

## **BIRMINGHAM COMMONWEALTH GAMES BILL**

### **Memorandum from the Department for Digital, Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee**

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Birmingham Commonwealth Games Bill (“the Bill”). The Bill was introduced in the House of Lords on 5 June 2019. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

#### **B. PURPOSE AND EFFECT OF THE BILL**

2. The purpose of the Bill is to bring forward a number of temporary operational measures needed to support successful delivery of the Birmingham Commonwealth Games (“the Games”) in 2022.
3. Broadly speaking, these measures:
  - a. enable HMG to continue to provide financial assistance to the Birmingham Organising Committee for the 2022 Commonwealth Games Ltd (“the OC”). The OC 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 DCMS;
  - b. criminalise the unauthorised resale of Games tickets in a public place, in the course of a business or for profit;
  - c. safeguard public investment in the Games by introducing restrictions to protect the commercial value of any association with the Games. In particular they prohibit unauthorised association with the Games, a

breach of which is enforceable by the Organising Committee as if it were a breach of an exclusive right of the Committee, with the same remedies available as for infringement of a property right. They also create criminal offences for trading and advertising (which is not authorised or excepted) in, or in the vicinity of, specified Games locations during specified periods; and

d. support successful transport operations during the Games by introducing a number of measures to ensure road regulation for Games purposes can be delivered and to ensure effective coordination between the relevant transport and traffic authorities.

4. The measures sought are in line with those introduced for previous major multi-sport events, including the London 2012 Olympic and Paralympic Games (“the London Games”) and the Glasgow 2014 Commonwealth Games (“the Glasgow Games”). Those measures were introduced by the London Olympic Games and Paralympic Games Act 2006 (“the 2006 Act”) as amended by the London Olympic Games and Paralympic Games (Amendment) Act 2011, the Glasgow Commonwealth Games Act 2008 (“the 2008 Act”) and the Glasgow Commonwealth Games Act 2008 (Games Association Right) Order 2009 (“the 2009 Order”), made under the Scotland Act 1998. This legislation was supplemented by a range of delegated legislation, such as the London Olympic Games and Paralympic Games (Advertising and Trading) (England) Regulations 2011, the Glasgow Commonwealth Games (Trading and Advertising) (Scotland) Regulations 2013, and the Glasgow Commonwealth Games (Compensation for Enforcement Action) (Scotland) Regulations 2013.

### **C. DELEGATED POWERS**

5. The Bill is divided into 5 Parts.

a. Part 1 deals with the provision of financial assistance to the OC. This Part contains no delegated powers.

- b. Part 2 provides measures in respect of association with the Games, including in relation to civil enforcement by the OC. The following clauses are addressed in this memorandum:
  - i. Clause 3, which enables the OC to authorise the use of any representation that suggests an association with the Games.
  - ii. Clause 7, which obliges the OC to publish guidance on the operation of Part 2.
  
- c. Part 3 deals with the new criminal offences introduced under the Bill and the associated delegated powers. The following clauses are considered in this memorandum:
  - i. Clause 9(2)(b) enables the OC to authorise the sale of Games tickets.
  - ii. Clause 12(2) allows the Secretary of State to make regulations specifying the Games locations in relation to which the advertising offence will apply and, in relation to any given specified Games location, the time during which where unauthorised advertising will be prohibited (unless excepted or authorised). Clause 15(2) has the same effect in respect of trading. Clauses 12(4) and 15(4) allow the Secretary of State to make regulations as to when a person is, or is not, to be treated as doing something, or as being, in or in the vicinity of a Games location.
  - iii. Clause 13 enables the OC to authorise advertising that would otherwise be prohibited by clause 12. Clause 16 has the same effect in respect of trading.
  - iv. In addition, clause 14(2) gives the Secretary of State the power to make regulations setting out exceptions to the new offence of advertising contrary to clause 12(1). Clause 18 allows the Secretary of State to set out further exceptions in respect of the trading offence in addition to the exceptions set out in clause 17.

- v. Clause 22(1) requires the OC to publish guidance about the operation of the advertising and trading provisions in Part 3 of the Bill and any regulations made under that Part.
- d. Part 4 of the Bill addresses transport measures. This section contains the following delegated powers:
- i. Clause 24 makes provision for the Secretary of State to direct a person to prepare, and keep under review, a Games Transport Plan.
  - ii. Clause 25 provides that, in addition to the grounds for making a Temporary Traffic Regulation Order or issuing a Temporary Traffic Regulation Notice identified in section 14 of the Road Traffic Regulation Act 1984 (“the RTRA 1984”), traffic authorities may use these measures for the purpose of implementing the Games transport plan, facilitating transport services in connection with the Games or facilitating travel by any person for a purpose connected to the Games.
  - iii. Clause 26 gives the Secretary of State the power, where a local traffic authority consents, to make regulations providing that the person directed to prepare the Games Transport Plan may exercise the traffic regulation powers provided by the Bill concurrently with that authority.
  - iv. Clause 27 sets out a power of Direction, permitting the Secretary of State to direct a local traffic authority to make, amend or revoke an order or issue a notice for the purposes identified above. If the authority fails to comply with a direction, the Secretary of State may make, amend or revoke an order or issue a notice in place of that authority.
- e. Part 5 contains provisions on commencement, extent and other final provisions. Clause 29 gives the Secretary of State the power to make, by regulations, such transitional provision or savings as considered necessary or expedient in consequence of any provision of this Act.

- f. Schedule 1 makes further provision about the application of the ticket touting offence in relation to persons providing information society services. This schedule does not contain any delegated powers.
- g. Schedule 2 deals with the enforcement of the touting, trading and advertising offences. Paragraph 16 of this Schedule gives the Secretary of State the power to make regulations to make provision about claims for compensation as provided for in paragraph 15.

## **Part 2: Association with the Games**

### **Clause 3: Power of OC to authorise the use of representations that suggest an association with the Games**

*Power conferred on:* The OC

*Power exercised by:* Executive decision

*Parliamentary Procedure:* None

#### **Context and Purpose**

- 6. Clause 2 provides that a person acting in the course of a business may not use any representation in a manner likely to suggest to the public that there is an association between the Games and either goods or services or a person who provides goods or services. An infringement of this provision does not occur where the OC has authorised the use of that representation (clause 3(1)). Clause 3(2) provides that the OC can grant authorisations to a person or a class of persons. Authorisation may also be granted in respect of a particular type of representation. The OC can also attach conditions to such an authorisation and has the power to revoke an authorisation (clause 3(2)).

#### **Justification for taking the power**

- 7. Commercial protections, such as clause 2, are key to the successful delivery of the Games. Similar protections were provided for in respect of the London Games and the Glasgow Games (see, in particular, Sch. 4 of the 2006 Act and the 2009 Order). The protections set out in Part 2 of the Bill are designed to

prevent the use of inventive tactics by those trying to gain commercial benefit from associating with the Commonwealth Games without having to make the financial and reputational commitments of an authorised party thereby preventing a diminution in the value of sponsorship agreements that are necessary to minimise the overall cost of hosting the Games.

8. As the OC is responsible for the overall delivery of the Games, including the spectator experience, it is considered that the OC should be responsible for the authorisation of any use of representations that may suggest an association.

#### Justification for the procedure

9. The processing of requests for authorisation is a largely administrative task and it is considered that it would not be proportionate to subject all authorisations to Parliamentary procedure. For the reasons set out above the OC is well placed to make an assessment of such an authorisation and to consider whether to attach any conditions. This is in line with the approach taken for both the London 2012 Games (see Sch. 4, paras. 4-5) and the Glasgow Games (see the 2009 Order, paras.6-7).

### **Clause 7: Duty of OC to publish guidance on Part 2 of the Bill**

*Power conferred on:* The OC

*Power exercised by:* Publication of Guidance

*Parliamentary Procedure:* None

#### Context and Purpose

10. The OC is to be responsible for authorising any use of the representations that would otherwise be prohibited by clause 2. The OC is also empowered to take enforcement action against those persons infringing the prohibition (clause 2(6)(b)). In order to ensure that members of the public are fully aware of the implications of this prohibition, the OC has a duty to publish guidance within 31 days of Royal Assent.

### Justification for taking the power

11. The purpose of this guidance will be to provide an accessible and user-friendly explanation of the effect of Part 2 of the Bill. It is appropriate that the OC is responsible for producing this guidance as the OC will be responsible for the overall look and feel of the Games and will be the only body able to take enforcement action against those infringing the prohibition in clause 2.
12. The OC will be undertaking a campaign of public engagement to reduce the risk of businesses unwittingly infringing Part 2 of the Bill and to help businesses understand what they can and cannot do in relation to the Games. The publication of guidance will facilitate this campaign and can be used in conjunction with it to provide clarity on any exceptions to the prohibition and set out examples of use of a representation that may infringe it. The use of guidance will also allow the OC to easily modify it if, for example, in the course of its engagement it becomes apparent that there is confusion over any aspect of Part 2 of the Bill.

### Justification for the procedure

13. The guidance will not be legally binding and is intended to provide clarity on the new provisions and to assist with public awareness. It is suggested that it is not necessary for Parliament to scrutinise the guidance issued by the OC and Parliament will have approved the overarching principles of Part 2 of the Bill. As the OC will be primarily responsible for implementing and enforcing this prohibition, it is fitting that the OC produces the guidance. Although it was not required by legislation, the relevant organising committees for the Glasgow Games and the London Games published guidance on the equivalent provisions. Clause 7 simply ensures that the OC will carry on this practice in respect of the Birmingham Games and that this guidance will be available in a timely manner and kept under review.

### **Part 3: Touting, Advertising and Trading Offences**

#### **Clause 9(2)(b): Touting Offence: Power of OC to authorise ticket sales**

*Power conferred on:* The OC

*Power exercised by:* Executive decision

*Parliamentary Procedure:* None

#### **Context and Purpose**

14. Clause 9 creates the offence of ‘touting’ a Games ticket otherwise than in accordance with a written authorisation granted by the OC. Clause 9(2)(b) provides that the OC can grant such authorisations and, pursuant to clause 11, that these can be made subject to conditions.

#### **Justification for taking the power**

15. The OC is responsible for ticket sales for the Games and will set the terms and conditions of these tickets. The ‘touting’ of such tickets is criminalised in order to prevent the resale of tickets for profit and in the vicinity of Games venues. This in turn helps ensure that tickets to the Games are affordable and accessible to a wide range of people. However the intent is not to make it an offence for a person to give their tickets informally to family or friends for free or for a nominal payment up to the ticket’s face value, unless this activity takes place in a public place. The OC is expected to set up a mechanism to authorise the sale and resale of tickets. In contrast with the provisions for the London Games the OC will not be permitted to charge for these authorisations (see s. 31(11)(a) of the 2006 Act).

16. The OC will establish a mechanism to provide assurance to those purchasing tickets that they are doing so from official ticketing platforms for the Games, and for those purchasing tickets to be able to seek refunds or authorisation for resales if they can no longer attend the Games.

#### **Justification for the procedure**

17. The authorisation of tickets for resale will be an administrative process carried out by the OC as the body responsible for ticket sales. It is considered that it

would not be proportionate to submit such a process to Parliamentary scrutiny. This is in line with the authorisation processes adopted for the London 2012 Games (see s.31(1)(b) and s.31(11) of the 2006 Act) and the Glasgow Games (see s.17(4)(b) and s.20 of the 2008 Act), where tickets could lawfully be re-sold with a written authorisation from the relevant organising committee.

### **Clauses 12(2) and 12(4): Advertising Offence: Regulations to specify Games location and prohibited periods**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative

#### Context and Purpose

18. Clause 12(1) creates the offence of carrying out, arranging or permitting “Games location advertising”. Games location advertising is advertising that is done in, or in the vicinity of, a specified Games location during a specified period and is done wholly or partly for the purpose of promoting a product, service or business to members of the public in, or in the vicinity of, that location or who are watching or listening to a broadcast of a Games event (see clause 12(2)). The power at clause 12(2) provides for the Secretary of State to set out what is “a specified period” and what is a “specified Games location” in regulations. The power at clause 12(4) provides for the Secretary of State to make provision in regulations as to when a person is, or is not, to be treated as doing something, or being, in or in the vicinity of a Games location.

19. “Games location” is defined in clause 23(1) as meaning a place in England which:

- a. is, or is to be used for a Games event (defined in clause 23(1)), or
- b. is otherwise used, or to be used, in connection with the Games (whether before, during or after the Games).

### Justification for taking the power

20. Regulations made under this provision will address matters of detail, primarily Games locations where the offence is to apply, what it means to be in or in the vicinity of a Games location and setting the periods during which the offence will apply (and which it is intended will span the specific times during which any given location will be in use for the Games).
21. Flexibility is desirable in respect of these details. First, operational planning for the Games is still underway. As the competition schedule for the Games is developed the details of the Games locations and, in particular, the times during which they will be in use for Games events that the specified period for any given Games location will need to cover, will not be known for some time. It is anticipated that even after ticket sales are formally launched in advance of the Games, venues could be subject to change even after a competition schedule is confirmed, such as changes to the competition routes for the marathon, cycling time trial and cycling road race.
22. Flexibility also allows for the restrictions to be in place for as limited a time as possible - for example, rather than restricting advertising in the vicinity of all Games locations for the entire duration of the Games, the restriction can be limited so that it is only in force around the times when that venue is being used for a Games event or in connection with the Games - however this will only be possible once details of the competition schedule and the relevant venue are known.
23. This power will also enable the Secretary of State to respond to any changing circumstances, for example modification of the Games competition programme, a change in a Games location, or the imposition of new technical requirements by the Commonwealth Games Federation which result in a change to the footprint of a Games location, such as a road cycling route. By providing that these details are set out in regulations, this ensures that the areas surrounding all Games locations are captured - thereby avoiding the need for amendments by primary legislation should there be a subsequent change in Games planning.

24. In any event any regulations will only be in effect for a limited period of time. Clause 12(3) provides that each prohibited period must begin no earlier than 21 days before the day of the Opening Ceremony and end no later than five days after the day of the Closing Ceremony. Accordingly, the regulations can only be in effect in a relatively narrow window.
25. Finally, this regulation-making power is narrower than the precedents set by the 2006 Act (ss.19-20) and 2008 Act (ss.10-11). Section 19(3) of the 2006 Act gave the Secretary of State the power to define the nature of the 'advertising' for the purpose of the regulations, while section 10(2)(b) of the 2008 Act granted Ministers the power to "*make [by regulations] such further provision as they think fit in relation to advertising in the vicinity of a Games location*". The regulation making power is further restricted by the definition of advertising in clause 12(2).

#### Justification for the procedure

26. As these regulations will relate to a new criminal offence, it is right that they should be placed before Parliament. However it is considered that the negative resolution procedure provides a suitable level of scrutiny for three reasons. First the regulation making power is narrowly drawn, particularly in contrast to the equivalent powers taken in the 2006 Act and the 2008 Act.
27. Secondly, and as a result of how the power has been drawn, the regulations will primarily address matters of detail - namely the dates, times and specific areas at which advertising will be restricted. The power is further circumscribed in this respect by clause 12(3), which limits any 'prohibited period' in the Regulations to no earlier than 21 days before the day of the Opening Ceremony and end no later than five days after the day of the Closing Ceremony.
28. Finally, it is submitted that the negative resolution procedure would facilitate the flexibility required to accommodate the fact that the schedule for the Games is not yet known and may be subject to last minute changes. As set out above, flexibility in respect of these regulations ensures that any restrictions are in place for as limited a time as possible.

### **Clause 13: Power to authorise advertising in prohibited places at prohibited times**

*Power conferred on:* The OC

*Power exercised by:* Executive Decision

*Parliamentary Procedure:* None

#### Context and Purpose

29. Clause 13(1) provides that a person who advertises in accordance with an authorisation granted by the OC (or a person who arranges or permits the carrying out of such advertising) will not contravene the offence set out in clause 12(1), which criminalises advertising (or arranging or permitting advertising) in a prohibited place at the prohibited time.

#### Justification for taking the power

30. The issuing of authorisations is a largely administrative task suited to the OC, who are responsible for the overall look and feel of the Games. Designating the OC as the body responsible for authorising advertising during the restricted periods ensures that decisions on the authorisation of advertising are consistent.

#### Justification for the procedure

31. It is considered that the administrative nature of these authorisations mean that Parliamentary scrutiny is not required. This, coupled with the OC's responsibilities for the administration of Games matters means that it is considered that the OC is best placed to make authorisations.

### **Clause 14: Advertising Offence: Power to specify exceptions**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative

### Context and Purpose

32. Clause 12(1) creates the offence of advertising in or in the vicinity of a Games location during a prohibited period. It also criminalises the arrangement of such advertising and permitting such advertising. Clause 14(1) provides that the offence in clause 12(1) does not apply to anything done by the OC. Clause 14(2) provides that the Secretary of State may, by regulations, specify exceptions.

### Justification for taking the power

33. In previous legislation for the London 2012 Games and the Glasgow Games the Secretary of State was given the power to specify exceptions to the advertising offence in regulations (see s.20(1)(c) of the 2006 Act and s.10(2)(a) of the 2008 Act).

34. Clause 14(3) requires the Secretary of State, before making the regulations, to consult certain people (such as the Organising Committee and the local authority for an area that includes any place to which the regulations would apply). By retaining the power to make exceptions, the Secretary of State will retain the flexibility to address any issues that may arise, including from consultation.

### Justification for the procedure

35. It is proposed that the negative procedure provides a suitable level of scrutiny for regulations made under this clause. First this power can only be used to add exceptions - it cannot be used to expand the scope of the offence. Secondly it may be that the regulations need to be amended quickly to take account of any specific issues arising from changes to a Games location, (for example where there might be a mural that would be inside a prohibited location and we would not wish for it to be considered as breaching the prohibition) or where following consultation, we wish particular types of promotional activities to be listed as an exception. Given the limited scope of the regulations, and that they can only narrow, and not widen, the offence, it is considered that the negative procedure is proportionate.

## **Clauses 15(2) and 15(4): Trading Offence: Regulations to specify prohibited periods and Games location**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative

### Context and Purpose

36. Clause 15(1) creates the offence of carrying out “Games location trading”, or arranging or permitting the carrying out of such trading. Clause 15(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 in the vicinity of a Games location during a specified period. The power at clause 15(2) provides for the Secretary of State to specify in regulations the meaning of “specified period” and “specified Games location”. The power in clause 15(4) allows the Secretary of State to make provision in regulations as to when a person is, or is not, to be treated as doing something in, or in the vicinity of, a Games location.

37. A “relevant public place” is defined in clause 15(8) as meaning:

- a. a highway,
- b. a building to which the public have access and which is designed or generally used for the parking of cars, or
- c. any other place-
  - i. to which the public have access (whether generally or only for the purposes of trading, and
  - ii. which is not in a building.

38. “Games location” is defined in clause 23(1) to mean a place in England which:

- a. is, or is to be, used for a Games event, or
- b. is otherwise used, or to be used, in connection with the Games (whether before, during or after the Games).

### Justification for taking the power

39. As with the advertising offence, these regulations will deal with matters of detail and flexibility is desirable in respect of these aspects of the new trading offence. The justifications set out in paragraphs 20-23 above also apply to the powers set out in clauses 15(2) and 15(4).
40. As with the equivalent power in respect of the advertising offence, any regulations can only take effect for a limited period - clause 15(3) provides that each prohibited period must not begin earlier than 21 days before the day of the Opening Ceremony and must end within five days of the Closing Ceremony.
41. Finally, this regulation-making power is narrower than the precedents set by the 2006 Act (ss.25-27) and 2008 Act (ss.2-9). In particular the definition of the term 'trading' is included on the face of the Bill (clause 15(2)) and a number of specific exceptions to the offence are set out in clause 17. In contrast, the 2006 and 2008 Acts delegated the power to define in regulations what constituted 'trading' for the purpose of the offence and no exceptions were set out in primary legislation.

### Justification for the procedure

42. The justifications set out in respect of clause 12(2) and 12(4), set out in paragraphs 26-28 above, are equally applicable to the proposal to use the negative procedure for regulations made under clause 15(2) and 15(4). In summary the power to create these regulations is narrowly defined and will address matters of detail. In addition, the prospect of changes to the Games schedule means that flexibility in respect of these regulations is desired to ensure any restriction on trading is as limited as possible.

## **Clause 16: Power to authorise trading during restricted times and in restricted places**

*Power conferred on:* The OC

*Power exercised by:* Executive Decision

*Parliamentary Procedure: None*

Context and Purpose

43. Clause 16(1) provides that a person who trades in accordance with an authorisation granted by the OC, or who arranges or permits the carrying out of such trading, will not contravene the offence set out in clause 15(1), which criminalises the carrying out of trading (or arranging or permitting trading) in a time and place specified in Regulations made by the Secretary of State under clauses 15(2) and 15(4).

Justification for taking the power

44. As with the authorisation of advertising (see para. 30 above), the issuing of trading authorisations is a largely administrative task suited to the OC, who are responsible for the overall 'look and feel' of the Games. Designating the OC as the body responsible for authorising trading ensures that decisions on the authorisation of trading are consistent.

Justification for the procedure

45. It is considered that the administrative nature of these authorisations mean that it would not be proportionate to subject them to any Parliamentary procedure. This, coupled with the OC's responsibilities for the administration of Games matters means that it is considered that the OC is best placed to make authorisations.

**Clause 18: Trading Offence: Power to specify exceptions**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative*

Context and Purpose

46. Clause 15(1) creates the trading offence (see paras. 36-38 above). Clause 18 provides that the Secretary of State may specify further exceptions to this offence, in addition to those set out in the Bill at clause 17.

#### Justification for taking the power

47. As with the advertising offence (see para. 33 above), the 2006 Act and the 2008 Act provided that the Secretary of State could set out exceptions to the restrictions placed on trading (see s.20(1)(c) of the 2006 Act and s.10(2)(a) of the 2008 Act).

48. A number of exceptions have been included on the face of the Bill in clause 17. These address activities relating to premises adjoining a highway, public facilities, activities related to motor vehicles and activity by the Organising Committee, based on the precedence and experience of the London 2012 Games and the Glasgow Games. However it is considered that the Secretary of State should retain the power to specify further exceptions to the offence should it be necessary. As with the advertising restrictions, clause 18(2) requires the Secretary of State to consult certain people before making these regulations, and this may illustrate the need for further exceptions to be made to the offence.

#### Justification for the procedure

49. As with the power to specify exceptions to the advertising offence, set out at paragraph 35 above, it is considered that the negative parliamentary procedure is suitable. Regulations made under this power can only serve to set out exceptions to the offence and narrow the scope of the offence. Any such regulations may need to be introduced at short notice to accommodate changes to Games locations.

### **Clause 22(1): Duty of OC to publish guidance on trading and advertising restrictions.**

*Power conferred on:* The OC

*Power exercised by:* Guidance

*Parliamentary Procedure: None*

### Context and Purpose

50. Part 3 of the Bill makes provision about advertising and trading, including creating new offences, making provision about authorisation, and giving powers to the Secretary of State to make provision in regulations for exceptions to the offences.

51. Clause 22(1) creates a duty on the OC to publish guidance about the operation of the advertising and trading provisions (see clause 22(2)) and of any regulations made by the Secretary of State under these.

### Justification for taking the power

52. The OC is responsible for authorising advertising and trading (respectively clauses 13 and 15) in and in the vicinity of Games locations during prohibited times. The OC is also responsible for determining the procedure for applying for and issuing authorisations and it is anticipated that any guidance would likely cover this authorisation process. This is tied to their responsibility for the overall look and feel of the Games.

53. The OC will engage with traders and advertisers interested in the restrictions imposed by the Bill and any regulations made under clauses 12 and 15. It is considered that this engagement will put the OC in a good position to know what information would be most helpful to include in any guidance to ensure that those affected by the new rules will know clearly what they can and cannot do and how they could apply for authorisation to trade or advertise (in or in the vicinity of a Games location during a prohibited period) from the OC.

### Justification for the procedure

54. The guidance will not be legally binding and is designed to provide clarity on the restrictions on advertising and trading that will be implemented by primary and secondary legislation.

55. Accordingly, it is suggested that it would not be proportionate to submit this guidance to any Parliamentary procedure. Furthermore, the use of guidance

here provides flexibility - allowing the OC to update the guidance should further clarity be needed.

56. Similar guidance was produced for the London Games, however there was no statutory requirement for the London Olympic Delivery Authority to do so.

#### **Part 4: Transport Provisions**

##### **Clause 24: Power of Secretary of State to direct a person to prepare a Games Transport Plan**

*Power conferred on:* Secretary of State

*Power exercised by:* Direction

*Parliamentary Procedure:* None

##### **Context and Purpose**

57. It is proposed that a Transport Plan is produced for the Games in order to facilitate and deliver integrated 'Games time' transport planning and operations in a clear and practical way. The purpose of such a Plan would be to set out a strategic approach to the planning and coordination of transport to support the Games, covering the transportation of spectators, athletes and the Games Family, whilst at the same time ensuring that any disruption to everyday users of the relevant transport networks is kept to a minimum.

58. This clause allows the Secretary of State to direct a person - a definition which includes a local authority or body corporate - to prepare a plan. Such a direction must be in writing and may, subsequently, be revoked. Before preparing or revising this plan, the person will be required to consult the following and the consultation can be commenced by a person prior to the power to make a direction coming into force:

- a. The Secretary of State;
- b. The OC;
- c. in relation to any road likely to be affected by the plan or revision—

- i. the local traffic authority for the road, and
  - ii. if different, the local authority in whose area the road is situated;
- d. Chief officers of police the person considers appropriate;
  - e. Transport Operators the person considers appropriate; and
  - f. Anyone else whom the person or the Secretary of State considers appropriate.

59. When exercising their functions local traffic authorities will be required to do so with a view to securing the implementation of the proposals contained in the plan.

Justification for taking the power

60. Where the lead body is not the Secretary of State there is precedent for the Secretary of State to be provided with a delegated power to direct that body to produce guidance or plans. Examples include:

- a. Section 25(5) of the Tenant Fees Act 2019 allows the Secretary of State to direct the lead enforcement authority (by virtue of section 24 of that Act) to issue guidance about the operation of the relevant letting agency legislation to relevant authorities in England and give directions as to the content of that guidance;
- b. section 4 of the Infrastructure Act 2015 which requires the Secretary of State, from time to time, to direct a strategic highways company to prepare a route strategy; and
- c. section 2 of the Road Traffic Reduction Act 1997 allows the Secretary of State to direct local traffic authorities to prepare a report assessing the levels of local road traffic and forecasting the growth in those levels in their area.

Justification for the procedure

61. It is proposed that this power should not be subject to any Parliamentary procedure due to the limited period for which the directed duty will apply and

that the plan produced will primarily be for local purposes limited to the vicinity of Games locations. The minimum levels of consultation required prior to the preparation of the plan will ensure that the views of stakeholders are given due consideration.

#### **Clause 25: Power to make Games Temporary Traffic Regulation Orders.**

*Power conferred on:* Traffic Authorities and, subject to regulations, the person directed to produce the Games Transport Plan

*Power exercised by:* Order

*Parliamentary Procedure:* None

#### Context and Purpose

62. Clause 25 adds to the conditions mentioned in section 14(1) of the RTRA 1984, which dictate when an order imposing temporary prohibitions or restrictions on roads can be made under section 14(1). This expansion of the power currently conferred removes the restriction that the traffic authority must be satisfied that vehicular or pedestrian traffic on the road (including footways, footpaths, cycle tracks, cycle lanes and bridleways) should be restricted or prohibited solely for the following purposes:

- a. because works are being or are proposed to be executed on or near the road; or
- b. because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or
- c. for the purpose of enabling the duty imposed by section 89(1)(a) or (2) of the Environmental Protection Act 1990 (litter clearing and cleaning) to be discharged.

63. This clause modifies that order making power and will allow traffic authorities, as defined by section 121A of the RTRA 1984, to make orders for the purpose of:

- a. implementing a Games transport plan;
- b. facilitating transport services in connection with the Games; or
- c. facilitating travel by any person for a purpose connected to the Games.

#### Justification for taking the power

64. It would not be possible to impose the bespoke traffic regulation measures required to ensure the safe and reliable operation of the transport network at Games time by relying solely on the existing section 14(1) power under the RTRA 1984.

65. This power is necessary to allow the regulation of traffic for the Games. Traffic authorities are already able to make orders under section 14 of the RTRA 1984. This clause maintains the procedure that applies to such orders. Traffic authorities and, subject to regulations pursuant to clause 26, the person directed to prepare the Games transport plan, are considered the most appropriate bodies to regulate traffic for the Games and are familiar with the procedures that apply to the measures.

66. In any event, measures will only be in effect for a limited period of time. Clauses 25(3) and (4) provide that any Games temporary traffic regulation order must take effect no earlier than 21 days before the Opening Ceremony and end no later than five days after the day of the Closing Ceremony. Accordingly, the measures can only be in effect in a relatively narrow window. In addition, the procedure for revoking Games temporary traffic regulation orders has been streamlined to enable them to be revoked as soon as they are no longer necessary, rather than having to wait 7 days for the proposed revocation to be publicised.

#### Justification for the procedure

67. Given the local nature of orders, it is considered that there is no reason to depart from the level of scrutiny required under the RTRA 1984.

## **Clause 25: Power to make Games Temporary Traffic Regulation Notices.**

*Power conferred on:* Traffic Authorities and, subject to regulations, the person directed to produce the Games Transport Plan

*Power exercised by:* Notice

*Parliamentary Procedure:* None

### Context and Purpose

68. In addition to the power to make orders imposing temporary prohibitions or restrictions on roads under section 14(1) of the RTRA 1984, traffic authorities also have the power, pursuant to section 14(2) to issue notices for the purposes listed in section 14(1) (as outlined above in respect of Games Temporary Traffic Regulation Orders) where it is necessary or expedient for the restriction or prohibition to come into force without delay. This clause will expand the purposes for which a notice for Games purposes can be issued in the same way that is outlined above in respect of orders.

### Justification for taking the power

69. The modification to the existing power to issue notices under section 14(2) of the RTRA 1984 is necessary as, without it, it would not be possible to introduce immediate restrictions or prohibitions on vehicular or pedestrian traffic where a given situation required an immediate response.

70. As with the power to make Games temporary traffic regulation orders, this power is necessary to allow for the regulation of traffic for the Games. Traffic authorities are already able to issue notices under section 14 of the RTRA 1984. This clause maintains the procedure that applies to such notices. Traffic authorities and, subject to regulations pursuant to clause 26(2), the person directed to prepare the Games transport plan, are considered the most appropriate bodies to regulate traffic for the Games and are familiar with the procedures that apply to the measures.

71. In any event, measures will only be in effect for a limited period of time. Clause 25(3) and (5) provides that any Games temporary traffic regulation notice must take effect no earlier than 21 days before the Opening Ceremony. In addition

a notice can be in force for no longer than 21 days or no later than five days after the day of the Closing Ceremony, whichever is earlier. Accordingly, the measures can only be in effect in a relatively narrow window.

#### Justification for the procedure

72. Given the local nature of orders, it is considered that there is no reason to depart from what the 1984 Act requires in terms of parliamentary scrutiny.

### **Clause 26: Power to allow for concurrent exercise of Games traffic regulation powers**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative

#### Context and Purpose

73. This clause allows the Secretary of State to provide, by regulations, that a local traffic authority and the person directed to produce the Games transport plan may exercise the traffic management powers provided by this Bill concurrently, should the two agree to operate in this way. Where one or more local traffic authorities agree this course of action it will allow economies of scale through measures being administered centrally and simplify the process when traffic regulation measures cross local traffic authority boundaries.

#### Justification for taking the power

74. The Government considers that the negative procedure is suitable as regulations providing for the concurrent exercise of traffic management powers under the Bill would only be made where the local traffic authority agreed to such an approach. The powers that could be exercised concurrently are limited to those provided by clause 25, so the traffic regulation measures would be limited to those for Games purposes. In addition, the issuing of notices and making of orders could only be done by the person producing the Games

transport plan when the local transport authority (or authorities) concerned consent to the introduction of those measures.

#### Justification for the procedure

75. It is considered that the short period that the concurrent powers would have effect for, coupled with the limited duration of the resulting Games traffic regulation measures, would make the affirmative procedure disproportionate.

### **Clause 27: Power to Direct or Order a Local Traffic Authority to introduce measures**

*Power conferred on:* Secretary of State

*Power exercised by:* Direction or, if a direction is not complied with, by order

*Parliamentary Procedure:* None

#### Context and Purpose

76. This clause will ensure that local traffic authorities adequately regulate road use during the Games period. If the Secretary of State has concerns that a local traffic authority does not have adequate traffic regulation measures planned or in place for the Games a request will be issued to that authority, following consultation as specified by clause 27(2), asking them to take actions outlined in the correspondence within seven days, beginning on the day on which the request is made. If this request is not complied with within the timescale set out, the Secretary of State may direct a local traffic authority in writing to introduce the traffic regulation measures outlined in the request within a defined timescale. A direction may not be issued to the person exercising concurrent powers by virtue of clause 26. If the Secretary State is satisfied that reasons of urgency require it, that direction must be made without delay. The measures forming the subject of the direction may be for any of the purposes outlined in clause 25. When a direction is no longer considered necessary by the Secretary of State, it may be revoked.

77. If a direction is not complied with, the Secretary of State may make an order or issue a notice implementing those measures in place of the local traffic authority and recover costs incurred in connection with this as if they were a debt. Orders made by and notices issued by the Secretary of State in these circumstances are to be treated as though they were made or issued by the local traffic authority.

Justification for taking the power

78. This power provides a backstop whereby the Secretary of State can ensure that adequate levels of traffic regulation measures are in place for the Games.

79. A similar power exists in Part 1 of Schedule 9 to the RTRA 1984 and allows the Secretary of State to issue a direction to the traffic authority concerned requiring them to make, amend or revoke one or a number of various traffic regulation measures. In the event that this direction is not complied with, the Secretary of State may introduce those measures by order. The powers in that Schedule only apply to temporary traffic regulation orders for anti-terrorism purposes and do not apply to temporary traffic regulation notices. Additionally, directions and orders can only be made where the Secretary of State is satisfied that:

- a. the traffic authority is not complying with their duty, under section 122 of the Act, to use their functions to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and provide suitable and adequate parking facilities; or
- b. there are special circumstances that make it expedient that the order should be made.

80. The 2006 Act (as amended by the London Olympic Games and Paralympic Games (Amendment) Act 2008) provides a precedent for a discrete power. Section 12(3) to (6) permitted the Secretary of State to issue a direction to a traffic authority (amongst other bodies), if satisfied that they were not cooperating with the Olympic Delivery Authority for the purpose of implementing the Olympic Transport Plan or co-operating with the Olympic Delivery Authority for the purpose of facilitating transport services in

connection with the London Olympics. A direction could require the authority to exercise any of its functions for those two purposes. If the authority failed to act in accordance with the direction, the Secretary of State could exercise the function or arrange for the Olympic Delivery Authority or any other person to exercise it.

81. A discrete power for the Secretary of State to direct the introduction of temporary traffic regulation orders and notices would provide a backstop that ensures appropriate measures are in place for the Games.

#### Justification for the procedure

82. Given the existence of an analogous power in Part 1 of Schedule 9 to the RTRA 1984, and the precedent set by the 2006 Act, it is considered that there is no reason to depart from what the 1984 Act requires in terms of parliamentary scrutiny.

### **Part 5: Final Provisions**

#### **Clause 29: Power of Secretary of State to make, by regulations, such transitional provision or savings as considered necessary or expedient**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative

#### Context and Purpose

83. This clause contains a power for the Secretary of State to make transitional or saving provision where it is considered necessary or expedient in consequence of any provision of the Bill. The purpose of the power is to enable changes made by the Bill to be implemented in an orderly manner. This is considered necessary in the absence of a specific delegated power in relation to commencement and to ensure that, where certain provisions of the Bill cease to have effect, this can be managed smoothly.

### Justification for taking the power

84. The Bill provides that certain clauses will cease to have effect at various points after the Games have concluded. The clauses that will be affected by these 'sunsetting' provisions are:

- a. Clauses 2(1-3), 3, and 4 relating to the prohibition on making unauthorised associations with the Games. These will cease to have effect on 1 January 2023; and
- b. Clauses 9 to 11 and Schedule 1, which set out the offence of ticket touting, cease to have effect on the day following the day on which the Games end.

85. The power for the Secretary of State to make transitional or saving provisions in regulations where necessary will help to facilitate the smooth commencement or winding down of the provisions of the Bill.

86. In addition, such transitional or saving provisions are considered necessary in the absence of commencement regulations. A power to make commencement regulations has not been included in the Bill as all of the provisions will come into force automatically, either on Royal Assent or two months thereafter.

### Justification for the procedure

87. Negative Parliamentary procedure is considered to provide a suitable level of scrutiny, as any such regulations are likely to concern matters of detail, rendering the use of affirmative procedure disproportionate.

## **Schedule 2: Further Provision about Enforcement of touting, street trading, and advertising offences**

### **Schedule 2, Paragraph 15: Power of Secretary of State to make provision about claims for compensation**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

Context and Purpose

88. Paragraph 15 of Schedule 2 sets out an entitlement to compensation where a person's property is damaged in the course of the exercise or purported exercise of an enforcement power conferred by the Schedule 2 to the Bill or by Parts 3 or 4 of Schedule 5 to the Consumer Rights Act 2015 for the purposes of the Bill, if the power was exercised unlawfully or any force used in the exercise of the power was unreasonable. Paragraph 16 gives the Secretary of State the power to make provision by regulations supplementing paragraph 15. These regulations may include provision about:

- a. how to make a claim for compensation;
- b. the person to whom a claim must be made;
- c. the period within which a claim must be made;
- d. information that must be provided when making a claim,
- e. the conferring of discretion on any person to decide whether a person is entitled to compensation and, if so, the amount to be paid,
- f. requiring a person making a claim to be given information, to be specified in the regulations, about the decision on the claim,
- g. provision about reviews or appeals.

Justification for taking the power

89. The entitlement to claim compensation and the amount of compensation that is payable are set out in the Bill. It is considered that is fitting to deal with these matters of procedural detail in regulations. This will also allow for further discussion (for example with enforcement authorities) before making these regulations. Similar powers were set out in legislation for the London and Glasgow Games (see ss. 22(9) and 28(6) of the 2006 Act and s30(2) of the 2008 Act).

### Justification for the procedure

90. It is suggested that regulations made under this provision should be subject to negative procedure. While it is considered to be correct that these regulations should undergo some degree of Parliamentary scrutiny, the significant detail relating to the compensation scheme (such as the amount of compensation payable) is set out on the face of the Bill. These regulations will address administrative details and, accordingly, it is considered that the affirmative procedure would be disproportionate here.

**Department for Digital, Culture, Media and Sport**

**5 June 2019**

## Annex A: Index of Defined Terms

<b>Bill</b>	Birmingham Commonwealth Games Bill
<b>Games</b>	Birmingham 2022 Commonwealth Games
<b>Glasgow 2014</b>	Glasgow 2014 Commonwealth Games
<b>London 2012</b>	London 2012 Olympic and Paralympic Games
<b>OC</b>	Birmingham Games Organising Committee
<b>RTRA 1984</b>	Road Traffic Regulation Act 1984
<b>2006 Act</b>	London Olympic Games and Paralympic Games Act 2006
<b>2008 Act</b>	Glasgow Commonwealth Games Act 2008
<b>2009 Order</b>	Glasgow Commonwealth Games Act 2008 (Games Association Right) Order 2009