

SUNDAY TRADING (LONDON OLYMPIC GAMES AND PARALYMPIC GAMES) [HL] BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Sunday Trading (London Olympic Games and Paralympic Games) Bill (“the Bill”) as brought from the House of Lords on 26 April 2012. They have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill suspends for the period of the Olympics and Paralympics the current restrictions in the Sunday Trading Act 1994 (“the 1994 Act”) on Sunday opening times for certain large shops. The Bill would remove these restrictions so that all shops, of whatever size, can choose their own Sunday opening times for the period of the Olympics and Paralympics (subject to any relevant planning or other restrictions).
4. This Bill will not diminish existing protections for shop workers in Part 4 of the Employment Rights Act 1996 (“the 1996 Act”). Rather, it will temporarily shorten the three month opting-out notice period for shop workers who work in large shops affected by the Bill. This will enable those who have the right to opt out of Sunday working (and to whom a three month notice period would otherwise apply) to serve their opting-out notice after the Bill receives Royal Assent and be able to avoid working on Sundays from the start of the period of suspension of the Sunday trading restrictions (if the notice is given by 21st May). People serving an opting-out notice after 21st May but on or before 9th July will also benefit from a reduced (2 month) notice period.

BACKGROUND

5. The Chancellor of the Exchequer announced in the Budget on the 21 March 2012 that the Government intended to suspend the Sunday opening hours restrictions on large shops during the period of the Olympics and Paralympics.
6. At present paragraph 2 of Schedule 1 to the 1994 Act limits the opening times on a Sunday for certain large shops (large shops are those with a relevant floor area over 280 sq m/3000 sq feet). The Act restricts them to opening on a Sunday for a maximum six hour period. The hours must be consecutive and must be between 10 a.m. and 6 p.m. The Bill will suspend these restrictions allowing these large shops to make their own decisions on Sunday opening times during the Olympics and Paralympics (subject to any relevant planning or other restrictions).
7. Small shops are not subject to Sunday trading restrictions, and so their freedom to open on Sundays will not be affected by the Bill. In addition, the Bill will not affect those categories of large shops that are already exempt from current Sunday trading restrictions, including:
 - Airport shops
 - Chemists
 - Exhibition stalls
 - Farm shops that sell their own produce
 - Petrol filling stations
 - Shops in railway stations
 - Motorway service stations
8. The suspension of the Sunday opening hours restrictions will apply on eight consecutive Sundays, beginning with the Sunday before the Olympic opening ceremony and ending with the Sunday on which the closing ceremony of the Paralympic Games will take place.
9. Shop workers have rights under Part 4 of the 1996 Act in relation to working on a Sunday (unless they are employed only to work on Sundays). Shop work is work in or about a shop on a day on which the shop is open to serve customers. Shop workers who work on Sundays, or may be required under their employment contract to do so, can give (generally speaking) 3 months' notice to their employer that they object to working on Sundays (an "opting-out notice"). Shop workers who cannot be required by their contract to work on a Sunday can give notice to their employer that they would like to do so (an "opting-in notice"), and can then agree with their employer to do shop work on Sundays. In addition the 1996 Act gives shop workers who have the right not to work on Sundays the right not to be dismissed, selected for redundancy or otherwise suffer a detriment for refusing to work on a Sunday. The Bill will not remove or restrict these rights. The rights are extended as explained in the commentary on clause 2.

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TERRITORIAL EXTENT

10. The 1994 Act applies only to England and Wales. Since the Bill will suspend restrictions in that Act, the Bill extends to England and Wales only. The suspension of the restrictions will apply to shops throughout England and Wales. Sunday trading is not devolved in relation to Wales.

FAST-TRACK LEGISLATION

11. The Government is asking Parliament to expedite the parliamentary progress of this Bill. In their report on *Fast-track Legislation: Constitutional Implications and Safeguards*, the House of Lords' Select Committee on the Constitution recommended that where a Bill is to be fast-tracked, Parliament should be provided with the following information.

Why is fast-tracking necessary? What is the justification for fast-tracking each element of the Bill?

12. The Government has carefully considered the implications of using the fast-track process for expediting this Bill through Parliament. The Government considered using the usual Parliamentary process for this Bill but came to the conclusion that the imminence of the London Olympics and Paralympics justified the exceptional use of the fast-track process for this Bill. Any delay in the legislation could mean that the full benefits to the UK economy that this Bill is designed to facilitate will not be realised. This is a short Bill, implementing a temporary and deregulatory measure designed to enable business and consumers to take full advantage of benefits that the London Olympics and Paralympics can bring. The Government considers that it is important that the Bill is passed as soon as possible so that businesses and shop workers can make their arrangements for the period of the Olympics and Paralympics as much in advance as possible.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

13. The Government is making Parliamentary time available to ensure that this Bill is scrutinised. In addition contact has been made with the Opposition with the intention of reassuring them and other parliamentarians of the time-limited nature of the Bill which is aimed at giving a short but sizable boost to the retail sector.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

14. The Minister with responsibility for this Bill, Mark Prisk M.P., has held a number of discussions with interested parties including large businesses, all the main supermarkets, representatives of small businesses, other business representatives, and

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trade unions.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?

15. The Bill contains a sunset clause, repealing Clause 1 (suspension of restriction on Sunday trading hours) and Clause 2 (opting out of Sunday work) of the Bill immediately after the end of the period of suspension of the Sunday trading restrictions.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?

16. The suspension of Sunday trading restrictions effected by the Bill will be time limited, expiring on 9 September 2012. Accordingly, the Government does not judge that post-legislative scrutiny is required for this Bill. Should the Government ever decide that it is appropriate to look again at the possibility of permanent relaxation of Sunday trading restrictions a full consultation would be undertaken.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

17. Existing legislation does not confer powers to achieve a temporary suspension of the Sunday trading restrictions. Nor is there sufficient time to effect this suspension by means of a Legislative Reform Order. Therefore primary legislation is required to achieve the suspension.

Have relevant parliamentary committees been given the opportunity to scrutinise the legislation?

18. Due to the nature of this Bill and the need to ensure that the suspension of the Sunday trading restrictions can take effect in time for the Olympics and Paralympics, full Committee scrutiny will not be possible.

COMMENTARY ON CLAUSES

Clause 1: Suspension of restriction on Sunday trading hours

19. *Subsection (1)* disapplies, during the "suspension period" (as to which see the commentary on subsection (3) below), the current restrictions imposed by paragraph 2 of Schedule 1 to the 1994 Act on the Sunday opening hours of large shops. Large shops are shops with a "relevant floor area" exceeding 280 square metres. As a result, large shops will be free to choose to open for as long as they wish on the Sundays in

question (subject to any relevant planning or other restrictions). As a result of lifting the opening hours restrictions, the duty imposed by paragraph 6 of Schedule 1 to the 1994 Act on large shops to display a notice specifying their Sunday opening hours will not apply during the suspension period.

20. *Subsection (2)* ensures that the provisions regarding loading and unloading at large shops on Sunday mornings contained in Schedule 3 to the 1994 Act will continue to apply in the usual way during the suspension period. So large shops which currently need local authority consent in order to load/unload before 9 a.m. on Sunday mornings will continue to need that consent during the suspension period. A large shop which has already obtained such a consent from a local authority will continue to be able to rely on that consent during the suspension period despite any longer hours the shop may be open for during that period.
21. *Subsection (3)* defines the "suspension period", namely the period during which the disapplication of the Sunday opening hours restrictions (and the disapplication of the duty to display a notice specifying the shop's Sunday opening hours) will apply. This period will start on Sunday 22nd July 2012 and will end on Sunday 9th September. The 22nd July is the Sunday which precedes the opening ceremony for the Olympic Games (which is to take place on 27th July). The 9th September is the day on which the closing ceremony will take place for the Paralympic Games.
22. *Subsections (3) and (4)* make clear that the suspension period falls within the "London Olympics period", as defined in section 1(3) of the London Olympic Games and Paralympic Games Act 2006. The London Olympics period begins four weeks before the day of the opening ceremony of the Olympics Games and ends five days after the day of the closing ceremony of the Paralympic Games.

Clause 2: Opting out of Sunday work

23. *Subsection (1)* temporarily shortens, in relation to shop workers who work in "exempted large shops", the three month notice period that usually applies to opting-out notices given by shop workers to employers under Part 4 of the 1996 Act. This is to enable such shop workers to serve opting-out notices after the Bill receives Royal Assent which would take effect in time for the start of the suspension period (for more details see paragraphs 25 to 27). In cases where the notice period for an opting-out notice is, under Part 4 of the 1996 Act, only one month (which is the case if an employer has not complied with requirements to tell shop workers about their rights), this subsection does not affect that one month notice period.
24. "Exempted large shops" are defined in *subsection (5)*: they are those shops to which the suspension of Sunday trading restrictions by clause 1(1) of the Bill applies.
25. The shortened notice period only applies in relation to opting-out notices which are given in the "pre-Games period". This period is defined in *subsection (4)*: it starts on

the day on which the Bill is passed and ends on Monday 9 July 2012 (i.e. two months before the last day of the suspension period).

26. For notices which are given in the period from Royal Assent up to and including 21st May (i.e. given more than two months before the start of the suspension period), the notice period is more than two months and automatically ends at the end of Saturday 21st July 2012, enabling the shop worker to opt-out of Sunday working from the first Sunday of the suspension period (22nd July 2012). For notices which are given on or after 22nd May and on or before 9th July (i.e. two months or less before the start of the suspension period), the notice period ends two months after the day on which the notice is given, enabling the shop worker to opt-out of Sunday working only on those Sundays after the notice period has ended.
27. Opting-out notices which are given after 9th July will not be affected by the Bill: the current three month notice period provided for by Part 4 of the 1996 Act will apply to them (unless the one month period contained in that Act applies instead).
28. *Subsection (2)* modifies the effect of a provision in the 1996 Act as a result of subsection (1).
29. *Subsection (3)* applies to a shop worker who gives an opting-out notice in the pre-Games period that relates to work at an exempted large shop, and who wishes to opt out of Sunday working only during the suspension period. He can include an express statement in his opting-out notice to the effect that he objects to Sunday working only during that period. No particular form of words is needed. If the shop worker includes such a statement in his opting-out notice, he will be treated as having given his employer an opting-in notice for the purposes of Part 4 of the 1996 Act at the end of the suspension period. He will not therefore need to give his employer a separate opting-in notice in order to opt back in to Sunday working after the suspension period, although he will still need to agree expressly with his employer to do shop work on Sundays or on a particular Sunday.

Clause 3: Duration, transitional provision, extent and short title

30. *Subsection (1)* provides that clauses 1 and 2 of the Bill are repealed immediately after the end of the suspension period (as defined by subsection (3) of clause 1).
31. *Subsections (2) and (3)* contain a transitional provision in relation to the right to opt out of Sunday working during the suspension period. These provisions ensure that an opting-out notice given on or after 10th June 2012 and on or before 9th July 2012 (and to which the one month notice period in Part 4 of the 1996 Act does not apply) continues to have effect after the end of the suspension period (unless and until the shop worker goes through the opting-in process under Part 4 of the 1996 Act). Without this transitional provision, the repeal of clause 2 by subsection (1) immediately after the end of the suspension period would mean that a worker who had served an opting-out notice on or after 10th June and on or before 9th July and had

therefore acquired the right not to work on some of the Sundays during the suspension period (as a result of the two month notice period given by clause 2) would suddenly not have this right for a short period after the end of the suspension period until the usual three month notice period under the 1996 Act had expired, at which point he would regain the right not to work on Sundays.

32. *Subsection (4)* provides that the Bill extends only to England and Wales. The 1994 Act itself (restrictions in which will be suspended by the Bill) extends only to England and Wales.

FINANCIAL EFFECTS

33. It is considered that the provisions contained within the Bill will have no substantial effect on public expenditure. There is the potential for there to be an increased number of applications to local authorities for permits to load/unload before 9am on a Sunday morning from those shops that choose to take advantage of the suspension of the restrictions, though such costs will be met by retailers through the application fee. There is also the possibility of increased enforcement costs for local authorities where shops opening and loading/unloading earlier have not obtained the necessary loading/unloading consents. It is not anticipated that this will have a significant effect on local authority expenditure.

PUBLIC SERVICE MANPOWER

34. The provisions contained within the Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

35. The provisions in the Bill do not require an Impact Assessment since the Bill contains a temporary measure only. However, the Department for Business, Innovation and Skills has continued to keep the available evidence under review and placed an updated assessment of the available evidence in the House of Lords library and the House of Commons library on 25th April 2012. The assessment will also be published on the Department's website (www.bis.gov.uk).

EUROPEAN CONVENTION ON HUMAN RIGHTS

36. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention Rights (as defined in

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section 1 of that Act).

37. The Rt Hon Dr Vince Cable MP, Secretary of State for Business, Innovation and Skills and President of the Board of Trade, has made a statement pursuant to section 19 of the Human Rights Act 1998 to the effect that in his view the provisions in the Bill are compatible with the Convention rights.

COMMENCEMENT

38. The Bill will come into force automatically on Royal Assent (as a result of section 4(b) of the Interpretation Act 1978).

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