

# BIRMINGHAM COMMONWEALTH GAMES BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Birmingham Commonwealth Games Bill [HL] as brought from the House of Lords on 4 March 2020 (Bill 103).

- These Explanatory Notes have been prepared by the Department for Digital, Culture, Media and Sport 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.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill provides for a number of operational measures required to support the delivery of the 2022 Commonwealth Games to be held predominantly in Birmingham (and venues across the West Midlands). It provides United Kingdom ministers and the Organising Committee with the powers necessary to ensure delivery of aspects of the Games relating to funding of the Organising Committee, Organising Committee reporting, provisions regarding association with the Games, ticket touting, advertising and trading and transport. The Bill does not apply to other Commonwealth Sport events such as championships, which will not form part of the Games.

## Policy background

- 2 The Commonwealth Games is one of the largest multi-sport events in the world, with a global audience estimated at 1.5 billion people. It has been held every four years since 1930, with a short intermission between 1938 and 1950. The Birmingham 2022 Games will bring elite athletes from around the Commonwealth drawn from the 71 different nations and territories who are members of the Commonwealth Games Federation.
- 3 The right to host the 2022 Commonwealth Games had originally been awarded to Durban, South Africa. However, in March 2017 the Commonwealth Games Federation removed hosting rights from Durban following its failure to meet a number of hosting requirements. In April 2017 the United Kingdom government invited interested cities to submit proposals for hosting the 2022 Games and, in September 2017, following a competitive bid process, confirmed that Birmingham would be submitting a government-backed bid to host the Games.
- 4 On 21 December 2017 Birmingham was awarded the right to host the 2022 Games with a truncated timeline of four and a half years rather than the typical seven years to deliver the Games.
- 5 Analysis of the hosting requirements and the legislation brought forward for previous, similar multi-sports events, such as the London Olympic Games and Paralympic Games Act 2006, the London Olympic Games and Paralympic Games (Amendment) Act 2011, and the Glasgow Commonwealth Games Act 2008, identified a small number of areas which require a legislative response in respect of Birmingham 2022. This Bill addresses those requirements.

## Legal background

- 6 The relevant legal background is explained in the policy background section of these Notes.

## Territorial extent and application

- 7 Clause 32 sets out the territorial extent - that is the jurisdiction of which the Bill forms part of the law - and application of the Bill. Application is where a provision produces a practical effect. The extent of a Bill can be different from its application.
- 8 As the territorial extent and application differ between the Bill's provisions, commentary set out in these notes on each individual provision (or group of provisions) includes a paragraph explaining its extent and application.
- 9 The Bill includes one offence, the ticket touting offence, which extends and applies to England

and Wales, Scotland and Northern Ireland. It also applies to United Kingdom nationals and those normally resident in the United Kingdom where the offence is carried out overseas (for example where the offence is carried out online), and to internet service providers established in the United Kingdom.

- 10 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The Department has resolved with officials in the three devolved administrations that legislative consent motions are required in respect of the ticket touting offence. The Department has sought in-principle agreement from relevant ministers to seek legislative consent motions in the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.
- 11 The provisions in Part 1 (power to provide financial assistance and reporting obligation) extend to the whole of the United Kingdom but do not require legislative consent motions due to the incidental effect of these provisions on matters which are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: The Organising Committee

### Clause 1: Financial assistance

- 14 This clause enables the Secretary of State to provide financial assistance to the Birmingham Organising Committee for the 2022 Commonwealth Games Ltd (“the Organising Committee”). The Organising Committee is a private company limited by guarantee established for the purpose of delivering the Games. It is wholly owned by the Secretary of State and is an arm’s length body of the Department for Digital, Culture, Media and Sport.
- 15 Financial assistance may be given for the delivery of the Commonwealth Games, or for any other purpose connected to, or arising from, the Commonwealth Games. For instance, this would enable the Secretary of State to fund any Organising Committee activities in relation to legacy programmes that may continue after the Games. Clause 1(2) sets out that this assistance could be provided in the form of grants, loans, guarantees or indemnities and may be subject to conditions. Conditions which may be attached to any financial assistance will be set out in the Management Agreement which governs the relationship between government and the Organising Committee. The Management Agreement, which is updated annually, can be found online at: <https://www.gov.uk/government/publications/birmingham-organising-committee-for-the-2022-commonwealth-games-ltd-management-agreement-201920>.
- 16 Clause 33(1) provides for this provision to come into effect on the day on which the Act is passed. This is because the provision is intended to provide specific statutory spending authority for financial propriety reasons and so it is appropriate for any funding to be made under that authority as soon as the Act is passed. Until that time the Organising Committee will continue to be funded under section 70 of the Charities Act 2006.

### Clause 2: Annual reporting

- 17 Clause 2 places a requirement on the Organising Committee to send a report to the Secretary of State on the exercise of its functions during each reporting period, including the progress made towards delivering the Games, and requires the Secretary of State to lay a copy of this report before Parliament. Subsection (2) sets out what this report must include. Subsection (5) sets out what the reporting periods are. The Organising Committee’s reports must be sent to the Secretary of State as soon as is reasonably practicable after the end of each reporting period.
- 18 Clause 33 subsection (1) provides for this provision to come into effect on the day on which the Act is passed. This will ensure that any relevant activity undertaken by the Organising Committee from the date of Royal Assent is captured in the first reporting period.

### Clause 32: Extent

- 19 Clause 32 (2) establishes that the provisions in this Part extend and apply to England, Scotland, Wales and Northern Ireland as some of the Organising Committee’s activities may be carried out anywhere in the United Kingdom, such as any enforcement action in relation to an unauthorised association under clause 3 or clause 6.

## Part 2: Association with the Games

### Clause 3: Unauthorised association with the Games

*These Explanatory Notes relate to the Birmingham Commonwealth Games Bill [HL] as brought from the House of Lords on 4 March 2020 (Bill 103)*

- 20 Clause 3 (1) provides that a person acting in the course of a business may not use a representation to suggest an association between themselves (or any other person), or any goods or services, and the Birmingham Commonwealth Games 2022. A representation need not be visual; it could simply be a statement designed to convince the public that a business is in any way associated with the Games.
- 21 This provision is intended to prevent the use of inventive tactics by those trying to gain commercial benefit from an association with the Commonwealth Games without having made the financial or other commitments of an authorised business.
- 22 Clause 3 (2) provides examples of an association between the Games and a person providing goods and services. Subsection (3) provides a non-exhaustive list of how a representation could be used to suggest an association and is designed to illustrate how the right of association could be infringed without using words, images or symbols which are otherwise protected (for example; the Birmingham 2022 logo, for which a registered trade mark will be sought).
- 23 Clause 3 subsections (4) and (5) provide that any breach of subsection (1) is to be considered an infringement of the Organising Committee's exclusive right to use this type of representation and that the Organising Committee can take action in a civil court against such an infringement to seek relief, including damages or an injunction.
- 24 Subsection (6) specifies for each jurisdiction which courts may grant relief.
- 25 For completeness, subsection (7) makes clear that representations are not prohibited when they are authorised under clause 4 or captured under the exceptions to the prohibition under clause 5. It also makes clear that the restriction on unauthorised association is enforceable only by the Organising Committee, which may apply to the court for an order in relation to infringing goods and documents under clause 6, subject to the protections for a person with an interest in those goods and documents set out in clause 7.
- 26 Subsections (1) to (3) of this clause, and clauses 4, 5 and 6(a), are subject to the sunset provision at clause 33(3); they will cease to have effect on 1 January 2023, when it is anticipated that all events associated with the Games will have taken place and the Organising Committee will be, or will shortly be, wound up.

#### Clause 4: Authorised association

- 27 Clause 4 provides for the Organising Committee to grant an authorisation to a person acting in the course of a business so that they may legitimately associate with the Games. Use of a representation by an authorised person will not infringe the right of association described in clause 3.
- 28 Subsection (2) provides that such an authorisation may be granted in relation to a person acting in the course of business (or a group of businesses). It may also be granted in respect of a particular type of representation – such as if the Organising Committee decided to allow the use of a particular type of representation to express general support for the Games. An authorisation may also be subject to conditions or be revoked.
- 29 Subsection (3) allows the Organising Committee to take account of any agreements entered into by others - for example the Secretary of State - when considering whether to grant an authorisation. Subsection (4) requires that authorisations be given in writing.

#### Clause 5: Exceptions to the prohibition on unauthorised association

- 30 Clause 5 establishes a number of circumstances where activities are not prohibited (and so do not require authorisation by the Organising Committee).

- 31 Subsection (1)(a) provides that it would not be an unauthorised association for a business to use a trade mark registered in its own name, or which it has been granted a licence to use (provided the relevant goods or services are registered for that use). Similarly, subsection (1)(b) provides that it would not be an unauthorised association for a business to use its own registered design.
- 32 Subsection (1)(c) protects the use of a representation under another right that existed before the date on which the Bill obtains Royal Assent. This provision is designed to ensure that those who obtained rights, which, for example, may include an unregistered trade mark or design or the sort of rights which may be enforced through an action for passing off, before that date are unaffected by the restriction. In contrast, a person who acquires a right on or after that date would need to register that right if they wish to suggest an association with the Games. Under the Trade Marks Act 1994, the rights of a proprietor have effect from the date of registration, which is the date of filing the application for registration (sections 9(3) and 40(3)). Equivalent provision applies to registered designs (section 3C of the Registered Designs Act 1949).
- 33 Subsection (2) allows a representation to be used by a business if the representation was used in that way before 21 December 2017 and has been used by the business continuously since that date. This is the date on which the Games were awarded to Birmingham by the Commonwealth Games Federation. For example, a company established in 2007 under the name of Commonwealth Foods and which has consistently traded under that name, would not infringe the prohibition unless, since the Games were awarded, that business changed the way in which it used the representation. This enables a person who does not have an enforceable right - protected by virtue of subsection (1)(c) - but who nevertheless carried out their business in a particular way before the Games were awarded (and so could not have anticipated that representations suggesting an association with the Games might be restricted), to continue to carry out their business in that way even if doing so might have such an effect.
- 34 Subsection (3) provides for certain exceptions, such as the use of certain types of factual information when providing goods or services, which would not amount to an unauthorised association with the Games. This includes representations that describe (amongst other things) the purpose, quality or origin of a product or service. For example, a restaurant might state on its website that it was within walking distance of Alexander Stadium, a venue for the Commonwealth Games in 2022. This would be a factual description and would not be deemed an unauthorised association.
- 35 Subsections (4) – (6) provide that it is not an unauthorised association to use a representation in a Games related publication or broadcast for reporting purposes. This is to ensure that information about the Games can be shared - such as in news broadcasts. However, this exception does not apply if the activity has the purpose of promoting something other than the Games. Incidental inclusion of the Games in other artistic endeavours would also not be deemed an unauthorised association.
- 36 Subsection (7) enables goods sold in accordance with an authorisation to be further sold without breaching the prohibition, provided this is done in accordance with the authorisation.
- 37 Subsection (8) provides that the use of a representation by the Organising Committee does not constitute an unauthorised association.
- 38 Subsection (9) sets out that exceptions relevant to providers of information society services are contained in Schedule 1.

## Schedule 1: Unauthorised association: Providers of information society services

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- 39 This Schedule makes provision regarding the liability of providers of information society services in the United Kingdom in relation to unauthorised association. It provides exceptions to the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information.

#### Clause 6: Enforcement of this Part in relation to goods and documents

- 40 Clause 6 provides for the remedies which may be sought by the Organising Committee in relation to infringing goods or documents. These are defined in subsection (2) as goods or documents bearing an unauthorised representation and things which have been specifically designed or adapted to produce such goods or documents. This clause is intended to enable a court to make orders in relation to physical representations; for example, where there is an infringing representation on a t-shirt.
- 41 Subsection (3), provides a number of remedies that a court could order, following an application from the Organising Committee. This gives the court a suite of options from delivery, to erasure, to forfeiture and destruction. In practice, whilst it is preferable that the Court orders the removal of a representation that creates an unauthorised association in the first instance, there may be reasons why delivery up - the surrender of goods - is required. For example, where a court considers an order for erasure might not be complied with. However, if a court considers no further enforcement action is to be taken, a court may order that goods be returned to someone.

Subsection (4) provides that an order for the forfeiture or destruction of goods or documents can only be made as a last resort where no other remedy is available.

#### Clause 7: Protection for persons with an interest in goods or documents

- 42 Clause 7 provides that those with an interest in any goods or documents that are subject to court proceedings have certain rights. This means that any application to the court must be served on any identifiable person with an interest in the goods, and that an interested party can appear in the court proceedings or even bring an appeal. For example, an interested party could be someone who owns goods (even if they were not in that person's control). In the event a court makes an order under clause 6(3)(c) for the return of goods or documents, it may order the return of those goods to anyone with an interest in them. For example, the Organising Committee may bring action against Person A who is in the possession of infringing goods or documents, whilst the goods actually belong to Person B. If Person B can be identified, the notices should be served on both Person A and B. Should a court decide to order those goods to be returned, the court would consider the interests of both Person A and B before making such an order.
- 43 Subsection (2) provides that no order for destruction or forfeiture will be exercised until after the appeals period ends or any appeal is determined or abandoned. The appeals period for statutory appeals is specified in the relevant court rules.

#### Clause 8: Guidance

- 44 Clause 8 provides that the Organising Committee is under a duty to produce guidance on this Part of the Bill within 31 days of Royal Assent. (The commencement provision at clause 33(1) provides for this provision to come into effect on the day of Royal Assent.) The Organising Committee will publish guidance on the new provisions as soon as possible in order to ensure that any person acting in the course of business who might have wished to make an infringing representation has the opportunity to understand the restrictions imposed by Part 2 before the restrictions take effect. The guidance is intended to provide an accessible and user-friendly explanation of these provisions - including how businesses can engage with the Games and more detail about enforcement action.

## Clause 9: Interpretation of Part 2

- 45 Subsection (1) provides definitions for the terms used in this Part. Clause 32 establishes that this Part extends and applies to England, Scotland, Wales and Northern Ireland. Interpretation of the terms used in clause 5 is also provided for the application of this part in Scotland.

## Clause 32: Extent

- 46 Clause 32 subsection (2) establishes that this Part extends and applies to England, Scotland, Wales and Northern Ireland. Clause 33 subsection (1) provides for Clause 8 to come into effect on the day of Royal Assent; this is to ensure that the Organising Committee is under a duty to publish guidance in advance of the prohibition on making unauthorised representations coming into effect, in order to raise public awareness about the potential effect of the restrictions and enable those affected to take steps to avoid infringing the prohibition.

## Part 3: Touting, Advertising and Trading Offences

### Clause 10: Ticket touting offence

- 47 This clause establishes that it is a criminal offence to tout a Games ticket. Subsections (1) – (3), establish that it is an offence for a person to sell, offer to sell, or expose for sale (for example in a shop window) a Games ticket without authorisation from the Organising Committee. The offence is committed where it is carried out in a public place, in the course of a business (including at face value or below), or where the intention is for any person to make a profit from the sale of the ticket. It does not cover a person giving away their ticket informally for free or for payment of up to the face value of the ticket, unless this activity takes place in a public place.
- 48 Subsection (3)(d) also makes it an offence to advertise that a ticket is available for purchase. However, by virtue of subsection (4), this does not apply where a person advertises that a Games ticket is available to purchase from someone else and the person advertising the ticket did not know, or could not be expected to know, that the ticket was being touted.
- 49 Subsection (5) applies the offence where a ticket is offered to a person paying for other goods and services (for example, as part of a promotional offer where a ticket is given to a consumer if they purchase a certain amount of other goods or services).
- 50 Subsection (6) defines what is meant by a ‘Games ticket’. It covers a ticket for any event forming part of the Birmingham Games, including non-sporting events (for example the Opening and Closing Ceremonies), or any other event organised by or on behalf of the Organising Committee.
- 51 Subsection (7) provides that the Organising Committee cannot commit the offence.
- 52 Subsection (8) provides for the penalties for the offence, and subsection (9) makes provision regarding the recovery of fines in Scotland.
- 53 Subsection (10) establishes that clauses 10 and 11 are subject to Schedule 2, which sets out restrictions and exceptions in relation to the application of the provision to information society service providers.

### Clause 11: Ticket touting outside of United Kingdom

- 54 Clause 11 sets out how the offence will apply to activity outside the United Kingdom.
- 55 Subsection (1) establishes that if a United Kingdom person (as defined in subsection (6)) carries out activity outside the United Kingdom that would constitute a ticket touting offence

if carried out in the United Kingdom, they would also commit an offence under this clause 10.

- 56 Subsection (2) sets out that a ticket touting offence committed by a service provider (who is established in the United Kingdom (as defined in subsection (6)), but is not a United Kingdom person), where this is carried out in a European Economic Area state other than the United Kingdom, would constitute an offence under clause 10 as if carried out in the United Kingdom.
- 57 Subsection (3) establishes that proceedings for any offence committed outside the United Kingdom may be taken in any place in the United Kingdom and subsection (4) makes provision regarding the application of this provision to Scotland.
- 58 Subsection (5) refers to paragraph 1 of Schedule 2, which sets out restrictions on the institution of proceedings against service providers established in an EEA state other than the United Kingdom.
- 59 Subsection (6) defines what is meant by ‘established’ in relation to a service provider, ‘information society services’, ‘service provider’, ‘sheriff court district’, ‘United Kingdom national’ and ‘United Kingdom person’.

#### Clause 12: Other provision about authorisations under section 10

- 60 This clause makes provision regarding the authorisations that may be granted by the Organising Committee.

#### Schedule 2: Ticket touting: Providers of information society services

- 61 This Schedule makes provision regarding the liability of United Kingdom and non-United Kingdom providers of information society services in relation to the touting offence. It provides exceptions from the commission of the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information. The Schedule also provides that non-United Kingdom service providers, as defined in subparagraph (3), cannot be prosecuted for the commission of the offence regarding their provision of information society services, unless the derogation condition is met. The derogation condition is established where an information society service prejudices, or presents a serious risk of prejudicing, the pursuit of public policy and action is deemed to be proportionate.
- 62 The Schedule references at paragraph 5(a) Directive 98/34/EC. This directive has now been repealed and any reference to it has to be construed as a reference to Directive 2015/1535/EU.

#### Clause 13: Advertising offence

- 63 Clause 13 makes it an offence to advertise (or to arrange or permit advertising) in, or in the vicinity of, a specified Games location during a specified period (the “advertising offence”). A person guilty of the offence is liable to an unlimited fine.
- 64 This offence is introduced to ensure that Games locations and the areas around them provide a welcoming atmosphere for spectators and have a consistent celebratory look and feel in line with Commonwealth Games branding. This is intended to prevent activity where an advertiser ‘ambushes’ an event to compete for exposure (both at live events and via broadcast) against other advertisers who may be official sponsors of the Games. This in turn will help safeguard public investment in the Games by ensuring the rights of commercial sponsors can be robustly protected.
- 65 Subsection (1) establishes that in addition to it being an offence to carry out Games location advertising it is also an offence to permit Games location advertising (for example on private land) or to arrange for someone else to carry out Games location advertising that would be an

offence. Subsection (5) makes further provision about permitting.

- 66 Subsection (2) defines ‘Games location advertising’ as meaning when someone does something in, or in the vicinity of, a specified Games location during a specified period and where the thing is done wholly or partly for the purpose of promoting a product, service or business to members of the public who are in, or in the vicinity of, a Games location or are watching or listening to a Games event via a broadcast. Whilst there is a definition of what constitutes a “Games location” in clause 24(1), the specific locations to which the offence will apply will be stipulated in the regulations. A ‘specified period’ is also to be set out in regulations, subject to the limitation in subsection (3) on specified period. The definition of advertising as being ‘something done wholly or partly for the purposes of promoting a product, service or business’ means that activities such as promoting a cause or belief would not be prohibited (unless they also promoted a product, service or business).
- 67 Subsection (4) provides a power for the Secretary of State to make regulations about when a person will be treated, or not, as doing something, or as being, in or in the vicinity of a Games location.
- 68 Subsection (5) establishes that a person does not ‘permit’ Games location advertising if that person took all reasonable steps to prevent the advertising from taking place or continuing to take place. This means that if the offence took place on a person’s land, and the landowner took appropriate action to try to prevent the offence, they would not be considered to be ‘permitting’ advertising for the purposes of the offence.
- 69 Subsection (6) provides that it is not a defence that the advertising was carried out in accordance with a licence (see the interpretation of ‘licence’ at clause 24) (for example, from a local authority or private land owner), other than an authorisation granted by the Organising Committee (as set out at clause 14).
- 70 Subsection (7) provides a penalty for the offence, namely that anyone found guilty of this offence is liable to an unlimited fine.
- 71 Subsection (8) makes clear that no offence is committed if advertising has been authorised by the Organising Committee under clause 14 or is otherwise excepted by clause 15 or any regulations made under clause 15.

#### Clause 14: Authorised advertising

- 72 Clause 14 empowers the Organising Committee to authorise, in writing, advertising that would otherwise be considered an offence.
- 73 Subsection (1) provides that it is not an offence under clause 13 to carry out Games location advertising in accordance with an authorisation granted by the Organising Committee, or to arrange for or to permit advertising that is so authorised.
- 74 Subsection (2) provides for the type of authorisations that may be granted (such as an authorisation in relation to advertising of a certain nature) and that the Organising Committee can revoke authorisations. Subsection (3) sets out the sorts of conditions which may be imposed upon authorisations by the Organising Committee (for example specifying where advertising may be carried out).
- 75 Subsection (4) allows the Organising Committee to take account of agreements entered into by others - for example the Secretary of State - when considering whether to grant an authorisation. It also allows the Organising Committee to take into account any existing advertising licences (see clause 24(1)). Subsection (5) provides that an authorisation must be in writing.

## Clause 15: Exceptions to the advertising offence

- 76 Subsection (1) establishes that advertising by the Organising Committee would not be an offence.
- 77 Subsection (2) gives the Secretary of State a power to bring forward regulations to provide additional exceptions to the advertising offence. Subsection (3) requires the Secretary of State, before making such regulations, to consult the Organising Committee, the local authority for an area that includes any place to which the regulations would apply, and any other person whom the Secretary of State considers it appropriate to consult. Subsection (4) provides that this requirement can be satisfied by consultation undertaken before clause 15 comes into force.

## Clause 16: Trading offence

- 78 Clause 16 makes it an offence to trade (or to arrange or permit trading) in a specified Games location during a specified period, or in a relevant public place (see 16(8)) in the vicinity of a Games location during a specified period (the “trading offence”). Trading is defined for this purpose at subsection (2) as selling, offering or exposing an item for sale; providing, or offering to provide, a service for gain or reward; providing public entertainment for gain or reward; and appealing for money or other property.
- 79 This offence will improve the spectator experience by helping ensure that trading does not obstruct the easy movement around Games areas such as from transport hubs to Games venues.
- 80 Subsection (1) establishes that, in addition to it being an offence to carry out Games location trading, it is also an offence to permit Games location trading (for example on private land) or to arrange for someone else to carry out Games location trading. Subsection (5) makes further provision about permitting.
- 81 Subsection (2) defines “Games location trading” as meaning trading in a specified Games location at any time during a specified period, or trading in a relevant public place (defined in subsection (8)) in the vicinity of a Games location during a specified period. Whilst there is a definition of what constitutes a “Games location” in clause 24(1), the specific locations to which the offence will apply will be stipulated in the regulations. What is a “specified period” will be set out in regulations (subject to the limits about specified period in subsection (3)).
- 82 Subsection (4) provides a power for the Secretary of State to make regulations about when a person will be treated, or not, as doing something, in or in the vicinity of a Games location.
- 83 Subsection (5) establishes that a person does not “permit” Games location trading if that person took all reasonable steps to prevent the trading from taking place or continuing to take place. This means that if the offence took place on a person’s land, and the landowner took appropriate action to try to prevent the offence, they would not be considered to be “permitting” trading for the purposes of the offence.
- 84 Subsection (6) provides that it is not a defence to the trading offence that the trading was carried out in accordance with a licence (see the interpretation of “licence” at clause 24) (for example, from a local authority, private landowner or police), other than an authorisation from the Organising Committee (as set out at clause 17).
- 85 Subsection (7) provides a penalty for the offence, namely that anyone found guilty of this offence is liable to an unlimited fine.
- 86 Subsection (8) defines a relevant public place as a highway, indoor carpark, or any outdoor space to which the public have access.
- 87 Subsection (9) makes clear that no offence is committed if trading has been authorised by

clause 17 or is otherwise excepted by clause 18 or any regulations made under clause 19.

### Clause 17: Authorised trading

- 88 Clause 17 empowers the Organising Committee to authorise, in writing, trading that would otherwise be considered an offence. Subsection (1) provides that it is not an offence to carry out trading in accordance with such an authorisation, or to arrange for or permit trading so authorised. Subsection (2) provides for the type of authorisations that may be granted (such as in relation to trading of a certain nature) and that the Organising Committee can revoke authorisations. Subsection (3) sets out the sorts of conditions which may be imposed by the Organising Committee upon authorisations (for example specifying where trading may be carried out).
- 89 Subsection (4) allows the Organising Committee to take account of agreements entered into by others - for example the Secretary of State - when considering whether to grant an authorisation. It also allows the Organising Committee to take into account any existing trading licences (see clause 24).

### Clause 18: Exceptions for certain kinds of trading

- 90 Clause 18 establishes that trading by the Organising Committee, and other types of trading specified in the clause (for premises adjoining a highway; public facilities; motor vehicles), would not be an offence.
- 91 Subsection (2) deals with activities relating to premises adjoining a highway. For example, the trading offence will not apply to selling an item to a person who is in a premises adjoining a highway, or providing a service to such a person. This includes, for example, deliveries of groceries or providing services to premises such as window cleaning.
- 92 Subsection (3) lists certain public amenities (the provision of public toilets, cash machines or permanent telephone kiosks) which are excepted from the offence. Whilst it is not an offence to provide a permanent telephone kiosk, an unauthorised advertisement on a telephone kiosk would constitute an advertising offence under clause 13.
- 93 Subsection (5) lists a range of activities relating to motor vehicle services (such as provision of a car park, or selling a motor vehicle) which are excepted from the offence. Whilst it would not be an offence to provide motor vehicle parking services from a place usually used for such services, it would be an offence to undertake other types of unauthorised trading in car parks within the prohibited area during the prohibited period (unless they are excepted in clause 18).

### Clause 19: Power to provide exceptions to the trading offence

- 94 Clause 19 gives the Secretary of State a power to bring forward regulations to provide additional exceptions to the trading offence. Subsection (2) requires the Secretary of State, before making such regulations, to consult the Organising Committee, the local authority for an area to which the regulations would apply, and any other person whom the Secretary of State considers it appropriate to consult. Subsection (3) provides that this requirement can be satisfied by consultation undertaken before clause 19 comes into force.

### Clause 20: Enforcement of offences under this Part

- 95 Clause 20 provides for the enforcement of the offences set out in this Part and gives effect to Schedule 3.
- 96 Subsection (1) provides that the ticket touting offence may be enforced by a local weights and measures authority in England, Scotland or Wales, or by the Department for the Economy in Northern Ireland. By virtue of subsection (2), however, it does not authorise a local weights

and measures authority in Scotland to undertake a prosecution under this offence.

97 Subsection (3) provides that the advertising and trading offences may be enforced by a local weights and measures authority in England.

98 Subsection (4) provides that a local weights and measures authority and the Department for the Economy can use the investigatory powers set out at Schedule 5 to the Consumer Rights Act 2015 - see <http://www.legislation.gov.uk/ukpga/2015/15/schedule/5> and subsection (5) amends Schedule 5 to that Act so that these powers can be used to enforce the relevant provisions in this Bill. Subsection (6) gives effect to Schedule 3, which sets out further provision about the enforcement of the touting, advertising and trading offences.

### **Schedule 3 – Further provision about enforcement**

99 This Schedule sets out a number of powers available to an enforcement officer who is enforcing the ticket touting, advertising and trading offences in addition to the investigatory powers set out in Schedule 5 to the Consumer Rights Act 2015 (see <http://www.legislation.gov.uk/ukpga/2015/15/schedule/5>). In paragraph 1, a number of terms are defined for the purposes of the Schedule to the Bill.

#### **Conditions for seizure and detention of goods**

100 Paragraph 2(1) provides additional circumstances under which the powers to seize goods or documents under paragraph 28 or 29 of Schedule 5 to the Consumer Rights Act 2015 may be used; namely, to stop a relevant offence from occurring, or to prevent it from continuing. Subparagraph (1) also provides for the power of seizure to be used to enable the goods or documents to be used as evidence in proceedings. Subparagraph (2) makes clear that this does not preclude an officer using the power to seize and detain goods as set out in Schedule 5 to the Consumer Rights Act 2015 in relation to any other legislation in relation to which the investigatory powers in Schedule 5 can be used (for example, if in the course of enforcing the trading offence, the officer discovers counterfeit goods that are liable to forfeiture).

#### **Additional powers of search and seizure**

101 Paragraph 3 provides for additional powers of search and seizure where an officer is in a public place (other than in reliance on a power in paragraph 23(1) or 32 of Schedule 5 to the 2015 Act) and the officer reasonably suspects that a person has committed, is committing or is about to commit a relevant offence. This is intended, for example, to provide that officers are able to act against itinerant traders in a public place who are not trading from premises.

102 Paragraph 3(2) provides that an officer may search or examine, seize and detain an item in the person's possession or control.

103 Paragraph 3(3) makes clear that items may only be seized where it is appropriate to stop an offence or prevent it continuing, or to enable the item to be used as evidence.

104 Paragraph 4 provides that the power to break open a container as provided by the Consumer Rights Act at paragraph 31 of Schedule 5 is available to an enforcement officer for the purpose of exercising the power conferred by paragraph 3 (i.e. where a person is not trading from premises).

#### **Protections relating to search and seizure under paragraph 3**

105 Paragraphs 5-8 set out further conditions which apply to the powers of search and seizure under paragraph 3. Paragraph 5 provides that the officer must show evidence of the officer's identity and authority (unless it is not reasonably practicable to do so). Paragraph 6 provides that an enforcement officer must inform an individual that an item has been seized and provide a written record of the seizure.

106 Paragraph 6 subparagraph (2) also provides that an enforcement officer exercising the power of seizure must have regard to any relevant code of practice under the Police and Criminal Evidence Act 1984 (in England and Wales) or under the Criminal Evidence (Northern Ireland) Order 1989 (in Northern Ireland).

107 Paragraph 7 provides that an enforcement officer cannot use the power in paragraph 3(2)(b) to seize a legally privileged item.

108 Paragraph 8 makes clear that the powers in paragraph 3 and 4 cannot be used to search a person.

### **Retention etc of items seized under paragraph 3**

109 Paragraph 9 provides that any items seized under paragraph 3 may be retained for a maximum of 3 months or, if it is necessary to retain for a longer period for specific purposes - such as bringing a criminal prosecution where the item is used as evidence - only for as long as required for those purposes. This paragraph also provides a reference to the corresponding provisions in Schedule 5 to the Consumer Rights Act for seizure under paragraph 28 or 29 of that Schedule.

110 Paragraph 10 provides that a person from whom goods were seized is able to access the detained items, and that they may appeal that detention, as per the provisions contained with Schedule 5 to the Consumer Rights Act at paragraphs 38 and 40.

### **Disposal**

111 Paragraph 11 subparagraph (1) provides for the disposal of seized items where they are no longer required by an enforcement authority. However, items may only be disposed of when they have been held for a minimum of 3 months and where it has not been possible for the reasons given in paragraph 11(1)(c) to return the item. For example, if the items were seized from a person who gave a false address, and who could not be contacted by the enforcement authority in another way, the authority could dispose of those items after 3 months.

112 Subparagraph (2) sets out that seized items relate to items seized under paragraph 3 or the exercise of relevant powers under Schedule 5 to the Consumer Rights Act. Subparagraph (3) provides that the enforcing authority may dispose in any way they consider appropriate.

113 Subparagraph (4) provides that perishable items (such as food) that no longer have any commercial value can be disposed of by an enforcing authority before the end of the 3-month period.

114 Subparagraph (5) notes who may be entitled to an item - this is either a person from whom the items were seized or, if not the same person, the person who owns the items.

### **Power to conceal or destroy prohibited advertising**

115 Paragraph 12 subparagraph (1) provides that where necessary, an officer may conceal an advertisement that the officer reasonably suspects is an offence under clause 12, but the provision at subparagraph (2) provides that where the seizure or concealment of an advertisement is not reasonably practicable, an enforcement officer may deface or destroy an advertisement, such as when a poster is stuck to the side of a building in the vicinity of a Games location. Subparagraph (3) makes it clear that, for the purpose of exercising a power in subparagraphs (1) or (2) (concealment or destruction), an enforcement officer can exercise a power of entry and require the assistance of a person on the premises as provided within paragraphs 23 and 32 to 34(1) of Schedule 5 to the Consumer Rights Act 2015. Subparagraph (4) provides that nothing may be concealed for longer than is necessary to prevent the commission of the offence at clause 13. Subparagraph (5) provides that a person is not liable if

they fail to reveal any advertising, provided they took reasonable steps to reveal the advertisement as soon as reasonably practicable after the concealment ceased to be necessary, or that they ensured any other person was able to reveal an advertisement.

### **Obstruction of officers etc**

116 Paragraph 13 provides that in line with the powers in the Consumer Rights Act 2015, it is an offence to obstruct an enforcement officer. It is also an offence to pose as an enforcement officer.

### **Exercise of powers outside authority's area**

117 Paragraph 14 provides that a local weights and measures authority may exercise a power contained by this Schedule outside of their area.

### **Compensation**

118 Paragraph 15 provides that a person whose property is damaged as a result of the exercise or purported exercise of certain powers is entitled to compensation from a relevant authority if the exercise of the power was unlawful or any force used in the exercise of the power was unreasonable. Subparagraph (2) explains which powers compensation relates to. Subparagraph (3) provides for the amount of compensation that is to be paid.

119 Paragraph 16 provides that the Secretary of State may make regulations setting out supplementary provision relating to the payment of compensation, including how to make a compensation claim, to whom any claim must be made, and who will consider any review or appeal.

### **Clause 21: Offences by directors, partners etc**

120 Clause 21(1) sets out circumstances in which, where the touting, advertising or trading offence has been committed by a body corporate, an individual (as well as the body corporate) will also be liable to have proceedings taken against them. In particular, if it is proven that the offence was committed with the consent or connivance of a person falling within subsection (2) or is attributable to any neglect on the part of such a person, that person - as well as the body or organisation - could also be found guilty.

121 This is intended to ensure that both a company and an individual could be found guilty of the offence.

122 The persons listed in subsection (2) are a director, manager, secretary or other similar officer of the body, or any person who was purporting to act in such a capacity. Subsection (3) provides where a body corporate is managed by its members, subsection (1) applies to a member as if they were a director i.e. a member could also be liable for the offence in the same circumstances a director could be.

123 Subsection (4) makes similar provision with regard to the partners of a Scottish partnership.

124 Subsection (5) limits subsections (1) to (4) by providing that where the ticketing offence is carried out overseas by a body corporate or Scottish partnership, the offence only applies in respect of an officer where that officer is a United Kingdom national or habitually resident in the United Kingdom, a body incorporated under the law of a part of the United Kingdom, or a Scottish partnership.

### **Clause 22: Existing restrictions to be unaffected**

125 Clause 22 provides that nothing in this Part authorises a person to do anything that is otherwise against the law or affects any other requirement to hold a licence. For example, in order to be authorised to trade, a street trader must have permission from the local authority

(or land owner where this is private land) to trade.

### Clause 23: Guidance and information

- 126 Clause 23 provides that guidance must be published by the Organising Committee about the operation of the advertising and trading provisions (see clause 23(2)).
- 127 The guidance is intended to provide an accessible and user-friendly explanation of the impact of these provisions including where and when restrictions will be in place, how advertising and trading will be authorised, and to provide more detail about enforcement action.
- 128 Subsection (4) requires local authorities to share this guidance with traders who hold a licence or consent (see the definition of “licence” in clause 24) to trade from that local authority (or who have applied for one) and who the authority considers could be affected by the trading offence. Local authorities are also required to provide any additional information as appropriate which could assist with mitigating the impact of the trading offence.

### Clause 24: Interpretation of Part 3

- 129 Subsection (1) sets out the meaning of terms used in Part 3 of the Bill.
- 130 Subsection (2) makes provision about determining whether a person is carrying out Games location trading for the purposes of clause 16. The effect of subsection (2)(a) is that in determining whether a person is trading in a relevant public place or specified Games location, it is not necessary, for example, for both an offer to have been made in a relevant public place or specified Games location (as the case may be) and for any person to whom the offer is made to be in such a place.

### Clause 32: Extent

- 131 Clause 32 establishes the extent and application of the provisions which relate solely to the advertising and trading offences in this Part of the Bill as extending to England and Wales only. These provisions will apply only in England as the vicinity of Games locations fall in England. The remaining provisions will apply and extend to England, Scotland, Wales and Northern Ireland given the need to take enforcement action in relation to touting. Clause 33(1) provides that the regulation making powers provided in this Part and in Schedule 3 come into force on Royal Assent.

## Part 4: Transport

### Clause 25: Games transport plan

- 132 Clause 25(1) allows the Secretary of State to place a requirement on a local authority in England or combined authority to produce a Games transport plan. “Combined authority” is defined in clause 29. Under subsection (8) the Secretary of State may only place this requirement on such an authority in writing and may revoke it. Subsection (3) provides that this authority will be required to prepare the plan, keep it under review, make appropriate revisions and publish the plan and any revisions, unless there are security reasons preventing this.
- 133 Subsection (4) requires the local authority or combined authority to consult a number of persons in preparing or revising the plan; these persons are listed in subsection (5). Subsection (7) allows this consultation to take place prior to the Secretary of State being enabled to place the requirement on the authority to produce the plan.
- 134 Under subsection (6) local traffic authorities for roads affected by the plan will be required to undertake their transport functions with a view to securing the implementation of the proposals contained in the plan.

## Clause 26: Temporary prohibition or restriction on roads

- 135 Clause 26(1) allows a traffic authority for a road in England to make a temporary traffic regulation order (TTRO) or issue a temporary traffic regulation notice (TTRN) for the purposes of implementing the Games transport plan, facilitating transport services in connection with the Games, and facilitating travel by any person for a purpose connected to the Games. Both TTROs and TTRNs can be used to impose restrictions or prohibitions upon road use, including footpaths, cycle tracks and other types of highway, that the traffic authority may consider necessary. They can apply to identified classes of vehicle, motorised or not, or pedestrians. TTROs provide for longer-term temporary restrictions but a proposal to make one needs to be publicised 7 days prior to it being made, whereas TTRNs are a short-term measure that can be used where the traffic authority is satisfied that the restriction or prohibition should come into force without delay. When used for the purposes outlined in subsection (1), these are to be known as “Games temporary traffic regulation orders” or “Games temporary traffic regulation notices”.
- 136 Subsection (2) provides that the durations for which TTROs and TTRNs may ordinarily be in place, as per section 15 of the Road Traffic Regulation Act 1984, shall not apply in the case of Games TTROs or Games TTRNs; neither will the power to extend them. Regulation 8(3) of the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 is disapplied for Games TTROs to ensure that they can be revoked as soon as they become unnecessary. As Games TTROs will not be made for the purpose of works on the road, regulation 6 is disapplied.
- 137 Subsection (3) provides that Games TTROs or Games TTRNs cannot come into operation any earlier than 21 days before the Games Opening Ceremony. Subsection (4) provides that Games TTROs cannot remain in effect any later than 5 days after the Games Closing Ceremony.
- 138 Subsection (5) provides that Games TTRNs cannot remain in force longer than 21 days in total, starting on the day upon which they were issued, or 5 days after the end of the Games, whichever is sooner.

## Clause 27: Concurrent exercise of powers of a local traffic authority

- 139 Clause 27(1) grants the power to make Games TTROs and issue Games TTRNs to the authority appointed to produce the Games transport plan as per clause 25(1) as if they were the local traffic authority for the roads being regulated. An order made or notice issued by this authority will be treated as if it were an order made or notice issued by the local traffic authority.
- 140 Subsections (2) and (3) establish that this power is dependent on the consent of the relevant local traffic authority and subsequently on this local traffic authority being identified in future regulations issued by the Secretary of State. The authority directed to prepare the plan will furthermore only be able to make a Games order or issue a Games notice if the local traffic authority for the road agrees to it (subsection (4)).
- 141 When exercising powers under the Road Traffic Regulation Act 1984, including those provided by clause 26 of this Bill, section 122 of the 1984 Act requires the local traffic authority to have regard to the need to secure access to premises, protecting amenities, environmental considerations, facilitating the passage of public service vehicles and their users and other pertinent considerations before complying with their duty to use powers under the Act to secure the expeditious, convenient and safe movement of vehicular, pedestrian and other traffic and the provision of suitable and adequate parking facilities, both on and off the highway. Clause 27(5) provides that this duty will also apply to a local traffic authority when it is asked to agree, under subsection (4), to an order being made or a notice issued by the authority directed to prepare the plan.

## Clause 28: Power to direct a local traffic authority

142 Clause 28(1) allows the Secretary of State to direct a local traffic authority to make a Games temporary traffic regulation order or issue a Games temporary traffic regulation notice. The Secretary of State may make such a direction only if satisfied that such action is necessary for any of the purposes specified in clause 26 and the relevant local traffic authority has failed to take that action within 7 days of being asked by the Secretary of State. Under subsection (7) the Secretary of State must issue the direction in writing and may revoke it.

143 Subsection (2) places a requirement on the Secretary of State to consult a number of groups before requesting a local traffic authority to take the action. Subsection (3) provides that the Secretary of State is not bound by the requirements to consult or to request the local traffic authority to take action if satisfied that the direction must be issued without delay.

144 Under subsections (4) and (5), if the direction is not complied with before the end of the period specified in the direction, the Secretary of State will be able to take the directed action in place of the relevant local traffic authority and may recover from the authority the costs of so acting.

145 Subsection (6) sets out that the Secretary of State may not issue a direction under this clause to the local authority or combined authority directed to prepare the Games transport plan should that authority acquire powers as per clause 27(1) and (2).

## Clause 29: Interpretation of Part 4

146 Clause 29 sets out the meaning of terms used in part 4 of the Bill.

## Clause 32: Extent

147 Clause 32 extends the provisions relating to transport to England and Wales. These provisions will apply in England only as they are only required in relation to Games locations, all of which fall in England.

# Part 5: Final Provisions

## Clause 30: Power to make transitional provision and savings

148 Clause 30 contains a standard power for the Secretary of State to make transitional or savings provision where it is considered necessary or expedient in consequence of any provision of the Bill. This is intended to enable changes made to the Bill to be implemented in an orderly manner. This will help to ensure that, where certain provisions of the Bill cease to have effect, this can be managed smoothly and is necessary in the absence of a specific delegated power in relation to commencement.

## Clause 31: Regulations

149 Clause 31 confirms that the powers in the Bill to make regulations are exercisable by statutory instrument and are to be made under the negative resolution procedure. Regulations exercised by statutory instrument under paragraph 16 of Schedule 3 are to be made under the affirmative resolution procedure.

## Clause 32: Extent

138 Clause 32 deals with the extent of provisions; respective extent is dealt with in the commentary on each of the Bill's provisions.

## Commencement

### Clause 33: Commencement and duration

150 Clause 33 provides for Part 1 (Organising Committee financial assistance and annual reporting), the duty on the Organising Committee to publish guidance about the prohibition on unauthorised association with the Games (clause 8), Part 5 (final provisions) and any power to make regulations to come into force on the day the Act is passed; under subsection (2) the remaining provisions come into force two months after this date.

151 Subsections (3) and (4) set out when some of the Bill's provisions will cease to have effect. Clause 3(1) to (3) and subsection (6)(a), clause 4 and clause 5 and Schedule 1 (which prohibit unauthorised association and provide for relevant exceptions) will cease to have effect on 1 January 2023. This is when it is anticipated that all events associated with the Games will have taken place and the Organising Committee will be, or will shortly be wound up.

152 Subsection (4) provides that the ticketing touting provisions (clauses 10 to 12) and Schedule 2 will cease to have effect the day after the Games ends because tickets will no longer be valid after this point.

### Clause 34: Short title

153 This Act may be cited as the Birmingham Commonwealth Games Act 2019.

## Financial implications of the Bill

154 The government expects that a maximum of £417.7m (out of the estimated £594 million of funding from central government) will be funded by the Secretary of State under clause 1 of the Bill, spread over three years

155 Costs may arise from the powers to enforce Part 3 of the Bill, including compensation obligations in the Schedule, and the powers to make transport plans and orders and to issue notices in Part 4. However, due to the limited and temporary nature of these provisions, costs are expected to be minimal. No sums are expected to be raised as a result of the Bill.

## Parliamentary approval for financial costs or for charges imposed

156 A money resolution will be required in relation to clause 1 of the Bill, which provides that the Secretary of State may provide financial assistance to the Organising Committee for the purposes of delivering the Games, or for any other purpose connected to, or arising from, the Games.

157 The House of Commons will be asked to agree that any such expenditure arising from the Bill (should it become an Act) will be taken out of money provided by Parliament.

158 A ways and means resolution will not be required as no charges are imposed by the Bill.

## Compatibility with the European Convention on Human Rights

- 159 A statement has been made, pursuant to section 19 of the Human Rights Act 1998, by the Secretary of State for Digital, Culture, Media and Sport that, in his view, the Bill's provisions are compatible with the Convention rights.
- 160 The Government has published a separate ECHR memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the [Government website](#).

## Annex A - Territorial extent and application in the United Kingdom

161 Part 1: Organising Committee financial assistance and reporting and Part 2: association with the Games both extend and apply to England, Scotland, Wales and Northern Ireland. The ticketing provision at clauses 10 to 12 in Part 3 extends to England and Wales, Scotland and Northern Ireland and applies to England and Wales, Scotland and Northern Ireland and to United Kingdom nationals and those normally resident in the United Kingdom where the offence is carried out overseas. The remaining clauses in Part 3 covering advertising and trading extend to England and Wales but apply in relation to England as they will have effect in the vicinity of Games locations (all of which will be in England). Similarly, the transport measures in Part 4 extend to England and Wales and apply only to England, again as a result of Games locations being in England.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 Organising Committee								
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 2 Association with the Games								
Clauses 3-9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 Touting, Advertising and Trading Offences								
Clauses 10-	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
12								
Schedule 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	(W,S,NI) Yes (W,S,NI)
Clauses 13-19, 23	Yes	No	No	No	Yes	Yes	Yes	No
Clause 20	Yes	Yes	In part	In part	N/A	N/A	N/A	Y (W,S,NI)
Clause 21	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Y (W,S,NI)
Clause 22, 24	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 3	Yes	Yes	In part	In part	N/A	N/A	N/A	Y (W,S,NI)
Part 4 Transport Clauses 25-29	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 Final Provisions Clauses 30-34	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

## Subject matter and legislative competence of devolved legislatures

162 Provisions in Part 3 covering advertising and trading and the provisions in Part 4 which relate to transport extend to England and Wales and apply in England only as they will all take effect in the vicinity of Games locations, all of which fall in England.

163 We consider the subject matter of Part 3 (the advertising and street trading provisions) to be primarily the regulation of sport events - which is a devolved matter in Scotland, Wales and Northern Ireland.

164 We note that aspects of advertising and trade are reserved in Schedule 5 to the Scotland Act 1998 and Schedule 7A to the Government of Wales Act 2006 but consider the main purpose of the provisions is to host a successful sports event, in particular, to protect the commercial rights of sponsors and provide a good Games experience for spectators.

165 On this basis, we consider corresponding provision would be within the competence of the

National Assembly for Wales and the Scottish Parliament. We also note that corresponding provision was made by the Scottish Parliament for the Glasgow Commonwealth Games 2014.

- 166 In Northern Ireland, we note that neither sport nor consumer protection are excepted or reserved matters under the Northern Ireland Act 1998, and that corresponding provision would be within the competence of the Northern Ireland Assembly (if the Games were taking place in Northern Ireland).
- 167 The subject matter of Part 4 of the Bill is transport – which is, for the most part, a devolved matter in Scotland, Wales and Northern Ireland.
- 168 We note that aspects of transport are reserved under Schedule 5 to the Scotland Act 1998, but consider that corresponding provision would be within the competence of the Scottish Parliament, and was made in respect of the Glasgow Commonwealth Games 2014.
- 169 Transport is within the legislative competence of the National Assembly for Wales as it is not one of the reserved matters listed in Schedule 7A to the Government of Wales Act 2006. For example, the Transport (Wales) Act 2006 amended Part 2 of the Transport Act 2000, as it applies in Wales, in respect of local transport plans.
- 170 Transport is within the legislative competence of the Northern Ireland Assembly as it is neither excepted nor reserved in Northern Ireland by virtue of sections 4 and 6 of and Schedules 2 and 3 to the Northern Ireland Act 1998. For example, regulation of traffic in Northern Ireland is provided for through the Road Traffic Regulation (Northern Ireland) Order 1997.

# **BIRMINGHAM COMMONWEALTH GAMES BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Birmingham Commonwealth Games Bill [HL] as brought from the House of Lords on 4 March 2020 (Bill 103).

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