (in relation to the period from the date of commencement of trading to the end of the Levy period) as agreed between the Board and the Operator.</p> <p>Where such estimated level of leviable bets cannot be agreed between the Board and the Operator, then the total sum specified shall be an amount determined by the Government-appointed members of the Board who may, in connection with making their determination, consider such information and undertake such consultation with such other persons as the Government-appointed members of the Board may think fit.</p> <p>Where the Operator subsequently provides the Board with such information as it may require in relation to the level of leviable bets which will give rise to a liability to the Levy in respect of the Levy Period, then all the provisions of paragraph 13 shall apply in relation thereto.</p>

8. Advance payment and payment dates

For the purpose of payment(s) on account of the Levy, Operators will be required to make payment as per the details contained in the Notice of Determination.

In the case of a Notice of Determination issued after the start of the Levy period, the total amount of any payments in advance shall be divided to the nearest whole amount by the number of complete months remaining in the Levy period and the first such resulting sum shall be due 28 days after the date on which the Notice of Determination is issued (together with any resulting fractional or balancing amount) and the remaining payments shall be due on the 20th day of each following complete month until the total amount of the Advance Payment has been paid.

9. Non-payment and underpayment

Save where there is any outstanding appeal or Application for Relief under paragraphs 10-12 below, if any part of the total amount of an Advance Payment due on any date shall remain unpaid at the expiry of 14 days after the applicable due date for payment thereof, the total of all amounts payable on account but unpaid (irrespective of whether or not their due date shall have arrived) for the remainder of the Levy period shall become payable immediately.

10. Right of appeal against Notice of Determination of, and Application for Relief from, advance payments

Under section 2 of the Horserace Betting Levy Act 1981, an Operator has a right of appeal against a Notice of Determination of Advance Payment on the grounds that the determination was not appropriate having regard to the Operator's likely liability. It must be

made in writing to the Chairman of the Board not later than 28 days after the date of service of the Notice of Determination of Advance Payment. The appeal will be considered by an Appeal Tribunal.

11. An Operator may apply in writing at any time to the Board to be excused from making the payments as set out in the Notice of Determination of Advance Payment, giving his reasons (an "**Application for Relief**"). Such an Application for Relief, which is made under section 3 of the 1981 Act, should be on the ground that the Operator's circumstances make it unjust that he should make payments in accordance with the Notice. An Operator may make more than one Application for Relief under section 3 of the 1981 Act within a Levy period only where there has been a change in the Operator's circumstances since the last preceding application was considered. An Application for Relief may not be made while an Operator has an appeal outstanding in respect of the relevant notice or a revised version, and once an Application for Relief has been made in respect of a Notice of Determination the Operator cannot appeal the same Notice of Determination.

12. Processing of Application for Relief from payment in advance

If the Board receives an Application for Relief from payments from an Operator, this is considered by the Government-appointed Members of the Board. The application may be the subject of consultation between the Board and the Government-appointed members of the Board. The Government-appointed members will either dismiss the Application for Relief or direct that from a specified date payments shall cease or shall be reduced. If they dismiss the Application for Relief, the payments due under the Notice of Determination of Advance Payment will stand. If they direct that the payments shall cease, they will cancel the Notice of Determination of Advance Payment and issue a Notice to that effect. If they direct that the Advance Payment shall be reduced, the Board will issue a revised Notice of Determination of Advance Payment setting out the reduced Advance Payment. Each such form of Notice will specify the date from which it will take effect.

SECTION C: CALCULATION OF LEVY

13. Computation of the Levy

The Levy is charged at 10% of profits on leviable bets which exceed £500,000 in any Levy period as a bookmaker or betting exchange provider (see s.27(1) to s.27(1D) of the 1963 Act). A leviable bet is defined in s.29A of the 1963 Act as a bet which relates to horseracing in Great Britain (excluding point to point racing, harness racing and trotting events) made by a person (whether in person or remotely) who is in Great Britain when the bet is made.

A bookmaker's horseracing profits are determined in accordance with the following formula, in relation to leviable bets taken on British horseracing (see ss.27A and 27B of the 1963 Act):

$$\mathbf{SM + OA - W}$$

Where:

SM (stake money) is the aggregate of the stake money falling due to the bookmaker in the Levy period. If the stake money falls due to a person other than the bookmaker with whom the bet is made, it is to be treated as falling due to the bookmaker. Where the bet is not a spread bet and the sum which the person who makes the bet will lose if unsuccessful is known when the bet is made, that sum is treated as falling due when the bet is made. Specific provision is made in respect of bets made in pursuance of a free offer from a bookmaker. An amount that would otherwise have had to be staked when taking up the

first offer is to be treated as stake money. But conditional winnings from a previous free offer is not to be included as stake money.

OA (other amounts) is the aggregate of any other amounts accruing to the bookmaker in the Levy period. This captures that money which is not ordinarily understood as stake money.

W (winnings) is the aggregate of any winnings paid by the bookmaker in the Levy period including winnings in money or kind.

14. Default percentage

There is no default percentage available to be used in calculating the Levy due.

15. Betting exchange commission

Commission charged by betting exchange providers on leviable bets is also included in the calculation of profits for the Levy period. The term "commission" covers any amount that any party to the bet is charged for the use of the betting exchange facilities, whether by deduction from winnings or otherwise.

16. Pool betting

The person conducting pool betting operations ("the pool betting operator") has full responsibility as the bookmaker for leviable pool bets.

17. Multiple bets

The liability to Levy of a multiple bet (including a multiple bet with a free bet element) is determined by the proportion of the stake money and winnings attributable to leviable bets.

The independent accountant's report should set out in detail the actual methodology used for apportionment of stake money and winnings and should confirm that the methodology was used consistently throughout the Levy period.

18. Novelty and special bets

All novelty and special bets that relate to horseracing in Great Britain are leviable under the legislation. An illustrative non-exhaustive list of novelty/special bet examples that would be considered leviable is as follows:

- Result of Jockeys Championship
- Top trainer
- Winning distances

19. Arabian horseracing

Bets relating to Arabian horseraces in Great Britain are leviable.

20. Cash refund schemes

With regard to any promotion whereby each of the following conditions were satisfied: (i) a stake, or a portion of a stake, placed by a customer on a losing British horseracing bet was refunded; (ii) it was refunded as cash and without conditionality; and (iii) it was known to the customer at the time that the bet was placed that if the bet was not won it would be so refunded, it shall be regarded as a "Cash Refund Scheme".

Money placed on a bet under a Cash Refund Scheme is a stake for the purposes of “SM” in s 27A but, where the bet has lost, the amount refunded to the customer is not winnings for the purposes of “W”. As a practical example, if a customer staked £10 and the bet lost (and therefore that the £10 was refunded to the customer), the stake money would be £10 and the winnings would be £0 for the purposes of the calculation of the levy under s27A.

21. Cash Loyalty Payments

The award of a cash loyalty payment, where an amount is credited to a customer’s account in cash, is leviable such that

- i. the amount credited cannot be deducted from Levy liability as winnings; and
- ii. any bet made with that credited amount should be treated as stake money.

22. Double results

Where bets on a horse that finishes first past the post and on the official winner (if different) are both paid as winning bets, such treatment is deductible for Levy purposes.

23. Discretionary returns

Discretionary returns, where a payment is made (either as a refund of stake or otherwise) on a losing bet as though it is not a losing bet, cannot be deducted from Levy liability as winnings.

24. Cash out

Cash out settlements may be included in the computation of the Levy liability and treated as winnings for the purposes of calculating Levy provided they are linked to the actual or predicted performance in the relevant race of the horse on which a customer has placed their bet.

However, cash out offers which are not linked to that actual or predicted performance, for example by allowing cash out for the sum of the stake on a losing bet, should not be included in the computation as settlements paid out under such offers are not to be regarded as winnings.

SECTION D: PROCEDURE FOR ASSESSMENT

25. Submission of Forms of Declaration

Forms of Declaration will be despatched on or before 31st March or as soon as practicable thereafter. Within 28 days after 31st March (or, if later, the despatch date of the relevant Form of Declaration), the Operator(s) to whom it is despatched shall complete the Form and submit it to the Board. The Chief Executive of the Board shall have power, but shall not be obliged, to extend the said period of 28 days upon receiving a written request to do so and a statement of the reasons for the request.

26. Claims for exemption

An Operator who claims that he is not liable to pay the Levy must complete the relevant part of the Form of Declaration and, within 28 days after the later of 31st March and the despatch date, return the Form duly signed.

27. Independent Accountant's Report/Information to accompany the Form of Declaration/ Verification

The Form of Declaration submitted by each Operator shall be accompanied by a report by an Independent Accountant and shall contain such information as the Chief Executive of the Board may reasonably require for the purposes of assessing and/or collecting the amount of Levy due (including information on the Operator's profit on leviable bets). An Operator shall provide to the Board, and the Board may obtain from any relevant source, such information as the Chief Executive of the Board may reasonably require, in order to assess and/or verify the Operator's liability to the Levy. See Appendix 1 for further information.

An "Independent Accountant" for these purposes means a person or persons, independent of the Operator, eligible under the provisions of the Companies Act 2006 for appointment as a company auditor.

28. Failure to provide an Independent Accountant's Report

If an Operator fails to provide an Independent Accountant's Report where such a report is required pursuant to paragraph 27 above, that Operator shall be deemed to have failed to submit a properly completed Form of Declaration and the provisions of paragraph 30 below shall apply accordingly. In such circumstances the Chief Executive of the Board shall have power (but no obligation) to instruct an Independent Accountant to provide the required report.

29. Failure to provide Information

If an Operator fails to provide any information required by the Chief Executive of the Board pursuant to paragraph 27 above, that Operator shall be deemed to have failed to submit a properly completed Form of Declaration and the provisions of paragraph 30 below shall apply accordingly.

30. Failure or deemed failure to submit properly completed Form of Declaration

Where there has been a failure or deemed failure to submit a properly completed Form of Declaration in accordance with paragraph 25 above in relation to an Operator:

- (i) for all purposes of assessments to the Levy the Board may rely on any such estimate or assumption made or approved by them or the Government-appointed members of the Board, and on any such information available to them, as they think fit, including any modification thereof; and

- (ii) the Board will accordingly serve a Notice of Assessment as appropriate..

31. Notice of Assessment

Each person to whom a Form of Declaration is despatched will be assessed to, or exempted from, the Levy in accordance with the relevant legislation and a Notice of Assessment will be served, if appropriate.

32. Right of Appeal against Notice of Assessment

Under section 28 of the 1963 Act, an Operator has a right of appeal against a Notice of Assessment. Such appeal must be made in writing to the Board not later than 28 days after the date of service of the Notice of Assessment.

33. Payments and costs

- (i) The amount assessed as payable in the Notice of Assessment, less amounts paid on account, shall become due 28 days after the date of service of the Notice of Assessment unless the Operator has appealed against that Notice, in accordance with the provisions of the 1963 Act. Upon the discharge of liability to Levy, a certificate in writing to the effect that the liabilities have been discharged (which this Guidance refers to as a "**Certificate of Discharge**") will be issued by the Board. Certificates of Discharge should be preserved carefully for production to the Commission or licensing authority when making application for renewal of a licence or for other relevant purposes. The Board reserves the right to disclose to the Gambling Commission failure by an Operator to pay any amounts due in respect of that Operator's liability to the Levy.
- (ii) Any sum overpaid by an Operator as a result of the Advance Payment or otherwise shall be repaid by the Board when the Notice of Assessment is issued, unless the Operator has an outstanding Levy liability in respect of one or more Levy periods, when the overpayment is to be applied in reduction of the outstanding Levy liability of the Operator under, first, any applicable prior Levy periods (satisfying an outstanding liability under earlier periods before later) and, thereafter, Notices of Determination of Advance Payment in respect of subsequent years' Levy periods.

Appendix 1

Report of the Independent Accountant

Background

The Board requires all Levy payers to file an annual return which is accompanied by a Report by an Independent Accountant.

Requirement to provide an Independent Accountant's Report

Size of Operator	Scope of Reporting	How Often?
Gross profit (of Group) > £500,000	Full Independent Accountant's Report for all entities	Annually
Gross profit (of Group) > £250,000	Full Independent Accountant's Report for all entities	Annually
Gross profit (of Group) < £250,000	Full Independent Accountant's Report for all entities	Selection of Operators will be selected at random

Failure to provide an Independent Accountant's Report

If an Operator fails to provide an Independent Accountant's Report where such a report is required, that Operator shall be deemed to have failed to submit a properly completed Form of Declaration. In such circumstances the Chief Executive of the Board shall have power (but no obligation) to instruct an Independent Accountant to provide the required report. On receipt of the required Independent Accountant's Report, the Board will issue a Notice of Assessment, if applicable.

Agreed Upon Procedures for the Independent Accountant

This work is designed to be performed as an Agreed Upon Procedures (AUP) engagement in accordance with the International Standard on Related Services (ISRS) 4400 "Engagements to perform agreed-upon procedures regarding financial information". We therefore request that any exceptions identified during the performance of these procedures are formally reported to the Board as part of the completion of the Independent Accountant's Report. If a particular test is not deemed to be relevant to the Operator, a statement to this effect must be included in the Report of the Independent Accountant.

Information to be included in an Independent Accountant's Report

1. State whether your firm act as the statutory auditors (in an independent engagement) for the company or group that has produced the Horserace Betting Levy Board (HBLB) Form of Declaration for which these agreed upon procedures are being performed.
2. Agree the total of profits from leviable bets for the Levy period and Levy payable as shown on the Form of Declaration to the Levy summary created by the bookmaker.
3. Obtain a detailed breakdown of the Levy summary and check that the totals provided by the Operator agree to the Levy summary.
4. Agree the mathematical accuracy of the profit breakdown provided by the bookmaker on the Levy summary.
5. Select one month and trace the total leviable bets turnover and profit to management's records.
6. Obtain and provide an explanation from management of the Operator's method of distinguishing between bets placed in Great Britain and those outside Great Britain for the purpose of classifying whether or not a bet is leviable. This explanation should set out in detail the actual methodology used by the Operator to confirm whether the person making the bet (whether in person or remotely) is in Great Britain at the time the bet is made.
7. Obtain and provide an explanation from management of the Operators' treatment of linked or multi bets the outcome of which is dependent on at least one leviable bet and one non-leviable bet such that the Operator considers that the entirety of the bet is not leviable (including those that involve a free bet element). This explanation should set out in detail the actual methodology used for apportionment of stake money and winnings and must confirm that the methodology was used consistently throughout the Levy period.
8. Obtain and provide an explanation from management of how pool betting operations have been fully accounted for by the pool betting operator and how the pool betting operator has satisfied itself that all Levy payable on pool operations has been captured and included for the purposes of calculating leviable profits.
9. Obtain an analysis of turnover and gross profit figures of leviable bets by betting platform for the current and previous year to 31st March. Compare the trends observed in the analysis, identify any differences to the prior year and provide explanations from management for any unusual or significant variances (the Board would consider variances of greater than 10% of the total value to be significant).
10. Obtain and provide an explanation from management of the Operator's internal controls over the completeness of turnover and how they operated during the Levy period.
11. Obtain and provide an explanation from management for how the Operator's accounting system provides a sound basis for fully and accurately recording turnover and profit on leviable bets.
12. Obtain and provide an explanation from management of the Operator's treatment of Arabian horseracing in accordance with paragraph 19 of these guidance notes, cash refund schemes

(paragraph 20), cash loyalty payments (paragraph 21), double results (paragraph 22), discretionary returns (paragraph 23) and cash out (paragraph 24).

Appendix 2

Scenarios of profit calculations

This note sets out illustrative examples of the profit calculation for Levy purposes. For each example the table on the left side is where the punter wins, and on the right where they lose. Amounts that form the profit calculation (i.e. 'stakes' and 'winnings') are those highlighted in yellow in each example.

i) Single bet: £10 at 4/1

If punter wins, the profit/loss figure on the leviable bet is -£40, meaning no Levy would be due on that specific bet.

If punter loses, there are no winnings and Levy is due on the £10 stake.

	Stake	Winnings	
Bet	£10		
Wins		£50	
Levy calculation:	£10	£50	-£40

	Stake	Winnings	
Bet	£10		
Loses			
Levy calculation:	£10	£0	£10

ii) Free £10 bet. Punter can withdraw winnings as cash or use unconditionally. Places bet at 4/1

Levy treatment is the same as for the single bet (above): if punter wins, the profit/loss figure on the leviable bet is -£40. If punter loses, Levy is due on £10 stake.

	Stake	Winnings	
Bet	£10		
Wins		£40	
Levy calculation:	£10	£40	-£30

	Stake	Winnings	
Bet	£10		
loses			
Levy calculation:	£10	£0	£10

iii) Free £10 bet. Punter must place one further leviable bet before winnings can be withdrawn or become unconditional. Places bet at 4/1

Levy treatment: the initial bet is counted as 'stake' for the purposes of the calculation. 'Winnings' are only counted for the purposes of the Levy calculation following the subsequent leviable bet where the cash is no longer required to be used for a subsequent leviable bet. The 're-wagering' in between is disregarded for Levy purposes.

In both scenarios below the punter wins the initial (free) bet and then places a further bet (also at 4/1) (any winnings from which are no longer required to be used for a subsequent leviable bet).

In the scenario on the left, the punter wins the second bet and those winnings (£160) are not required to be used for a subsequent leviable bet. The profit/loss figure on the leviable bet is -£150.

In the scenario on the right, they lose the second bet. Levy is due on the £10 stake.

NB: Where a subsequent bet is restricted to a bet on another sport, or where the punter opts to place the bet on another sport, both the stake and the winnings should be appropriately apportioned to account for the leviable and non-leviable elements.

	Stake	Winnings	
Bet	£10		
Wins		£40	
Bet	£40		
Wins		£160	
Levy calculation:	£10	£160	-£150

	Stake	Winnings	
bet	£10		
wins		£40	
bet	£40		
loses			
Levy calculation:	£10	£0	£10

The total stake and winnings are calculated in these examples by disregarding the re-wagering in between.

iv) Losing bets refunded as free bet:

Punter places £10 bet but loses. Qualifies for a special offer whereby losing bets are refunded as a free bet.

In this scenario the initial bet is counted as a stake for Levy purposes. As the bet is lost the re-wagering chain is broken. The subsequent free bet is also treated as a stake for Levy purposes. Any winnings from the subsequent bet that are no longer required to be used for a subsequent leviable bet are treated as 'winnings' for the purposes of the Levy calculation.

	Stake	Winnings	
Bet	£10		
loses, but gets money back	£10		
Wins		£50	
Levy calculation:	£20	£50	-£30

	Stake	Winnings	
bet	£10		
loses, but gets money back	£10		
loses			
Levy calculation:	£20	£0	£20

However, where the offer is such that the initial losing bet is refunded as cash without conditionality (rather than a free bet) that cash will not be considered winnings and is not deductible for Levy purposes (see paragraph 20).