

EXPLANATORY MEMORANDUM TO
THE LONDON OLYMPIC GAMES AND PARALYMPIC GAMES (ADVERTISING
AND TRADING) (ENGLAND) REGULATIONS 2011

2011 No. [XXXX]

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

2. Purpose of the instrument

2.1. These Regulations control advertising and outdoor trading around Olympic and Paralympic Games venues during periods when Games events take place. The Regulations neither authorise advertising or trading that is prohibited by the general law nor affect any legal requirement to hold a licence before engaging in advertising or trading activity. But the Regulations do override existing consents or permissions that entitle a person to advertise or trade in an area covered by the Regulations. This means that, to advertise or trade around Games venues when events are taking place, a person will need to be authorised by or under the Regulations and will also have to comply with the general law.

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

3.1. None

4. Legislative Context

4.1. This is the first time that the powers to regulate advertising and trading in the vicinity of Games events in the London Olympic Games and Paralympic Games Act 2006 (“2006 Act”) have been exercised. It is intended that this set of Regulations will be the only set made for England. However, if there is an unexpected alteration to a Games venue or the Games schedule – for example, if an emergency means that a planned venue can no longer be used – it may be necessary to amend the principal Regulations. The London Olympic Games and Paralympic Games (Amendment) Bill, which is currently before Parliament, will facilitate the amendment of the Regulations in these circumstances.

4.2. The 2006 Act and these Regulations are necessary to give effect to commitments given by the Government to the International Olympic Committee (“IOC”) at their request as part of London’s bid to stage the 2012 Olympic and Paralympic Games. In particular, on 9 November 2004, the then Secretary of State for Culture, Media and Sport provided the following guarantee (amongst others) to the IOC:

“On behalf of the United Kingdom Government, I, Tessa Jowell, guarantee that:
...

- (d) in addition to the United Kingdom’s existing laws which already:
 - (i) protect intellectual property rights;
 - (ii) control street vending, illegal fly-posting and aerial advertising airspace; and
 - (iii) provide for a system of planning permission for billboards,

in good time to meet the deadline of 30 June 2010, the UK Government will introduce the legislation necessary to effectively reduce and prevent ambush marketing and eliminate street vending in the vicinity of Olympic sites, as well as control advertising space and airspace during the period of the Games (including for two weeks before the Games).

4.3. The Minister’s guarantee is reflected in the Host City Contract – the contract between the IOC, the Greater London Authority (“GLA”), the British Olympic Association (“BOA”) and the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”) which provides for the staging of the Olympic and Paralympic Games in London in 2012. Clauses 46 and 48 of the Contract require the GLA, BOA and LOCOG to combat ambush marketing. While the Government is not a party to the Host City Contract, in a letter to the IOC dated 9 November 2004, the Prime Minister confirmed that “the United Kingdom Government ... guarantees the respect of the Olympic Charter and the Host City Contract.”

4.4. When the Bill that became the 2006 Act was going through Parliament, Ministers gave a number of commitments which have been reflected in the draft Regulations:

4.4.1. Commenting on the fact that the Act provides for the Regulations to apply in the “vicinity” of Games events the Minister for Sport said:

“We will ensure that regulations are targeted, proportionate and consistent with the European convention on human rights. We intend that the regulations should apply only in the small areas around venues and events that are likely to be full of spectators or captured on camera. In most cases, that is what “vicinity” should mean. We do not want to draw up a blanket definition for inclusion in the Bill because the requirements will be different for different venues. In the close confines of a city centre football stadium, for instance, it would not be proportionate to impose the same sort of restrictions that we might apply to stand-alone Olympic park venues. We have therefore allowed for the regulations to specify a different definition of vicinity for different venues.

When we talk about vicinity, we mean a few hundred metres.”

(Commons Hansard, Standing Committee D, 18 October 2005 (morning), column 78)

Reflecting this commitment, the draft Regulations apply only to small, individually drawn areas around each venue in which a Games event will take place. In most cases, the boundary within which the Regulations will apply is no further than a few hundred metres beyond the venue’s perimeter. In aggregate, the area covered by the Regulations represents a very small proportion of the total land area of England.

4.4.2. The Minister said that the Regulations would apply for as short a time as possible – the intention was that “regulations should apply only to the period immediately surrounding particular Olympic and Paralympic events” (Commons Hansard, Standing Committee D, 18 October 2005 (morning), column 80). The Minister also confirmed that the maximum period that the Regulations would apply would be the “London Olympics period” but, for particular venues, they might apply for a shorter period (Hansard, Standing Committee D, 18 October 2005 (morning), column 81).¹

The draft Regulations apply only for short periods tailored for each venue by reference to the times when Games events are to take place. They do not apply to any place for the entire London Olympics period – the longest that they will apply to any one place is 35 days, in the area around the main Olympic Park. That period is made up of two phases – one of 22 days for the Olympic Games and another of 13 days for the Paralympic Games. Those phases are separated by a period of two weeks during which the Regulations will not apply. In many places, the Regulations will apply only for a few days. The Regulations will cease to have any effect on the day after the closing ceremony of the Paralympic Games.

4.4.3. Ministers confirmed that the Regulations would contain appropriate exemptions for newspapers, magazines, television and radio (Commons Hansard, Standing Committee D, 18 October 2005 (morning), column 93; Commons Hansard, volume 440, 6 December 2005, columns 807 and 808; Lords Hansard, volume 678, 2 February 2006, columns GC223-224). The draft Regulations contain express exceptions relating to the sale or distribution of current newspapers and periodicals (see regulations 10(3) and 14(2)). The Regulations will not apply to radio and television broadcasters (who will not be “engaging in advertising activity” within the meaning of the Regulations). In addition, there are

¹ The “London Olympics period” is defined in section 1(3)(c) of the 2006 Act as the period that begins four weeks before the opening ceremony of the Olympic Games and ends 5 days after the closing ceremony of the Paralympic Games. In total, the London Olympics period spans 77 days.

a number of exceptions that will apply to people watching or listening to television or radio advertisements.²

4.4.4. The Minister undertook to consider exempting mobile phones from the Regulations. However, noting that between 2005 and 2012 there were likely to be advances in technology, he did not agree to “provide a blanket exemption for mobile telephony” (Hansard, volume 440, 6 December 2005, column 808). The Regulations expressly provide that advertising activity consisting of the display of an advertisement on a personal communication device is not to be treated as advertising activity for the purposes of the Regulations unless the advertiser intends the advertisement to be displayed, by means of the device, to the public at large (rather than only to the individual using the device) (see regulation 5(3)). For these purposes, a “personal communication device” means a mobile telephone or other personal interactive communication device (such as a laptop or tablet computer) (see regulation 5(4)).

4.4.5. Finally, the Minister confirmed that the Government would ensure that the advertising industry was fully engaged in the development of Regulations (Hansard, volume 440, 6 December 2005, column 808). Departmental officials met with a number of different representatives of the advertising industry including the Advertising Association, ISBA (the Incorporated Society of British Advertisers), the Outdoor Advertising Association and the Internet Advertising Bureau during the development of the draft Regulations. In addition, the Regulations were the subject of a full 12 week public consultation process and the detailed consultation document (which included the draft Regulations) was specifically notified to more than 600 stakeholders including the advertising industry bodies just named, as well as the Advertising Standards Authority, the Institute of Practitioners in Advertising, and the Data Publishers Association. Further details about the consultation process are set out below.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Similar regulations will be made for Scotland (by the Scottish Ministers) and Wales (by the Welsh Ministers). Regulations will not be made for Northern Ireland as no Games events are scheduled to take place there.

² See, for example, regulation 8 (which provides an exception for an individual who engages in advertising activity only by displaying an advertisement on personal property); regulation 9(1) (which, amongst other things, provides an exemption for advertisements that are displayed within most types of buildings, including homes and shops), and regulation 5(2) and (3) (which applies to advertisements displayed on hand-held mobile telephones or other personal interactive communication devices).

6. European Convention on Human Rights

The Minister for Sport and Olympics has made the following statement regarding Human Rights:

In my view the provisions of the London Olympic Games and Paralympic Games (Advertising and Trading) (England) Regulations are compatible with the Convention rights.

7. Policy background

7.1 The UK has not hosted an Olympic or Paralympic Games since 1948. The 2012 Games will draw international attention to the country and the way we stage the Games will have a lasting impact on the UK's international reputation. The UK, Scottish and Welsh Governments promised to respect commitments made to the IOC in the Host City Contract (which included obligations as to the regulation of advertising and trading) and to take all necessary measures to ensure that London fulfils its obligations. In addition, the UK Government gave specific commitments to the IOC to legislate to prevent unauthorised advertising and trading around Games events. But more than that, it is important that we showcase London and the other cities and areas that are hosting events, protect sponsors' investment in the Games (without which they could not happen) and make it easy for spectators to move around. Accordingly, the objectives underlying the draft Regulations are:

- to ensure all Olympic and Paralympic events have a consistent celebratory look and feel to them;
- to prevent ambush marketing within the vicinity of venues; and
- to ensure people can easily access the venues.

7.2 There is already legislation in the UK which regulates advertising and trading in open public places. However a tailored approach is needed for the Olympic and Paralympic Games both because existing legislation was not crafted with the Games in mind (and therefore does not meet the three main objectives outlined above) and because enforcement procedures under current legislation are not suited to time-critical events like the Olympic and Paralympic Games. For example, under current legislation some types of illegal advertising can only be removed after 28 days' notice. Similarly, local authority powers to control street trading only apply to private land in limited circumstances – for example trading in gardens or on driveways a certain distance from the road does not necessarily need to be licensed by the local authority.

7.3 The Regulations specify the types of advertising and trading activity which will be restricted by them, including by specifying a number of exceptions. In the areas where the Regulations will apply (the 'event zones') during the periods when they apply (the 'relevant event periods') the Regulations will override any existing advertising and

trading authorisations and licences. (Maps illustrating the event zones accompany this memorandum and are available on the Department's website at the following address: <http://www.culture.gov.uk/publications/8483.aspx>) Advertisers and traders who operate in open public places will need to be authorised under the Regulations (in addition to holding current authorisations and licences under the general law).

8. Consultation outcome

8.1 The proposed Regulations were subject to a 12 week public consultation from 7 March to 30 May 2011. Over 600 stakeholders were alerted to the consultation through a variety of methods including letter, email, leaflet drop, and by utilising the communication channels of trading, business and advertising associations. In total the Department received 51 responses to the consultation. Few respondents questioned the need for the Regulations, understanding the requirement to protect sponsors and enhance the UK's reputation as a host of an international event. Most respondents were broadly positive of the policy direction the Department proposed. The responses on the whole addressed technical detail in specific areas. More detailed analysis of the consultation outcome is described in the Department's response to the consultation (available on its website at the following address <http://www.culture.gov.uk/publications/8483.aspx>) and the Impact Assessment.

9. Guidance

9.1 In June 2009 the Olympic Delivery Authority ("ODA") gave notice of the general effect of these Regulations to those likely to be affected. It published a short summary document and a more detailed document describing the Government's plans. These were made available on the official London 2012 website (www.london2012.com) and circulated to affected stakeholders and their representatives such as advertising and trading organisations, Olympic and Paralympic venues and local authorities. In addition a press statement was issued to the trade press, outlining the nature of the Regulations and highlighting the publication and availability of the information documents.

9.2 The giving of general notice was the start of a process of public engagement on the Regulations. A 12 week consultation earlier this year gave more information about the Government's plans including detailed maps showing where and when the proposed Regulations would apply.

9.3 The ODA has a statutory duty to give notice of the detailed provisions of the Regulations to affected persons at least 6 months before they come into effect. The ODA will publish a document which will, in plain English, describe what the Regulations cover, where they will apply and for how long they will be in effect. The document will also give details of the process by which people may apply for authorisation (for advertising or trading that is not exempted on the face of the Regulations). The document will be available from the London 2012 website (www.london2012.com) and will be provided in hard copy on request. Relevant industry bodies, local authorities and others likely to be interested or affected by the Regulations will be alerted to the existence of the document and there will also be a press release announcing its availability. Maps showing where the

Regulations will apply will be available to view in a variety of places including on the London 2012 and the Departmental websites (www.london2012.com and <http://www.culture.gov.uk/publications/8483.aspx>) and at the offices of the Department and the local authorities in whose areas events will take place.

10. Impact

10.1 There will be an impact on business, charities and voluntary bodies. Businesses and charities which trade in open public places in zones covered by the Regulations, will be prohibited from doing so unless their activities are exempt or authorised. Similarly, businesses that advertise in those places, or sell advertising space in those places, will face a potential loss of revenue because of the prohibition on advertising in the Regulations. A full impact assessment has measured the potential loss of revenue. The Regulations are intended to allow the majority of businesses to continue operating as normal, while meeting the objectives set out below paragraph 7.1 above. The Regulations apply no further than a few hundred metres around each venue's perimeter. This amounts to around 0.01% of the overall land space across Great Britain. The event zones have been influenced by people flow, camera sight lines and areas of potential ambush and, in respect of each venue, we have weighed the impact on local business.

10.2 The Regulations may be enforced by the police or by enforcement officers designated by the ODA. The police will focus on safety and security matters at Games time leaving the ODA to take the lead on enforcement of the Regulations. The ODA is looking to designate enforcement officers from local authorities, who are experienced in dealing with street trading and advertising offences under the existing law (for example, Trading Standards Officers, Street Trading Enforcement Officers, Planning Enforcement Officers). The ODA has a budget to fund enforcement.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the www.legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business. To comply with the Government's commitments to the IOC (see paragraph 4.2 above), the Regulations must apply both to small and large businesses that advertise or trade outdoors.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the ODA will assist outdoor traders to comply with or avoid breaches of the Regulations, including by giving financial assistance to traders to help them identify alternative locations. Most outdoor traders have some capacity to relocate i.e. the equipment they use is constructed to be mobile. Consequently there is the practical possibility of relocation even if there are difficulties in doing this. ODA will not provide financial assistance to owners of unauthorised advertising space but will work with them to avoid breaches of the Regulations.

11.3 To ensure the consultation was accessible to small businesses the Department met with a variety of business associations including the London Business Network, London Chamber of Commerce, and Confederation of British Industry. The Department also met with a range of trading organisations including the National Market Traders Federation, the National Association of British Market Authorities and Pedlars.info. In addition, the Department, LOCOG, and ODA gave presentations to a number of business forums organised by local authorities including in Stratford, Weymouth, and Surrey (areas in which the Regulations will apply).

12. Monitoring & review

12.1 The success of the Olympic and Paralympic 2012 Games will be evaluated after the Games and consideration of the laws that support that success will be part of that evaluation.

13. Contact

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