Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 - Senedd

Meeting date:
5 December 2011

Meeting time:
14:30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

For further information please contact:

Steve George
Committee Clerk
029 2089 8242
CLA.Committee@wales.gov.uk

Olga Lewis
Deputy Committee Clerk
029 2089 8154

Agenda

1. Introduction, apologies, substitutions and declarations of interest

2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA63 - The Agricultural Holdings (Units of Production) (Wales) Order 2011
Negative Procedure. Date made 22 November 2011. Date laid 24 November 2011. Coming into force date 21 December 2011

Affirmative Resolution Instruments

None

No Procedure Instruments

CLA62 - The Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (Wales) (Partial Revocation) Order 2011
No Procedure. Date made 16 November 2011. Date laid 18 November 2011. Coming into force date 9 December 2011

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

CLA61 – The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012 (Pages 1 – 55)
Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date in accordance with regulation 1(2)

4. Protection of Freedoms Bill (Legislative Consent Motion) (Pages 56 – 66)

Papers: CLA(4)-14-11(p1) – Legal Service Briefing on Protection of Freedoms Bill (Legislative Consent Memorandum)

5. Committee Correspondence

CLA31 – The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and CLA32 – The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 (Pages 67 – 75)
CLA(4)-08-11(p3) – Letter from the Chair to the Minister dated 27 September 2011
CLA(4)-08-11(p4) – The Minister's response dated 4 October 2011
CLA(4)-10-11(p3) – Letter from the Chair to the Minister dated 19 October 2011
CLA(4)-10-11(p4) – The Minister's response dated 31 October 2011
CLA(4)-14-11(p2) – Letter from the Chair dated 14 November 2011
CLA(4)-14-11(p3) – The Minister's response dated 29 November 2011

6. Date of the next meeting (Pages 76 – 86)

Papers to note:
CLA(4)-13-11- Report of the meeting 28 November 2011
CLA(4)-14-11(p4) – Additional evidence from the Welsh Refugee Council

7. Motion under Standing Order 17.42 to resolve to exclude the

public from the meeting for the following business:
A Committee may resolve to exclude the public from a meeting or any part of a meeting where:
(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish

8. Consideration of the evidence submitted to Inquiry to date and discussion on emerging issues (Pages 87 – 91)

Papers:
CLA(4)-14-11(p5) – Inquiry into the granting of powers to Welsh Ministers in UK Laws – Emerging issues and outline recommendations

Transcript
View the meeting transcript.

CLA(4)-14-11

CLA61

Constitutional and Legislative Affairs Committee Report

Title: The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012
Procedure: Affirmative

These draft regulations made under sections 19, 20, 22 (8), 25, 26 and 28 (6) of the London Olympic Games and Paralympic Games Act 2006, control advertising and outdoor trading around the only Olympic event centre in Wales, the Millennium Stadium, Cardiff, during periods when Olympic events take place in the stadium. They are intended to uphold the Host City Contract that both the UK and Welsh Governments promised to implement by preventing ambush marketing. The regulations enable the Olympic Delivery Authority ("ODA") and the London Organising Committee ("LOC") to determine what trading takes place and advertising is displayed within a designated 'event zone' around the Millennium Stadium, although the regulations contain exemptions to allow businesses to trade and advertise with minimal disruption.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this draft instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this draft instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

Background

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 have been exercised in Wales. Similar regulations are being made in England and Scotland.

A joint consultation was issued with England and Scotland between 07 March and 30 May 2011.

In total there were 50 responses, none of which specifically related to Wales

Matters identified by the Welsh Government as being of special interest to the Constitutional Affairs Committee

None

Other issues

A number of issues have been brought to the attention of the Committee within written correspondence.

Wide definition of Ambush Marketing

Both “advertisement” and “ambush marketing campaign” are defined in Regulation 5 (1).

Advertisement includes any word, letter, image (including logos and other forms of branding), mark, sound, light, model, sign, placard, board, notice, screen, awning, blind, flag, device, costume or representation, whether illuminated or not, which is in the nature of, and employed wholly or partly for the purposes of, promotion, advertisement, announcement or direction.

The regulations define an ambush marketing campaign (whether of one or many acts) as a campaign intended specifically to advertise goods or services or a person who provides goods or services in an Event Zone during an Event Period.

The explanatory memorandum states that the regulations are necessary to give effect to the host city contract which requires ambush marketing to be combatted.

The regulations provide that within the event zones during the event periods, a person wishing to engage in advertising activities, subject to certain exceptions will require a specific prior authorisation from London Olympic Game Organising Committee (LOCOG). The authorisation process will ensure that only advertising which is consistent with the aims of the Regulations is permitted. The regulations provide many exceptions to allow businesses to operate as normal from their premises with advertising that does not conflict with the aims of the Regulations. There are also other exceptions to various specific forms of advertising which don’t conflict with the aims of the Regulations.

For groups other than non – official sponsors licensees and partners LOCOG will operate a public application process for which there will be no charge.

The general position is that so long as you are not seeking to mislead the public into thinking that there is an association between your

business and the 2012 games or their sponsors, and you comply with the 2011 regulations then you should not face prosecution.

Penalties

Advertising or Trading without the necessary permit in contravention of the regulations will be an offence under Section 22 of the London Olympic Games and Paralympic Games Act 2006 and will be punishable by a fine of up to £20 000.00. The Act rather than these regulations provides for the criminal offence.

Guidance

The Olympic Delivery Authority has recently issued guidance on trading and advertising during the games which can be found here[1]

Reverse Burden

The regulations provide that a person who has an interest in or is responsible for a business, goods or service, will be liable for a contravention of the regulations by the business, or if the contravention relates to the goods or service. Similarly, a person who owns or occupies land will be responsible for any contravention of the Regulations that takes place on the land.

In both cases a person can escape liability if they prove that the contravention took place without their knowledge or despite them having taken all reasonable steps to prevent a contravention from occurring, continuing or recurring.

The Regulations therefore reverse the normal burden of proof in criminal offences.

Within the human rights assessment at Appendix B of the explanatory memorandum the UK government accept that the Regulations *"could be said to interfere with the right to be presumed innocent affirmed by Article 6 (2) ECHR."* The following justification is provided.

> *An interference with the right to be presumed innocent will be justified where it is confined "within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence." Putting this another way, an interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.*

[1] http://www.london2012.com/documents/oda-publications/detailed-provisions-of-the-advertising-and-trading-regulations.pdf

In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.

The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the regulations has occurred (that is, that there has been advertising or trading activity in contravention of the regulations). The prosecution would also have to prove that the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.

In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent

The Joint Committee on Human Rights in their fifteenth report on the London Olympic Games and Paralympic Games Bill stated:-

"We accept that, in light of the guidance recently given by the House of Lords on assessing the compatibility of reverse onus provisions (Sheldrake –v- DPP), this clause is compatible with the presumption of innocence in Article 6 (2) ECHR because the matters in relation to which the defendant bears a legal burden of proof (knowledge of, or efforts made to prevent, and advertisement) are not arbitrary, but

matters within his particular knowledge, and do not go beyond what is reasonable for the defendant to establish."[2]

Charity/not-for profit bodies

Regulation 7 provides an exemption to the advertising restrictions in relation to a not for profit body that engages in activity intended to demonstrate support for or opposition to the views or actions of a person or body of persons, publicise a belief, cause or campaign, or mark or commemorate an event.

A "not for profit body" is defined in regulation 5 as a body that is required to use its funds for charitable or public purposes and is prohibited from distributing its assets to members (other than for charitable or public purposes).

Goods Deliveries

Whilst the draft regulations which were consulted on in March 2011, only provided limited exceptions for goods deliveries, the current regulations provide an exemption to the restrictions on trading at regulation 14 (1) (c) to *"selling or delivering an article to a person in premises adjoining a highway"*. This would allow for example a pizza delivery or catalogue courier to engage in that activity in the event zone during the event period without contravening the regulations.

Proportionality

The Welsh Government state in the explanatory memorandum that the Regulations contain a trade-off between seeking to achieve the common aims of the regulations which are to ensure:-

- The games have a consistent look and feel across London and the UK;
- To prevent ambush marketing within the vicinity of venues, and
- Spectators and those participating in the Games can get in and out of venues easily and safely.

And seeking to maintain 'business as usual' for those organisations located within the event zone, and to maintain the same extent of controls as those in the other administrations.

The restrictions are in place for a total of 13 days, and extend no further than 500 metres from avenue entrance where this is along a main access route and substantially less otherwise.

[2] Joint Committee on Human Rights – Fifteenth Report 20 March 2006

The explanatory memorandum goes on to state:-

"If the regulations are not made it will mean the Host City Contract cannot be fulfilled in Wales and there is a risk that the football matches would be moved to an alternative stadium in England".

Legal Advisers
Constitutional and Legislative Affairs Committee

November 2011

Draft Regulations laid before the National Assembly for Wales on 18 November 2011 under sections 20(2) and 26(2) of the London Olympic Games and Paralympic Games Act 2006, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2012 No. (W.)

OLYMPIC GAMES AND PARALYMPIC GAMES, WALES

The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations control advertising activity and trading activity in and around the Millennium Stadium, Cardiff (the "event zone") during periods when London 2012 Olympic and Paralympic Games events take place ("event period").

The Regulations are made under sections 19, 20(1), 22(8), 25, 26(1) and 28(6) of the London Olympic and Paralympic Games Act 2006 ("the Act"). Section 21(1) of the Act makes it an offence to contravene advertising regulations made under section 19 of that Act, and section 27 of the Act provides that it is an offence to contravene trading regulations made under section 25 of that Act.

Part 1 of the Regulations comprises general provisions.

There is one event zone in Wales, the Millennium Stadium zone, which is defined in regulation 3 by reference to the map available for inspection at the offices of the Welsh Government and Cardiff Council. Regulation 3 also defines event period.

Part 2 of the Regulations contains detailed provisions relating to advertising activity in the event zone during an event period.

Regulation 5(1) defines “advertising activity” as displaying an advertisement or distributing or providing promotional material. “Advertisement”, “displaying an advertisement” and “promotional material” are defined in the same regulation. Specific provision is made in regulation 5(3) for advertisements displayed on mobile telephones and other similar devices.

Regulation 6 provides for an advertising prohibition and specifies people who are to be treated as satisfying the criteria for engaging in advertising activity.

Under section 21(2) of the Act, a person charged with an offence under section 21(1) of the Act has a defence if the person proves that the contravention occurred without the person’s knowledge or despite the person taking all reasonable steps to prevent it from occurring or (where the person became aware of it after its commencement) from continuing.

In addition to this defence, regulations 7 to 10 specify exceptions to the advertising prohibition.

The exceptions in regulation 9 are modelled on provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992 (the “1992 Regulations”).

As well as the exceptions specified in regulations 7 to 10, regulation 11 provides that the advertising prohibition does not apply to advertising activity undertaken or controlled by the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”), or a person authorised by LOCOG.

LOCOG’s right to engage in advertising activity and any authorisation granted by it are subject to the conditions specified in regulation 11(4), including that the advertiser holds a licence which, in addition to authorisation under regulation 11, is required before that person may engage in advertising activity (whether in a particular place or generally).

Part 3 of the Regulations contains detailed provisions relating to trading activity in the event zone during an event period.

Regulation 12 defines “trading activity” as carrying out one or more of the activities specified in that regulation in an open public place.

Regulation 13 provides for a trading prohibition and specifies people who are to be treated as satisfying the criteria for engaging in trading activity.

Regulation 14 specifies exceptions to the trading prohibition.

In addition to the exceptions specified in regulation 14, regulation 15 provides that the trading prohibition does not apply to trading activity undertaken in accordance with an authorisation granted by the Olympic Delivery Authority ("the ODA") or a person to whom the function of granting authorisations is delegated by the ODA.

Part 4 of the Regulations makes provision for a person who has applied for an authorisation, and is dissatisfied with the decision of the authoriser, to request the ODA to review that decision.

Part 5 provides for compensation for a person whose property is damaged in the course of the exercise or purported exercise of an enforcement power under section 22 or 28 of the 2006 Act.

Draft Regulations laid before the National Assembly for Wales on 18 November 2011 under sections 20(2) and 26(2) of the London Olympic Games and Paralympic Games Act 2006, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2012 No. (W.)

OLYMPIC GAMES AND PARALYMPIC GAMES, WALES

The London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers, in exercise of the powers conferred by sections 19, 20(1), 22(8), 25, 26(1) and 28(6) of the London Olympic Games and Paralympic Games Act 2006(**1**), and now vested in them(**2**), make the following Regulations.

The Welsh Ministers have consulted in accordance with the requirements set out in sections 20(3) and 26(3) and have had regard to the matters referred to in sections 19(2) and 25(2) of that Act.

(**1**) 2006 c.12. Sections 19, 20, 25 and 26 were amended by paragraph 6 of the Schedule to S.I. 2007/2129 and paragraph 8 of the Schedule to S.I. 2010/1551.

(**2**) Section 41(4) of the London Olympic Games and Paralympic Games Act 2006 provides that in their application to things done in Wales, sections 19 to 30 have effect as if a reference to the Secretary of State were a reference to the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30(1) and 30(2)(c) of Schedule 11 to, the Government of Wales Act 2006 (c.32).

A draft of these Regulations was laid before, and approved by a resolution of, the National Assembly for Wales in accordance with sections 20(2) and 26(2) of that Act(**1**).

PART 1

Introductory

Title, commencement, cessation and application

1.—(1) The title of these Regulations is the London Olympic Games and Paralympic Games (Advertising and Trading) (Wales) Regulations 2012.

(2) They come into force on the day after the day on which they are made.

(3) They cease to have effect at the end of 14 August 2012.

(4) These Regulations apply in relation to Wales.

Application to the Crown

2.—(1) The following provisions bind the Crown—

(a) regulations 5 to 11, and

(b) regulations 3, 4, 16 and 17 to the extent that they relate to advertising activity.

(2) But nothing in these Regulations makes the Crown liable for an offence.

General Interpretation

3. In these Regulations—

"the Act" ("*y Ddeddf*") means the London Olympic Games and Paralympic Games Act 2006;

"article" ("*eitem*") includes a living thing;

"building" ("*adeilad*") means a permanent building but excludes a telephone kiosk;

"event period" ("*cyfnod digwyddiad*") means each of the following periods—

(a) the period beginning at 00:01 on 24 July 2012 and ending at 23:59 on 28 July 2012,

(b) the period beginning at 00:01 on 30 July 2012 and ending at 23:59 on 4 August 2012, and

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(**1**) Sections 20(2) and 26(2) of the London Olympic Games and Paralympic Games Act 2006 provide that regulations made under sections 19 and 25 respectively of that Act may not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament. Section 41(4) of that Act provides that in their application to things done in Wales, sections 19 to 30 have effect as if a reference to a resolution of each or either House of Parliament were a reference to a resolution of the National Assembly for Wales.

(c) the period beginning at 00:01 on 9 August 2012 and ending at 23:59 on 10 August 2012;

"event zone" ("*parth digwyddiadau*") means the Millennium Stadium zone, being the area bounded externally by a dotted green line, including the airspace above that area, shown on the map signed on behalf of the Welsh Ministers, bearing the name of the event zone, the title of these Regulations, and the date September 2011, of which prints are deposited and available for inspection at the offices of the Welsh Government, Cathays Park, Cardiff, CF10 3NQ, and at the offices of Cardiff Council at County Hall, Atlantic Wharf, Cardiff, CF10 4UW, and at City Hall, Cathays Park, Cardiff, CF10 3ND;

"licence" ("*trwydded*") includes any kind of consent, certificate, permission or authority (by whatever name) granted by a landowner, local authority or other person in accordance with any enactment, Charter or other document;

"newspaper or periodical" ("*papur newydd neu gyfnodolyn*") does not include a newspaper or periodical intended specifically to advertise one or more of the following within the event zone during an event period—

(a) goods or services,

(b) a person who provides goods or services;

"receptacle" ("*daliedydd*") means anything which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article, including—

(a) any vehicle, trailer or barrow, or

(b) any basket, bag, box, vessel, stall, stand, easel, board, or tray;

"telephone kiosk" ("*caban ffôn*") means any kiosk, booth, acoustic hood, shelter or similar structure which is erected or installed for the purpose of housing or supporting electronic communications apparatus and at which an electronic communications service is provided (or is to be provided) by an electronic communications code operator; and

"the 1992 Regulations" ("*Rheoliadau 1992*") means the Town and Country Planning (Control of Advertisements) Regulations 1992(**1**).

Effect on other legislation etc.

4. Nothing in these Regulations—

(**1**) S.I. 1992/666, amended by S.I. 1994/2351; there are other amending instruments but none are relevant to these Regulations.

(a) authorises a person to do anything that is prohibited (whether in a particular place or generally) by or under any enactment or rule of law, or

(b) affects a requirement of any enactment or rule of law that a person hold a licence before engaging in activity for which that licence is required (whether in a particular place or generally).

PART 2

Advertising Activity

Interpretation of this Part

5.—(1) In this Part—

"advertisement" ("*hysbyseb*") means any word, letter, image, mark, sound, light, model, sign, placard, board, notice, screen, awning, blind, flag, device, costume or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purpose of, promotion, advertisement, announcement or direction;

"advertiser" ("*hysbysebwr*") means a person who engages in advertising activity;

"advertising activity" ("*gweithgaredd hysbysebu*") means—

(a) displaying an advertisement, or

(b) distributing or providing promotional material;

"advertising attire" ("*gwisg hysbysebu*") means—

(a) a costume that is an advertisement, or

(b) clothing on which an advertisement is displayed;

"ambush marketing campaign" ("*ymgyrch marchnata rhagod*") means a campaign (whether consisting of one act or a series of acts) intended specifically to promote, advertise, announce or direct one or more of the following within the event zone during an event period—

(a) goods or services,

(b) a person who provides goods or services;

"displaying an advertisement" ("*arddangos hysbyseb*") includes (without prejudice to the generality of that expression)—

(a) projecting, emitting, screening or exhibiting an advertisement,

(b) carrying or holding an advertisement or an apparatus by which an advertisement is displayed,

(c) providing for—

(i) an advertisement to be displayed on an animal, or

(ii) an apparatus by which an advertisement is displayed to be carried or held by an animal,

(d) doing one or more of the following as part of an ambush marketing campaign—

(i) carrying or holding personal property on which an advertisement is displayed,

(ii) wearing advertising attire,

(iii) displaying an advertisement on an individual's body;

"not-for-profit body" ("*corff di-elw*") means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes); and

"promotional material" ("*deunydd hyrwyddo*") means a document or article distributed or provided wholly or partly for the purpose of promotion, advertisement, announcement or direction.

(2) In this Part, a reference to a person who engages in advertising activity is to be treated as including a person to whom regulation 6(2) applies.

(3) Advertising activity that consists of the display of an advertisement on a personal communication device is not to be treated as advertising activity for the purposes of this Part 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).

(4) In paragraph (3), "personal communication device" ("*dyfais gyfathrebu bersonol*") means a mobile telephone or other personal interactive communication device.

Control of advertising activity

6.—(1) A person must not engage in advertising activity in the event zone during an event period.

(2) A person is to be treated as contravening paragraph (1) if that person arranges (at any time and in any place) for advertising activity to take place in the event zone during an event period.

(3) A person is also to be treated as contravening paragraph (1) if advertising activity in the event zone during an event period—

(a) relates to goods, services, a business or other concern in which that person has an interest or for which that person is responsible, or

(b) takes place on land, premises or other property that that person owns or occupies or of which that person has responsibility for the management.

(4) Without prejudice to the generality of paragraph (3)—

(a) a person is to be treated as having an interest in or responsibility for a business or other concern if that person is an officer of the business or concern,

(b) a person is to be treated as having an interest in or responsibility for goods or services if that person is an officer of a business or other concern that has an interest in or is responsible for the goods or services, and

(c) a person is to be treated as having responsibility for the management of land, premises or other property if that person is an officer of a business or other concern that owns, occupies or has responsibility for the management of the land, premises or other property.

(5) In paragraph (4), "an officer" ("*swyddog*") means a director, manager, secretary or other similar officer.

(6) This regulation applies in relation to advertising activity whether or not it consists of the result or continuation of activity carried out before these Regulations came into force.

Exception for demonstrations, etc.

7.—(1) Regulation 6 does not apply to advertising activity intended to—

(a) demonstrate support for or opposition to the views or actions of any person or body of persons,

(b) publicise a belief, cause or campaign, or

(c) mark or commemorate an event.

(2) But this exception does not apply to advertising activity that promotes or advertises—

(a) goods or services, or

(b) a person or body (excluding a not-for-profit body) that provides goods or services.

Exception for individuals wearing advertising attire, displaying advertisements on their bodies, or carrying personal property

8.—(1) Regulation 6 does not apply to individuals who engage in advertising activity only by doing one or more of the following, unless the individuals know or have reasonable cause to believe that they are participating in an ambush marketing campaign—

(a) wearing advertising attire,

(b) displaying an advertisement on the individual's body,

(c) carrying or holding personal property on which an advertisement is displayed.

(2) The fact that this exception applies to individuals does not affect the application of regulation 6 to any other person (whether in respect of the same advertising activity or otherwise).

Exceptions modelled on the 1992 Regulations

9.—(1) Regulation 6 does not apply to advertising activity that consists of the display of an advertisement—

(a) within a Class specified in the first column of Schedule 2 to the 1992 Regulations so long as the display or the advertisement complies with the conditions referred to in regulation 3(2) of those Regulations,

(b) within a Class specified in Part 1 of Schedule 3 to the 1992 Regulations subject to the conditions and limitations referred to in regulation 6(1)(a) and (b) of those Regulations, or

(c) which is an illuminated advertisement on business premises—

(i) to which express consent within the meaning set out in regulation 5(1) of the 1992 Regulations was granted before the date on which these Regulations come into force, and

(ii) that complies with the conditions and limitations specified in paragraphs (2) to (11) of Class 4B in Part 1 of Schedule 3 to the 1992 Regulations.

(2) But this exception does not apply to the display of an advertisement—

(a) within Class A (advertisements on balloons),

(b) within Class B (advertisements displayed on enclosed land) where the enclosed land on which the advertisement is displayed is—

(i) a railway station (and its yards) or bus station (together with its forecourt, whether enclosed or not), or

(ii) enclosed land (including a sports stadium or other building) on or in which a London Olympic Event(**1**) is taking place or to take place,

(c) within Class D (advertisements incorporated in the fabric of buildings) which was not in existence on the date on which these Regulations came into force,

(d) within Class J (advertisements displayed inside buildings), other than an exempt business advertisement, where the building in which the advertisement is displayed—

(i) is or forms part of a railway station or bus station, or

(ii) is a sports stadium or other building in which a London Olympic Event is taking place or to take place,

(e) within Class 1B (advertisements displayed by local planning authorities) that—

(i) is not displayed wholly for the purpose of announcement or direction in relation to any of the functions of the local planning authority by which it is displayed, and

(ii) is not reasonably required to be displayed for the safe or efficient performance of those functions,

(f) within Class 3D (advertisements announcing local events and activities) that promotes or advertises—

(i) goods or services, or

(ii) a person or body (other than a not-for-profit body) that provides goods or services,

(g) within Class 3F (advertisements relating to travelling circuses, fairs or similar travelling entertainments),

(h) within Class 7B (flags on residential development sites) that does not relate to the development or to a person carrying out the development or an aspect of the development,

(i) within Class 8 (advertisements on hoardings),

(j) within Class 9 (advertisements on highway structures),

(k) within Class 12 (advertisements displayed inside buildings), other than an exempt

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(**1**) "London Olympic Event" is defined in section 1(3)(b) of the Act.

business advertisement, where the building in which the advertisement is displayed—

(i) is or forms part of a railway station or bus station, or

(ii) is a sports stadium or other building in which a London Olympic Event is taking place or to take place,

(l) within Class 13 (advertisements on sites used for the display of advertisements without express consent),

(m) within Class 14 (advertisements displayed after expiry of express consent).

(3) In this regulation—

(a) "exempt business advertisement" ("*hysbysiad busnes esempt*") means an advertisement (whether illuminated or not) displayed on business premises within a building (or a forecourt associated with such premises) that refers wholly to any or all of the following: the business carried on, the goods or services provided or the name or qualifications of the person carrying on the business, or providing the goods or services, on those premises,

(b) a reference to a "Class" ("*Dosbarth*") of advertisement is a reference to the corresponding Class of advertisement in Schedule 2 or (as the case may be) 3 to the 1992 Regulations, and

(c) "business premises" ("*mangre busnes*") and "forecourt" ("*blaengwrt*") have the same meaning as in Schedule 3 to the 1992 Regulations(**1**).

(4) For the purposes of this regulation—

(a) Part 2 of Schedule 3 to the 1992 Regulations applies for the interpretation of that Schedule,

(b) a reference to a building in Schedule 2 or 3 to the 1992 Regulations is to be construed in accordance with the definition of building in regulation 3 of these Regulations,

(c) a reference to displaying an advertisement (however phrased) in Schedule 2 or 3 to the 1992 Regulations is to be construed in accordance with the definition in regulation 5 of these Regulations, and

(d) a reference to a vehicle in Schedule 2 to the 1992 Regulations includes a bicycle.

(**1**) See paragraph 1(1) of Part 2 to Schedule 3 to the 1992 Regulations.

Other exceptions

10.—(1) Regulation 6 does not apply to the following advertising activity—

(a) displaying an advertisement that is employed wholly as—

(i) a memorial, or

(ii) a railway signal,

(b) distributing or providing a current newspaper or periodical, either without a receptacle or from a receptacle that does not cause undue interference or inconvenience to persons using the street,

(c) advertising activity undertaken in accordance with a condition attached to an authorisation granted under regulation 15 (trading activity authorised by the Olympic Delivery Authority etc.),

(d) displaying an advertisement on an aircraft for one or more of the following purposes—

(i) complying with the law of the United Kingdom or any other country, being law in force in relation to the aircraft,

(ii) securing the safety of the aircraft or any person or property therein,

(iii) the furtherance, by or on behalf of a Government department including the Welsh Assembly Government, by a person acting under any public duty or by a person providing ambulance or rescue facilities by air, of measures in connection with circumstances, existing or imminent at the time the aircraft is used, which may cause danger to persons or property,

(iv) civil defence, military or police purposes,

(e) displaying a mark or inscription (other than an illuminated sign) on the body of an aeroplane or helicopter, or

(f) displaying an advertisement on an item of street furniture provided that the advertisement—

(i) is not illuminated,

(ii) bears only the name, contact details and device (or any one or more of those things) of the manufacturer, owner or operator of the street furniture (or any one or more of those persons), and

(iii) is not displayed as part of an ambush marketing campaign.

Advertising undertaken or authorised by the London Organising Committee

11.—(1) Regulation 6 does not apply to advertising activity undertaken or controlled by—

(a) the London Organising Committee(**1**), or

(b) any person authorised by that Committee (whether or not subject to terms and conditions imposed by that Committee and whether or not in accordance with a sponsorship or other commercial agreement with that Committee).

(2) Subject to these Regulations, the London Organising Committee has an absolute discretion in respect of each application to it for authorisation.

(3) The London Organising Committee must have regard to the provisions of the Host City Contract(**2**) before engaging in advertising activity or granting an authorisation under this regulation.

(4) The London Organising Committee's right to engage in advertising activity pursuant to this regulation and any authorisation granted by it are subject to all of the following conditions—

(a) that the advertiser holds any licence which, in addition to authorisation by or under this regulation, is required before a person may engage in advertising activity (whether in a particular place or generally),

(b) that no advertisement be sited or displayed so as to—

(i) endanger persons using any highway, railway, or waterway,

(ii) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air, or

(iii) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle, and

(c) that the advertiser maintains any advertisement in a condition that does not—

(i) impair the visual amenity of the site, or

(ii) endanger the public.

(**1**) "the London Organising Committee" is defined in section 1(3)(d) of the Act. Since the passing of the Act, the London Organising Committee has changed its registered name to The London Organising Committee of the Olympic Games and Paralympic Games Limited.

(**2**) "Host City Contract" is defined in section 1(3)(e) of the Act.

PART 3

Trading Activity

Interpretation of this Part

12.—(1) In this Part—

(a) a reference to a person who engages in trading activity is to be treated as including a person to whom regulation 13(2) applies;

(b) a reference (however phrased) to selling an article includes exposing or offering an article for sale;

(c) a reference (however phrased) to supplying a service includes offering to supply a service;

(d) "motor vehicle" ("*cerbyd modur*") has the same meaning as in the Road Traffic Act 1988(**1**);

(e) "open public place" ("*man cyhoeddus agored*") means—

(i) a highway, or

(ii) another place—

(aa) to which the public have access (whether generally or only for the purpose of the trading activity), and

(bb) which is not in a building other than one designed or generally used for the parking of cars;

(f) "performance of a play" ("*perfformiad drama*") means performance of any dramatic piece, whether involving improvisation or not—

(i) which is given wholly or in part by one or more persons actually present and performing, and

(ii) in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role;

(g) "public entertainment" ("*adloniant cyhoeddus*") means entertainment of one or more of the following descriptions provided for members of the public—

(i) a performance of live music,

(ii) any playing of recorded music,

(iii) a performance of dance,

(iv) a performance of a play,

(**1**) 1988 c. 52. See section 185 of that Act.

(v) entertainment of a similar description to that falling within paragraphs (i) to (iv);

(h) "selling an article" ("*gwerthu eitem*") includes (without prejudice to the generality of that term) trading by a person acting as a pedlar (whether or not under the authority of a pedlar's certificate granted under section 4 of the Pedlars Act 1871(**2**)); and

(i) "trading activity" ("*gweithgaredd masnachu*") means carrying out one or more of the following activities in an open public place—

(i) selling an article,

(ii) supplying a service,

(iii) making an appeal to members of the public to give money (by whatever means) or other property (or both) for charitable or other purposes (whether or not authorised by or under any enactment),

(iv) providing public entertainment for gain or reward.

(2) In determining whether activity amounts to trading activity for the purposes of this Part the following matters are to be disregarded—

(a) the fact that gain or reward arising from the activity does not accrue to the person actually carrying out the activity,

(b) the fact that either party to a transaction is not in an open public place when one or more of the following activities occurs—

(i) an offer or exposure for sale of an article,

(ii) an offer to supply a service,

(iii) the completion of the transaction,

(c) the fact that a transaction is not completed in an open public place, if one or both of the following activities occurs in such a place—

(i) an offer or exposure for sale of an article,

(ii) an offer to supply a service,

(d) the fact that an article actually sold or service actually supplied is different from that offered or exposed for sale.

Control of trading

13.—(1) A person must not engage in trading activity in the event zone during an event period.

(**2**) 1871 c. 96. Section 4 was amended by section 2 of the Pedlars Act 1881 (c. 45), section 31(5) and (6) of the Criminal Law Act 1977 (c. 45), and section 46 of the Criminal Justice Act 1982 (c. 48).

(2) A person is to be treated as contravening paragraph (1) if that person arranges (at any time and in any place) for trading activity to take place in the event zone during an event period.

(3) A person is also to be treated as contravening paragraph (1) if trading activity in the event zone during an event period—

(a) is undertaken by a business or other concern in which that person has an interest or for which that person is responsible, or

(b) takes place on land that that person owns or occupies or of which that person has responsibility for the management.

(4) But paragraph (3) does not apply to a person who proves that—

(a) the trading activity took place without that person's knowledge, or

(b) that person took all reasonable steps to prevent the trading activity taking place or, where it has taken place, to prevent it continuing or recurring.

(5) Without prejudice to the generality of paragraph (3)—

(a) a person is to be treated as having an interest in or responsibility for a business or other concern if that person is an officer of the business or concern,

(b) a person is to be treated as having responsibility for the management of land if that person is an officer of a business or other concern that owns, occupies or has responsibility for the management of the land.

(6) In paragraph (5), "an officer" ("*swyddog*") means a director, manager, secretary or other similar officer.

(7) This regulation applies in relation to trading activity whether or not it consists of the result or continuation of activity carried out before these Regulations came into force.

Exceptions

14.—(1) Regulation 13 does not apply to the following trading activity—

(a) selling a current newspaper or periodical either without a receptacle or from a receptacle that does not cause undue interference or inconvenience to persons using the street,

(b) trading activity undertaken or controlled by the London Organising Committee on enclosed land on which a London Olympic Event is taking place or to take place,

(c) selling or delivering an article to a person in premises adjoining a highway,

(d) selling a motor vehicle on private land generally used for the sale of motor vehicles,

(e) supplying motor vehicle cleaning services on private land generally used for the supply of those services,

(f) supplying motor vehicle parking services in a building or on other land designed or generally used for the parking of motor vehicles,

(g) providing a public sanitary convenience,

(h) providing a permanent telephone kiosk,

(i) trading as a walking tour operator,

(j) supplying public transport services including tourist services, or

(k) trading activity on private land adjacent to exempt retail premises provided that the trading activity—

(i) forms part of the usual business of the owner of the premises or a person assessed for uniform business rate in respect of the premises, and

(ii) takes place during the period during which the premises are open to the public for business.

(2) In this regulation—

"exempt retail premises" ("*mangre fanwerthu esempt*") means a building normally used as—

(a) a shop,

(b) a restaurant, bar, or other premises used for the supply of meals, refreshments or alcohol to the public, or

(c) a petrol filling station;

"sanitary convenience" ("*cyfleuster iechydol*") has the same meaning as in the Building Act 1984(**1**);

"tourist services" ("*gwasanaethau i dwristiaid*") means public transport services primarily for the benefit of tourists; and

"walking tour operator" ("*gweithredwr teithiau cerdded*") means a person that supplies services to the public comprising tours of an area on foot.

(**1**) 1984 c. 55. See section 126 of that Act.

Trading activity authorised by the Olympic Delivery Authority etc.

15.—(1) Regulation 13 does not apply to trading activity undertaken in accordance with an authorisation granted by the Authority(**1**).

(2) Subject to these Regulations, the Authority has an absolute discretion in respect of each application for authorisation.

(3) The Authority must have regard to the provisions of the Host City Contract before granting an authorisation under this regulation.

(4) An authorisation granted under this regulation is subject to the condition that any person who engages in trading activity in reliance on the authorisation must hold any licence which, in addition to authorisation under this regulation, is required before the person may engage in trading activity (whether in a particular place or generally).

(5) In this regulation "Authority" ("*Awdurdod*") means—

(a) the Olympic Delivery Authority, or

(b) a person to whom the function of granting authorisations for the purpose of this regulation is delegated by the Olympic Delivery Authority.

PART 4

Rights of review

Interpretation of this Part

16. In this Part—

"applicant" ("*ceisydd*") has the meaning given in regulation 17(1);

"authorisation" ("*awdurdodiad*") means an authorisation granted—

(a) under regulation 11(1)(b) in relation to advertising activity, or

(b) under regulation 15 in relation to trading activity; and

"authoriser" ("*awdurdodwr*") means—

(a) in relation to an application for an authorisation under regulation 11(1)(b), the London Organising Committee, or

(b) in relation to an application for an authorisation under regulation 15, the

(**1**) Under section 25(7) of the Act, an authorisation granted by the Authority may be subject to terms and conditions.

Authority (within the meaning of that regulation).

Right to seek review

17.—(1) A person who has applied for an authorisation (an "applicant") and is dissatisfied with the decision of the authoriser may request the Olympic Delivery Authority to review that decision.

(2) Such a request must—

(a) be in writing,

(b) include or be accompanied by such information or evidence as the applicant considers relevant, and

(c) be made within a period of 21 days beginning with the date on which the authoriser's decision was communicated to the applicant.

(3) The Olympic Delivery Authority must review the authoriser's decision within a period of 21 days beginning with the date on which it receives such a request.

(4) On reviewing the authoriser's decision, the Olympic Delivery Authority may—

(a) confirm the original decision, or

(b) substitute a new decision for the original decision.

(5) As soon as practicable after making a decision on the review, the Olympic Delivery Authority must send a written notice to the applicant informing the applicant of its decision and the reasons for that decision.

(6) The decision of the Olympic Delivery Authority on the review is final.

PART 5

Compensation

Interpretation of this Part

18. In this Part—

"claimant" ("*hawlydd*") has the meaning given in regulation 20(1);

"decision notice" ("*hysbysiad penderfynu*") means a notice issued by a relevant authority under regulation 22(2)(b) or (3);

"enforcement officer" ("*swyddog gorfodi*") means a person designated for the purpose of section 22 or 28 of the Act (enforcement powers) by the Olympic Delivery Authority;

"notice of claim" ("*hysbysiad am hawliad*") has the meaning given in regulation 20(1); and

"relevant authority" ("*awdurdod perthnasol*"), in relation to the exercise or purported exercise of a power under section 22 or 28 of the Act, means—

(a) if the exercise or purported exercise of the power was by an enforcement officer, the Olympic Delivery Authority, or

(b) if the exercise or purported exercise of the power was by a constable, the police authority for the police force of which the constable is a member.

Entitlement to compensation for damage to property

19.—(1) A person whose property is damaged in the course of the exercise or purported exercise of a power under section 22 or 28 of the Act is entitled to compensation from the relevant authority in accordance with this Part.

(2) But a person who, in the reasonable belief of the relevant authority, is responsible for a contravention of these Regulations is not entitled to compensation.

(3) The amount of compensation payable is the total of—

(a) the cost of repairing the property to its previous condition (or, in the case of property which is impossible, or not commercially worthwhile, to repair, the cost of replacing the property), and

(b) any other loss which was a direct result of the damage to the property.

Notice of claim

20.—(1) A person entitled to compensation under this Part (a "claimant") may send a written notice (a "notice of claim") to the relevant authority claiming that compensation.

(2) A notice of claim must be sent within—

(a) a period of 30 days beginning with the date on which damage occurred, or

(b) such longer period as agreed by the relevant authority in writing.

(3) A notice of claim must include or be accompanied by all of the following information and evidence—

(a) the claimant's full name,

(b) the date on which the damage occurred,

(c) the address or location at which the damage occurred,

(d) a description of—

(i) the property damaged,

(ii) the nature of the damage, and

(iii) the nature of any further loss which flowed directly from the damage for which compensation is claimed,

(e) the amount of compensation claimed (in accordance with regulation 19(3)) and the basis upon which the amount of compensation is calculated, and

(f) photographs, receipts, quotations or other evidence as to the matters referred to in sub-paragraphs (b) to (e).

Consideration of sufficiency of information and evidence received

21.—(1) Within a period of 14 days beginning with the date on which the relevant authority receives a notice of claim it must determine whether it has received sufficient information and evidence to enable it to decide the following matters—

(a) whether the claimant is entitled to compensation under this Part,

(b) and if so, the amount of the compensation.

(2) If the authority determines that it has not received sufficient information or evidence, it must send the claimant a written notice stating the further information or evidence that it requires.

(3) The claimant must send the authority the information or evidence stated in such a notice within—

(a) a period of 14 days beginning with the date on which the claimant receives the notice, or

(b) such longer period as agreed by the relevant authority in writing.

(4) Within a period of 7 days beginning with the date on which the authority receives any further information or evidence following such a notice, it must make the determination referred to in paragraph (1) again (and the other paragraphs of this regulation apply to that new determination).

Authority's decision on a claim

22.—(1) If a relevant authority determines under regulation 21 that it has received sufficient information and evidence it must, within a period of 14 days beginning with the date of that determination, decide the matters referred to in regulation 21(1)(a) and (b).

(2) If the authority decides that the claimant is entitled to compensation it must—

(a) pay to the claimant the amount of compensation stated in the notice of claim, or

(b) if it decides that the claimant is entitled to a lesser amount of compensation, send a notice in writing to the claimant—

(i) offering that lesser amount to the claimant, and

(ii) stating the reasons for its decision.

(3) If the authority decides that the claimant is not entitled to compensation it must send a notice in writing to the claimant—

(i) declining the claim, and

(ii) stating the reasons for its decision.

(4) A claimant who receives a decision notice offering a lesser amount of compensation than that stated in the notice of claim may agree, in writing, to accept that lesser amount (in which case the authority must pay that amount to the claimant).

(5) A decision notice must contain particulars of the claimant's rights to—

(a) request a review of the decision, under regulation 23, and

(b) appeal a decision on a review, under regulation 24.

Review of decision on a claim

23.—(1) A claimant who receives a decision notice may request the relevant authority to review its decision.

(2) Such a request must—

(a) be in writing,

(b) be made within—

(i) a period of 14 days beginning with the date on which the decision notice was received, or

(ii) such longer period agreed by the relevant authority in writing, and

(c) include or be accompanied by such information or evidence as the claimant considers relevant.

(3) Within a period of 14 days beginning with the date on which a relevant authority receives such a request it must review its decision under regulation 22.

(4) On reviewing its decision, the authority may—

(a) confirm the original decision, or

(b) substitute a new decision for the original decision.

(5) But on reviewing its decision the authority may not substitute a lesser amount of compensation for that stated in the decision notice.

(6) The authority must send a written notice to the claimant informing the claimant of its decision on the review and the reasons for that decision.

(7) A notice under paragraph (6) must contain particulars of the claimant's right to appeal a decision on a review under regulation 24.

Appeal to the county court

24.—(1) A claimant who is dissatisfied with a decision of the relevant authority on a review under regulation 23 may appeal to the county court.

(2) An appeal must be brought within a period of 21 days beginning with the date on which the claimant received written notice of the authority's decision on review.

(3) The court may give permission for an appeal to be brought after the end of that period, but only if it is satisfied—

(a) where permission is sought before the end of that period, that there is a good reason for the claimant to be unable to bring the appeal in time, or

(b) where permission is sought after the end of that period, that there was a good reason for the claimant's failure to bring the appeal in time and for any delay in applying for permission.

(4) An appeal under this regulation is to be by way of rehearing and the court may make such order confirming, quashing or varying the decision as it thinks fit.

Minister for Environment and Sustainable Development,
one of the Welsh Ministers

Date

Explanatory Memorandum to The London Olympic Games and Paralympic Games (Advertising and Street Trading) (Wales) Regulations 2012.

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The London Olympic Games and Paralympic Games (Advertising and Street Trading) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths AM

Minister for Environment and Sustainable Development,
one of the Welsh Ministers

17 November 2011

PART 1

1. Description

These regulations control advertising and outdoor trading around the only Olympic event centre in Wales, the Millennium Stadium, Cardiff, during periods when Olympic events take place in the stadium. They are intended to uphold the Host City Contract that both the UK and Welsh Governments promised to implement by preventing ambush marketing.

The regulations enable the Olympic Delivery Authority and the London Organising Committee to determine what trading takes place and advertising is displayed within a designated 'event zone' around the Millennium Stadium, although the regulations contain exemptions to allow businesses to trade and advertise with minimal disruption.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The power to make the regulations is provided by sections 19, 20, 22 (8), 25, 26 and 28 (6) of the London Olympic Games and Paralympic Games Act 2006 which were amended by paragraph 6 of the schedule of S.I 2007/2129 and paragraph 8 of the schedule to S.I 2010/1551. By virtue of section 162 of, and paragraph 30 of schedule 11 to, the Government of Wales Act 2006, functions of the National Assembly for Wales transferred to the Welsh Ministers who now make the following regulations.

The Welsh Ministers have consulted in accordance with sections 20(3) and 26(3) and have had regard to the matters referred to in sections 19(2) and 25(2) of that Act. A draft of these regulations is laid before the National Assembly for Wales in accordance with sections 20(2) and 26(2) of that Act, the instrument being subject to the approval of the Assembly.

4. Purpose & intended effect of the legislation

The 2006 Act and these regulations are necessary to give effect to commitments given by the UK 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).

The Secretary of State'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 UK Government and Welsh Government are not 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."

When the Bill that became the 2006 Act was going through Parliament, the Welsh Government secured powers that enable the Welsh Ministers to prepare the subordinate legislation necessary to fulfil the guarantee, in respect of Olympic events to be held in Wales.

The Millennium Stadium in Cardiff is a Olympic venue that will host football group games and some later stage games. There are no planned Paralympic events to be held in Wales.

Protecting the Olympic and Paralympic brands are a key part of the LOCOG official sponsoring and licensing programmes. The value of an association with the London 2012 Games is greatly enhanced by exclusivity. While there is already legislation in the UK which regulates advertising and street trading, tailored provision is needed for the Olympics and Paralympics both to act as a stronger deterrent to ambush marketing and illegal trading and because existing powers are unsuited to deliver the IOC's requirements. Therefore, regulations are required to control advertising and street trading in the vicinity of the events to be held in the Millennium Stadium.

Separate regulations will be made in Scotland, where Hamden Park is an Olympic football venue and in England where most Olympic events will take place, although each of the the three separate regulations have common aims, to ensure:

- the Games have a consistent look and feel across London and the UK;
- we can prevent ambush marketing within the vicinity of venues[1]; and

[1] Ambush marketing describes activities undertaken by businesses not sponsoring an event which nevertheless suggest they or their products are associated with the event or which seek

- spectators and those participating in the Games can get in and out of venues easily and safely.

The Regulations contain a trade off between seeking to achieve the above aims while seeking to maintain 'business as usual' for those organisations located within the event zone and to maintain the same extent of controls as those in the other administrations to avoid business in Wales being restricted to a greater extent than their counterparts in England or Scotland.

Wide definitions of advertising and street trading are therefore used in the regulations designed to prevent ambush marketing but the impact for businesses located in the event zone is lessened by many exemptions.

The geographical extent of the controls has been set on a pragmatic basis. It recognises that ambush marketing is difficult to control in the Millennium Stadium's city centre location, but the event zone has been made wide enough to cover the most popular routes to the Millennium Stadium, enabling effective enforcement based on experiences of previous major events, while minimising the disruption to existing businesses located within the zone and to those business that wish to advertise and undertake street trading during the Games.

The extent of the disruption is further reduced in that the restrictions would only be in force the day before and the actual day each match is played. Due to the way the matches are grouped together, there will be three blocks of restrictions or 'event periods':

- 24 July to 28 July 2012
- 30 July to 4 August 2012
- 9 August to 10 August 2012

If the regulations are not made it will mean the Host City Contract cannot be fulfilled in Wales and there is a risk that the football matches would be moved to an alternative stadium in England. The benefits of increased visitors to Cardiff would therefore also not be realised, set against the costs to individuals and businesses unable to advertise or trade within in the vicinity of the stadium as a result of the proposed controls. Full details of costs and benefits are set out in the Regulatory Impact Assessment at Part 2.

5. Consultation

Draft regulations were issued for consultation and details are included in the Regulatory Impact Assessment at Part 2.

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to exploit the interest in the event by exposing their brands to spectators at the event and/or watching the event on TV around the world.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The following options are those available to achieve the aims and intended effect of the regulations, that:

- the Games have a consistent look and feel across London and the UK;
- we can prevent ambush marketing within the vicinity of venues; and
- spectators and those participating in the Games can get in and out of venues easily and safely.

Option 1 - Do Nothing

We could do nothing and rely on existing legislation. We could utilise existing legislation and accept it was not drafted with such a large and time critical event in mind.

Option 2 - Act proportionately and limit scope of the restrictions

We could be proportionate and limit the scope of the restrictions. In the technical manual the IOC requests that advertising and concessions be controlled by the organising committee between main access points (train/bus stations, airports) and the venue. The IOC does not state how far this extends to but advises that: 'no publicity, or branding of any kind appears on or from the field of play or field of performance at any Olympic venue or other Olympic site, not appears within the sightlines of viewing spectators, nor within view of the television cameras'. We could aim to cover only the nearest transport hubs and identify key sites which could be used to promote brands within 200m of the venue perimeter.

Option 3 - Zero tolerance approach with requirements to cover a wide space around the venue

We could pursue a "zero tolerance" approach with the regulations preventing any and every advertiser and trader from conducting business within a wide space around the venue. Previous host nations have brought in stringent laws to regularise advertising and trading. In 2000 Sydney law makers restricted advertising within a 1km perimeter of the main Games venues. In 2004 the Athens Olympic and Paralympic organising committee cut the number of billboards around the city, clearing 10,000 from buildings and city rooftops. In 2008 the Beijing organisers ensured that all advertising was strictly controlled not just on billboards but on all public transport, at airports and city streets.

Costs and Benefits

Option 1: Do nothing approach and rely on exiting legislation.

Economic Benefits

- Status quo is preserved
- Free market for companies and individuals to derive commercial benefit from Olympic and Paralympic Games
- No additional expenditure incurred in authorising and enforcing.

Social Benefits
- None

Environmental Benefits
- None

Economic Costs
- The IOC could take legal action in respect of the Welsh Government failing to deliver on commitments made in the bidding process and contained in the Host City Contract.
- Companies and individuals may not comply with the existing regulations (may act illegally) where the penalty for doing so is lower than the potential commercial gain, or where enforcement is weak.
- Enforcement officers are unable to respond to illegal advertising and trading within the strict timeframes of the Olympic or Paralympic Games.
- The UK's inability to deal with ambush marketing means it is too high a risk to be allowed to host major events thus denying a significant future income.
- Current legislation does not effectively meet our three principal policy objectives.

Social Costs
- None

Environmental Costs
- None

Option 2: Do what is proportionate and limit the scope of the restrictions.

Economic Benefits
- Government and other bid stakeholders able to deliver the commitments made as part of the bidding process (in the Candidature File and associated guarantees as well as by signing the Host City Contract).
- The UK is considered a good option for future major events.

Social Benefits
- The people attending the games can experience a consistent celebratory look and feel to them.

Environmental Benefits
- None

Economic Costs

- Limiting advertising and street trading has a financial impact of around £15,000 depending on numbers of authorisations.
- Cost to ODA to enforce the regulations
- That a tightening of the laws on advertising and trading even for a small period is unpalatable to the general public.

Social Costs

- None

Environmental Costs

- None

Option 3: Zero tolerance approach with requirements to cover a wide space around the venue

Economic Benefits

- Government and other bid stakeholders able to deliver the commitments made as part of the bidding process (in the Candidature File and associated guarantees as well as by signing the Host City Contract).
- High satisfaction from the IOC and sponsors leading to the UK being considered for future major events.

Social Benefits

- The people attending the games can experience a consistent celebratory look and feel to them.

Environmental Benefits

- None

Economic Costs

- High outlay as enforcement would need to cover large distances for significant periods.

Social Costs

- That such stringent control on advertising and street trading would be unpalatable to the general public.

Environmental Costs

- None

Preferred Option

Taking account of the responses to the 12 week public consultation our chosen option is option 2.

In framing the draft regulations the Welsh Government's aim was to strike a balance between fully meeting commitments made to the IOC in the Host City

Contract and enabling businesses to continue to trade and advertise in event zones with minimal disruption.

The consultation sought to canvass opinion as to whether the draft regulations met this aim. Responding bodies broadly agreed that we had defined advertising and trading appropriately to meet the objectives of the regulations. 66% of respondents felt we have got the balance right or partially right between protecting sponsors and allowing business to operate as usual.

Responding bodies broadly agreed that by introducing temporary regulations that are only in force when an event is taking place and only apply in the event zones was proportionate and reasonable.

Whilst the consultation endorsed our approach to the regulations, respondents noted that businesses operating in event zones will need clear advice and information. The Welsh Government is working with the UK Government and the ODA on a range of communication products.

Explanation of costs calculation

Costs have been identified for option 2 and within that, 3 potential scenarios of impact are assessed. Financial impact is measured by the losses which businesses in Cardiff might incur as a result of new regulations on advertising and trading before and during the Olympic Games. The losses which are being measured are from existing trading not the losses which might arise from the extra revenues because of higher visitor numbers during the Games. Extra revenues generated as a result of the Games would be neutralised by losses as a result of the laws that come with the Games.

Advertising methodology

Any market consists of buyers and sellers who will both obtain benefits from buying and selling. The regulation of a market may have consequences for either of these groups and potentially other related markets.

For sellers we can estimate the total revenue of sites within the area and the potential losses. For the regulation under consideration it is generally assumed that the sellers of advertising space will be able to sell their existing outdoor media space generally to sponsors of the Games if not generally to other buyers. In some cases the advertising space may be at a higher price and there may be some gains for sellers. These are not estimated but are likely to be a few high prestige sites where sponsors might wish to compete for these locations. The majority of existing (and some new/bespoke) outdoor media sites in areas covered by the regulations (as well as other sites in London and other venue cities) were offered to Games sponsors via an auction process, initiated by LOCOG, which closed in May. Although at the end of the auction a high proportion of sites were not sold in the zones covered by the Regulations, the owners of the space are still free to sell this to Games sponsors and LOCOG is having initial discussions with the Outdoor Media Centre (the trade body of the owners of the space), in relation to authorising the remaining unsold

space to be sold to some advertisers which do not conflict with the London 2012 sponsor's products and services and whose adverts will not undermine the purposes of the regulations. This is likely to include advertising by governmental bodies and agencies, tourist attractions, theatre companies, museums, music, books and films. In practice therefore it is reasonable to expect any losses, if any to sellers, to be mitigated largely by sales to sponsors and/or these other companies. Some scenarios are estimated with less take up of advertising space as a result of the outcome of the auction than those estimated prior to the consultation.

For buyers there are potential losses but these are less tangible. The costs therefore will potentially lie with the buyers of advertising space who have a preference for a local site who are displaced by the sponsors (whose business is more international). Many buyers may be content to use other space or find substitute advertising media. It is not practical to estimate precisely the numbers of advertisers who benefit from a particular location but given the scale of the regulation perimeter the numbers are expected to be few. For these reasons it was concluded any potential loss to buyers should be excluded from the base advertising costs and scenarios.

Advertising sites are identified using the Postar database which lists advertising spaces in public areas such as roadside billboards, posters on kiosks etc. For Cardiff, 34 sites were identified within the regulation perimeter. For each of the advertising sites a price per day was established taking account of the type of road and size of the advertisement. For sellers this provides the potential revenue per site. Also the number of days the regulations were expected to apply to each venue has been taken into account.

Multiplying the price per day and number of affected days provides the potential revenue per site. This is then adjusted by an assumption that 15% of that space will not be taken up by advertisers. Two further scenarios are used to provide the low scenario (5%) and high scenario (25%). These scenarios are estimated based on the recent LOCOG auction process.

- Base scenario: 15% advertising space not taken: loss of £1,800
- Scenario 1: High cost scenario: 25% advertising space not taken up: loss of £5,000
- Scenario 2: Low cost scenario: 5% advertising space not taken up: loss of £700.

Trading methodology

Traders prohibited by the regulations will be those trading in open public places in the vicinity of the Millennium Stadium. Some traders may be exempt or be able to move to a suitable alternative site but estimates provided are based on the assumption that any traders subject to these regulations will have to cease trading for the appropriate period.

The Welsh Government sought the assistance of Cardiff Council to identify existing licensed street traders within or near to the zones. This information informed the total identified traders affected. These were three permanent licensed trading sites and a further 14 pitches for which licenses are issued during major events on a discretionary basis: nine event merchandising pitches and five catering sites. The nine event merchandising sites are very popular with regular traders and operate on a rota system of allocation. There are currently a total of twenty-three people on the rota system. The five food sites also tend to be operated consistently by the same traders. The three permanent licensed trading sites comprise two green grocers and a coffee stand. Other than the permanent pitches, the other sites are licensed on a discretionary basis by the council but have been included in this impact analysis, which is therefore represents 'a worse case scenario' in terms of street trading. The income forgone by the traders has been estimated in two ways:

Earnings can be based on the customer sales group using the Annual Survey of Hourly Earnings (ASHE) data. The ASHE database is a highly regarded and a widely used data source. This is a survey of earnings across the UK and provided incomes for broad ranges of occupations. Customer sales include street traders but other sales occupational groups. This earnings figure may not represent all the labour input into a small business. It is expected that an individual street trading unit might employ more than one person not necessarily in direct selling but including activities such as deliveries or other assistance. The evidence of incomes using the earnings data is used here as a proxy for profit of traders where there are few barriers to entry and where risks are limited. An estimate of two persons per site is used based on National Association of Business and Market Authorities (NABMA). These estimates suggest a national annual average of around £44,000 per business. These estimates are adjusted by a regional earnings index.

The profitability of business is an alternative approach to measuring the impact and arguably is better adjusted to the particular occupational group. The main disadvantage of this approach is the lack of any direct measure. Using sources that work with street traders we can estimate the turnover in the retail market to be around £3.5 bn (2009 estimates). These estimates indicate that here are 95,000 people working in 45,700 retail trading businesses and therefore suggest a turnover per business of around £75,000. The same source estimates gross profits of around 50% of turnover. A further question is whether turnover data might be fully reported by traders so any realistic level of profitability might underestimate incomes but net profit rates would be less than 50%. An estimate of 50% of turnover is used as the estimate for profitability taking these two factors into account.

These two estimates are quite close and an average of the two has been preferred as the final measure. The average of these estimates has been uprated to 2010 values using RPI to make them consistent with advertising values, which are already in 2010 values.

The following process is used to calculate the loss to traders:
Number of traders x no of days the traders will be affected x average earnings/profit per day (adjusted for Cardiff = earnings/profit.

To estimate the loss to traders this estimation is adjusted based on the assumption from the ODA that 50% of traders will be prevented from trading, which provides the final estimate for loss to traders. This represents the base case. The factor is varied by 25% and 75% representing the low and high estimates respectively.

- Base scenario: 50% street trading disallowed (loss of £13k).
- Scenario 1: 75% street trading disallowed (loss of £19k).
- Scenario 2: 25% street trading disallowed (loss of £6k).

Advertising and street trading combined

Three costs are identified based on the three scenarios (the estimates produced are based on 2010 values):

- Base scenario: 15% advertising space not taken up and 50% street trading disallowed (loss of £15k).
- Scenario 1: High cost scenario: 25% advertising space not taken up and 75% street trading disallowed (loss of £24k).
- Scenario 2: Low cost scenario: 5% advertising space not taken up and 25% street trading disallowed (loss of £7k).

All three scenarios are based on estimates of the impact of the regulations on existing habitual trading.

We estimate that our best estimate of costs lie with our base scenario.

Risks and assumptions

The UK has not hosted an Olympic Games since 1948, so it is difficult to calculate the extent of unauthorised advertising and trading that might occur during a London Games. However, the experience of previous host cities is that non-sponsors make sustained and creative attempts to benefit commercially from the Games. The regulations must be designed to counter such attempts.

However it is also recognised that the Olympic Games represents an opportunity for local business to benefit commercially and in these austere times, it should not be the role of Government to prevent that. Consequently the risk of ambush marketing must be weighed against the opportunities for local businesses to exploit the influx of potential trade.

In developing the policy two major assumptions have been made:

- That despite efforts a number of local businesses will not be aware of these restrictions and will, in ignorance, breach the regulations;

- That some companies will know about the regulations but will be prepared to risk the penalties to market their products.

The enforcement of the regulations will take into account these two extremes and deal appropriately and sensitively to the range of breaches that may occur.

Wider impacts

The Games will be the largest special event ever hosted by the country and will attract an unprecedented level of commercial activity in public spaces in the proximity of the Games venues, unless it is carefully regulated. Street trading and commercial advertising at the street level, through distribution of pamphlets, flyers, and product samples, can cause congestion and litter adversely affecting the enjoyment of the games by residents and visitors alike. The regulations strengthen our ability to regulate activities on the streets in the vicinity of Games sites.

Public consultation

In developing option 2 a joint consultation was issued with England and Scotland. A 12 week public consultation took place between 07 March and 30 May 2011. Over 600 stakeholders were alerted to the consultation through a variety of methods including letter, email, leaflet drop and utilising the communication methods of trading, business and advertising associations. In total across Great Britain there were 50 responses, none of which were from Wales. The bulk of respondents can be broken down as follows; 18 responses from local authorities and local authority groups, 8 from the advertising and press industry, and 3 from the sporting industry, with the remaining responses coming from a range of individual businesses, traders and residents.

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 taken. The responses on the whole addressed technical detail in specific areas rather than stating the approach was fundamentally wrong. The comments on whether the definition of advertising and trading were right and the views expressed on the exceptions were very helpful to the Welsh Government. Changes have been made to the regulations as a result of these comments. The consultation has contributed significantly and positively to the way the regulations have now been framed and drafted.

Amongst other things, the Welsh Government was keen to hear how people felt the regulations would impact on certain groups of people. Three key points were made in terms of how the regulations would have a financial impact on people:

- Unsurprisingly the majority of respondents felt that traders in the regulated zones could be disadvantaged by the regulations. If habitual traders fail to get authorisation from the ODA and they are not found an alternative trading venue then clearly their revenues will be reduced.

- One respondent from the advertising industry felt sellers of advertising space should be compensated if advertising hoardings remained unsold at Games time.
- One respondent noted that venues which regularly host large scale events will already have business arrangements with a variety of traders, some of these traders will only come in to support specific events. If they are not authorised by the ODA then this will have an adverse effect on both the venue's and traders' earnings.

These points are addressed as part of the development of the implementation plan.

Summary and Implementation Plan

In order to adopt a proportionate approach the Welsh Government has tailored the common policy approach across the three administrations to the environment of Cardiff around the Millennium Stadium. The regulations apply in three blocks for a total of 13 days – the match days themselves and the days immediately before matches. The coverage of the regulations extend no further than 500 metres from a venue entrance where this is along a main access route but is substantially less otherwise. It covers less than half of the central shopping streets of Cardiff city centre. In combination with the other event zones across Great Britain they are to less than 0.01% of the land mass of Great Britain. As a consequence of these strict spatial and temporal restrictions, a permanent impact on competition in the affected areas is very unlikely.

In the regulated zone (during the event period) the regulations will override any existing advertising and street trading authorisations and licences. That means that advertisers and traders will need to be authorised by or under the regulations (in addition to holding current authorisations and licences under the general law).

Existing and usual outdoor trading and advertising within the zones has been identified as part of the consideration of the impact of the regulations. In drafting the regulations we have considered whether business in its current format would breach the three objectives of the regulations. Where it is clear that a breach of the objectives would not occur, an exception has been drafted into the regulations. However where the business has the potential to undermine the objectives, the policy is to rely on the authorisation process to allow a case by case consideration. This allows for a filter process.

Authorisation

In addition to exemptions on the face of the regulations, there will be an authorisation process whereby advertisers and existing street traders can apply to advertise and trade during the Olympic period. LOCOG, which is identified by the draft regulations as the designated body to authorise advertising will permit advertising which does not conflict with the aims of the regulations,

including advertising by London 2012 sponsors on existing outdoor advertising sites in the vicinity of the stadium.

LOCOG has indicated that it proposes to authorise advertising activity which is consistent with the aims of the regulations and has identified the following types of activity which it therefore anticipates authorising:

- advertising activity undertaken by London 2012 sponsors for products within their sponsor category, including displaying advertisements on outdoor advertising spaces in the vicinity of venues in respect of which LOCOG has entered into option agreements;

- the display of London 2012 “Look” (i.e. decorative Games related street dressing) displayed by local authorities and other organisations, with LOCOG's agreement;

- advertising activity undertaken by non-commercial partners (including the local authority and government departments)

- permanent or customary advertising which is not specifically excepted by the regulations but which does not suggest that the brand advertised is associated with the Games and does not seek to gain advantage for the brand advertised by reason of its proximity to a Games venue (examples may include some large illuminated signage on the forecourt of petrol stations or films advertised outside a cinema).

In response to the fact that a high proportion of outdoor media sites in the zones covered by the regulations were not purchased by Games sponsors during the initial auction of those sites LOCOG is also now having initial discussions with the Outdoor Media Centre (the trade body of the owners of the space), in relation to authorising the remaining unsold space to be sold to some advertisers which do not conflict with the London 2012 sponsor's products and services and whose adverts will not undermine the purposes of the regulations. This is likely to include advertising by government bodies and agencies, tourist attractions, theatre companies, museums, music, books and films. LOCOG will continue to monitor the advertising space sold and will work with the industry to maximise sales.

In the case of trading the ODA is responsible for issuing authorisations. The ODA will look to the three main policy objectives when considering authorisation. The focus will be on ensuring that existing businesses can continue to operate, or operate with conditions attached, without compromising the main objectives.

Financial Assistance

The ODA is required under section 29(1)(b) of the 2006 Act to work with persons likely to be prevented by the regulations from carrying out their habitual

trading activities in attempting to identify acceptable alternatives. The ODA is permitted under section 29(3)(b) to give assistance (which may include financial assistance) in complying with or avoiding breaches of the regulations however the ODA has taken the position of considering itself bound by the wording of section 29(1)(b). Therefore the financial assistance will be provided to assist traders in complying with or avoiding breaches of the regulations by making payments to help the trader identify acceptable alternatives (i.e. an alternative location).

While the ODA notes the discretionary powers contained in section 29(3)(b) to give assistance (which may include financial assistance) to those affected by the advertising regulations it does not have a duty to work with them to identify acceptable alternatives and therefore will not consider the provision of financial assistance in respect of advertisers or owners of advertising space. The rationale for this is that 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. An advertising space has some level of permanency to it and therefore relocation even with financial assistance is not viable. In addition in the most part comprises that own advertising space have it as part of a wider business model and are not reliant on advertising, or on a small proportion of advertising space, to generate its sole income. That is not to say that ODA will not give assistance in complying with or avoiding breaches of the regulations if space remains unsold through the authorisation process. ODA will not provide financial assistance to the owner of the advertising space but will work with them to avoid breaches of the regulations.

Any financial assistance provided to traders by the ODA is likely to be up to a maximum of £200 per day. This figure has been calculated taking into account:

- The pro-rata refund of the trader's annual licence (consent/permission) fee
- Possible additional licence (consent/permission) fee
- Storage charges for stock and stall
- Van hire

The ODA estimate that of the 50% denied authorisation, 40% (2 in 5 of those denied) will be offered financial assistance to relocate. In the case of Cardiff financial assistance would potentially only apply to the three permanent licensed traders. This means assistance could cost around £2,600 in the base scenario, which assumes one of the three traders being denied a licence but offered financial assistance.

Assistance to street traders is calculated by estimating the number of traders and days of trading affected. This calculation provides the number of days eligible for assistance which is multiplied by the level of assistance (£200)

Enforcement

The regulations may be enforced by the police or by enforcement officers designated by the ODA. It is only right that the police focus on safety and

security matters at Games time and therefore the ODA will take the lead on enforcement. It is looking to designate enforcement officers from the local authority, who are experienced in dealing with street trading and advertising offences (for example Trading Standards Officers and Planning Enforcement Officers). ODA will take a light touch approach to minor infringements that can easily be rectified by giving advice but persistent offenders could face having items seized, removed or destroyed. Serious and deliberate ambush marketing attempts will be dealt with using the full enforcement powers conferred on designated officers, and may result in prosecution through the criminal courts.

The ODA's approach is to fund small teams of designated enforcement officers from local authorities attached to local venues who will prioritise dealing with more serious breaches of the regulations. They estimate that the cost of enforcement of the regulations across Great Britain at the 28 venues and events involving 33 local authorities and a total of 342 enforcement days will be £868,000 (which includes the storage of seized items, payment for officers and specialist equipment). The cost for enforcement at Cardiff, including the assistance of council officials, is therefore estimated around £35,000 based on the proportion of enforcement days occurring.

Statutory Duties (GOWA 2006) of the Welsh Ministers and their Sectoral Interests

Sectors

The regulations will not have any financial implications for Welsh devolved budgets, with the costs and risks of enforcing the regulations being borne by the ODA.

The following organisations will be affected by the regulations:

Local Planning Authorities

The ODA is responsible for enforcement of the regulations, they will rely on assistance from council officers but will arrange contractual terms and funding with the council. The regulations will apply in only ‘event zone’ in Wales which is the Millennium Stadium, therefore only Cardiff Council will be affected. During the ‘relevant event period’ the regulations may prevent the use of existing advertising and trading authorisations and licences which have been authorised by the local authority.

The definition of street trading is to be extended to include certain activities where they take place in an open public place. This was highlighted as a concern by local planning authorities in the consultation stages of these regulations they wanted a clearer definition of open public space. Local planning authorities are unlikely to benefit from the impact of the games, but Cardiff Council will not bear costs after the events compared to authorities in England dealing with legacy regeneration schemes such as at the Olympic Park.

Street Traders

The regulations will supplement the existing permissions and will apply despite any licences or consents currently in existence under which a person is otherwise authorised to trade. This means that a person will need to be authorised under the 2012 Games regulations (as well as under the existing law) in order to trade in the areas where the regulations apply, during the periods when they apply. Those given permission to trade will receive substantial benefits but those affected will be the traders not authorised to trade for reasons such as number limitations and the goods sold by the trader.

There are only three permanent street traders located within the proposed event zone who may be affected. Cardiff Council issues licences for other pitches in the event zone on a discretionary basis depending on the nature of the event taking place at the stadium. Therefore traders who take part in the council's rota system are not normally guaranteed an income from events.

Advertising Agencies

Advertising that is displayed must generally be information in connection with the Games or relate to the business undertaken at premises in the event zone. Therefore the main impact in respect of advertising will be owners of poster hoardings where the advertisement is generally unconnected with business activities normally undertaken at the site. Loss of advertising revenue from normal sources will be offset to some degree by sales of advertising space to official sponsors.

Voluntary Sector

Trading by not-for-profit businesses and charity collections are restricted in the same way as other forms of street trading. This is intended to avoid congestion within the event zone, thereby fulfilling one of the aims of the regulations although permission could be sought from the ODA. However not-for-profit organisations are able to benefit from exemptions to the advertising controls.

Duties

Equality of opportunity (Equality, Diversity and Inclusion Division)

There is no evidence available that suggests the regulations will cause significant issues in respect of equality of opportunity, however annex B contains further analysis of human rights issues.

The Welsh language

The regulations do not discriminate on the basis of the language of advertisements displayed. As the regulations are about restricting what is displayed rather than requiring advertisements to be provided, there are no opportunities to promote the Welsh language

Sustainable development

The restrictive nature of these regulations together with their short term nature mean that no significant sustainable development issues arise.

Consultation

Details of the consultation undertaken are provided above. A detailed analysis of the consultation responses can be found on the Department of Culture Media and Sport website.

A joint consultation document was issued containing separate regulations from Wales, England and Scotland. It issued in March 2011 for a period of 12 weeks from the 07 March to the 30 May 2011. The document sought the views of those likely to be affected such as street traders and their representative organisations, pedlars, advertisers and local authorities. However, we also welcomed views from others. The main issues the consultation sought views on were: the scope of advertising activity and trading which we propose to regulate, the areas within which the regulations will apply (which we have called the 'event zones') and the time periods during which the regulations will be in force (which we have called the 'event periods').

Over 600 stakeholders were alerted to the consultation through a variety of methods including letter, email, leaflet drop, and utilising the communication methods of trading, business and advertising associations. Cardiff Council directly notified street traders while nine Welsh stakeholders that were directly consulted on the regulations they included:

- Arriva Trains Wales
- Cardiff Council
- CBI Wales
- Planning Aid Wales
- Planning Officers Society Wales
- Police
- RTPI
- Welsh Local Government Association
- Welsh Language Board

Detailed analysis of the responses can be found in the DCMS document 'The Government Response to advertising and trading regulations London 2012' available via the DCMS website.

In total 50 responses were received to the consultation. The bulk of respondents can be broadly broken down as follows; 18 responses from local authorities and local authority groups, 8 from the advertising and press industry, and 3 from the sporting industry, with the remaining responses coming from a range of individual businesses, traders and residents. Of the 50 responses received, there was none relating to Wales specifically, with none of the respondents being residents of Wales or representing a Welsh business or organisational interest.

Competition Assessment

Both advertising and trading will be limited in terms of what product they can promote however this limitation will only be in place within a restricted area and for a limited time. The regulations affect the official sponsors of the Games in a different way to other business wishing to advertise in the event zone. However, the regulations should not have significant effects on the normal trading of business with premises within the event zone.

The competition filter (at **Appendix A**) does not indicate any significant concerns in relation to the proposed regulation.

Post implementation review
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.

APPENDIX A

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	no
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	no
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	no
Q4: Would the costs of the regulation affect some firms substantially more than others?	yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q8: Is the sector characterised by rapid technological change?	no
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	no

The difference in costs between firms will depend on whether the business premises display advertisements that exceed deemed consent limits. Costs are generally likely to be greater for firms with larger premises with no impact on competition as we are not making a permanent change to business in the area.

APPENDIX B

Human Rights Assessment

Introduction

1. Sections 19 and 25 of the London Olympic Games and Paralympic Games Act 2006 ("2006 Act") require Ministers to make regulations about advertising and trading in the vicinity of London 2012 Games events.

2. Ministers have prepared draft Regulations which were the subject of a public consultation exercise in early 2011.

3. This paper assesses the impact of the Regulations on the rights and fundamental freedoms affirmed by the European Convention on Human Rights ("ECHR") and given further effect in UK law by the Human Right Act 1998.

Freedom of Expression and Protection of Possessions

Impact of Regulations

4. Article 10 of the ECHR affirms the right to freedom of expression. During the London 2012 Games, the Regulations will restrict a person's ability to engage in advertising activity as well as some forms of trading that may include an element of "expression" in small areas around London 2012 events. By doing so, the Regulations will interfere with the Article 10 rights of people who wish to engage in those activities.

5. Article 1 to the First Protocol to the ECHR ("A1P1") protects a person's "possessions" from unjustified appropriation or interference by the State. The benefit of a licence, permit, certificate or consent (a "licence") to carry on a profitable activity can amount to a "possession" for A1P1 purposes. The Regulations will apply despite any licence granted before or after the Regulations come into force and will restrict a person's ability to engage in advertising and trading activity in accordance with an existing licence (in the small areas where the Regulations apply, during the Games period). Accordingly, the Regulations will arguably interfere with the A1P1 rights of current licensees.

6. Further, the Regulations will limit the uses to which land and other property (again, within the small areas where the Regulations apply) may be put during the Games period. They will prevent, for example, a land owner from using his or her land (or allowing his or her land to be used) for advertising or trading activities. This may also amount to an interference with land or other property owners' A1P1 rights.

Justification

7. Interferences with the rights to freedom of expression and protection of one's possessions may be justified on related grounds.

8. An interference with freedom of expression will be justified under Article 10(2) of the ECHR where it is prescribed by law, where it furthers a "legitimate aim" referred to in Article 10(2), and where it is necessary in a democratic society. States are accorded a broad margin of appreciation under Article 10 for restrictions on commercial expression.

9. Likewise, an interference with possessions will be justified under A1P1 where it is "lawful" (that is, imposed by sufficiently accessible, precise and foreseeable law), where it pursues a legitimate aim which is in the general interest, and where it is proportionate to that aim (that is, it strikes a "fair balance" between the general interests of the community and the individual's fundamental rights).

10. The interferences in the Regulations with Article 10 and A1P1 rights will be prescribed by law that is accessible, precise and foreseeable. As we have noted, sections 19 and 25 of the 2006 Act set out Ministers' powers to make regulations about advertising and trading in the vicinity of London 2012 Games events (indeed, those sections require Ministers to make such regulations). The Regulations specify:

- the areas to which the restrictions apply;
- the periods during which they will apply; and
- the types of advertising and trading activities that are covered by the regulations.

11. The Regulations were the subject of a consultation process that both informed the public about their proposed content and invited responses. The Regulations have been amended in light of responses to the consultation. They will be debated in draft in Parliament and will be made by the Minister only if the draft is approved by both Houses. The Regulations will be publicly available and the Olympic Delivery Authority will make arrangements to have their effect brought to the attention of persons likely to be affected or interested.

12. The Regulations are intended to meet commitments given by the UK Government to the International Olympic Committee in London's bid to host the 2012 Games. The main aims 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.

13. These aims are consistent with legitimate aims that justify an interference with Article 10 and A1P1 rights. The Games are a once-in-a-lifetime occasion and it is reasonable for the Government to enact measures to facilitate the staging of the Games, even where those measures necessitate a limited and temporary interference with individuals' rights.

14. Moreover, the Regulations further the interests of public safety at Games time by ensuring that competitors, officials, spectators and other people attending events are able smoothly to enter and exit venues. They also protect the rights of those that have made a commercial contribution to the staging of the Games (without which the Games could not take place) by preventing advertising and trading activities that amount to ambush marketing. It is legitimate in a democratic society to take steps to protect commercial investments which have a public interest element to them. In this case, the social benefits of the Games could not be achieved without such commercial investments.

15. The Regulations are reasonable and proportionate. They strike a fair balance between the community's general interests (as reflected in the objectives underlying the Regulations) and individuals' rights to freedom of expression and protection of possessions. They interfere with those rights to the minimum extent necessary to meet the underlying objectives described above.

16. For example, the Regulations apply only to small, individually drawn areas around each Games venue. In most cases, these areas extend only a few hundred metres from a venue's perimeter. Where an area does not pose a risk to the objectives underlying the Regulations, it has been excluded from the Regulations, even if it is situated close to a Games venue. In aggregate, the area covered by the Regulations represents a very small proportion of the total land area of the United Kingdom.

17. Further, the Regulations are a temporary measure – they only apply for short periods tailored for each venue by reference to the times when Games events are to take place. The longest period that the Regulations apply to any one place is 35 days (in the area around the main Olympic Park). This period is made up of two phases (one of 22 days for the Olympic Games, and another of 13 days for the Paralympic Games) separated by a period of two weeks during which the Regulations will not apply. For many venues, the Regulations will apply only for a few days. The Regulations cease to have any effect on the day after the closing ceremony of the Paralympic Games.

18. The Regulations contain a number of exceptions which exempt advertising and trading activity that does not undermine the objectives underlying the Regulations. For example, there is an exception for demonstrations and related activity. This exempts acts that are intended to demonstrate support for or opposition to the views or actions of a person or body. It also exempts acts that are intended to publicise a belief, cause or campaign or mark or commemorate an event. The exception would cover (for example) carrying a placard during a protest march, displaying a poster promoting a particular religious belief, or distributing flyers in support of a political party. The exception does not apply to any commercial activity – activity that promotes or advertises a good, service or supplier of a good or service (unless that supplier is a not-for-profit body).

19. There are a number of detailed exceptions for advertisements that do not require express consent from local planning authorities under the current law. These exceptions have the effect (for example) of exempting certain types of advertisements

on business premises (such as standard shop signs) and advertisements on vehicles not principally used to display advertisements.

20. Likewise, there are a number of detailed exceptions for trading activity, which exempt (for example) operating as a newsvendor, providing various motor vehicle-related services on private land (such as, running a car sale yard), and trading on private land adjacent to shops, cafés and related premises, and petrol stations.

21. In addition to specific exceptions, the Regulations provide for advertising and trading activity to be authorised by the London Organising Committee of the Olympic Games and Paralympic Games Limited ("LOCOG") and the Olympic Delivery Authority ("ODA") respectively. LOCOG and ODA will publish documents setting out their approach to authorisation and, in general, will authorise advertising and trading that is not inconsistent with the objectives underlying the Regulations.

22. The combined effect of the exceptions set out in the Regulations and LOCOG's and the ODA's authorisation functions is that only those forms of advertising and trading activity that are inconsistent with the legitimate aims of the Regulations will be prohibited.

Right to be Presumed Innocent

Impact of Regulations

23. Article 6(2) of the ECHR affirms the right to be presumed innocent until proven guilty according to law. The Regulations provide that a person who has an interest in or is responsible for a business, good or service, will be liable for a contravention of the regulations by the business or if the contravention relates to the good or service. Similarly, a person who owns or occupies land will be responsible for any contravention of the Regulations that takes place on the land. In both cases a person can escape liability if they prove that the contravention took place without their knowledge or despite them haven taken all reasonable steps to prevent a contravention from occurring, continuing or recurring. By requiring an accused person to prove the elements of the defence the usual onus is reversed and the Regulations could be said to interfere with the right to be presumed innocent affirmed by Article 6(2).

Justification

24. An interference with the right to be presumed innocent will be justified where it is confined "within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence." Putting this another way, an interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.

25. In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services

in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.

26. The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the regulations has occurred (that is, that there has been advertising or trading activity in contravention of the regulations). The prosecution would also have to prove that the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.

27. In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent it.

Conclusion

28. In light of the above analysis, we have concluded that any interference with a person's Article 6, 10 or A1P1 rights by the Regulations is justified.

Constitutional and Legislative Affairs Committee

Protection of Freedoms Bill

Legislative Consent Memorandum

Legal Advice Note

Background

1. On the 10th November 2011, the First Minister laid a Legislative Consent Memorandum (LCM) in relation to the Protection of Freedoms Bill. The Memorandum was considered by the Business Committee on the 15th November and referred to the Constitutional and Legislative Affairs Committee for scrutiny under Standing Order 29.4 prior to it being debated in Plenary, with a reporting deadline of 24 January 2012. This Note is intended to inform that consideration.

The Bill

2. The Bill in question was given a Second Reading in the House of Commons on 1st March 2011 and it completed its passage through the Commons on the 11th October. It has since been given a Second Reading in the House of Lords, and Committee Stage is scheduled to commence on 29 November 2011.

3. The Bill consists of seven Parts and includes:

- provision in respect of the retention and destruction of fingerprints, footwear impressions and DNA samples and profiles taken in the course of a criminal investigation;
- a requirement on schools and further education colleges to obtain the consent of each parent of a child under 18 years of age attending the school or college, before the school or college can process the child's biometric information;
- provision for the further regulation of Closed Circuit Television, Automatic Number Plate Recognition and other surveillance camera technology operated by the police and local authorities;

- amendment of the Regulation of Investigatory Powers Act 2000 to require local authorities to obtain judicial approval for the use of any one of the three covert investigatory techniques available to them under the Act, namely the acquisition and disclosure of communications data, and the use of directed surveillance and covert human intelligence sources;
- provision in respect of powers to enter land or other premises. The provisions enable a Minister of the Crown (or the Welsh Ministers), by order, to repeal unnecessary powers of entry, to add safeguards in respect of the exercise of such powers, or to replace such powers with new powers subject to additional safeguards. Each Cabinet Minister is placed under a duty to review existing powers of entry with a view to considering whether to exercise any of the aforementioned order-making powers. Provision is also made for the exercise of powers of entry to be subject to the provisions of a code of practice;
- provision in respect of parking enforcement;
- provision in respect of counter-terrorism powers;
- amends the Safeguarding of Vulnerable Groups Act 2006;
- amendment of the Police Act 1997 which sets out the framework for the disclosure of criminal convictions and other relevant information in certificates issued by the Criminal Records Bureau;
- establishes a new organisation, to be known as the Disclosure and Barring Service, which will replace and combine the functions of the ISA and the CRB;
- provides for a person to apply to the Secretary of State for a conviction or caution for an offence under section 12 or 13 of the Sexual Offences Act 1956, and associated offences, involving consensual gay sex with another person aged 16 or over, to become a disregarded conviction or caution;
- repeals section 43 of the Criminal Justice Act 2003, which makes provision for certain fraud trials to be conducted without a jury, and
- removes the restrictions on the times when a marriage or civil partnership can take place.

4. It is Part 6 that contains the subject matter of the current LCM and makes amendments to the Freedom of Information Act 2000 ("FOIA") and the Data Protection Act 1998 ("DPA"). The changes are fourfold. First, they amend the FOIA to make provision for the re-use of datasets by public authorities subject to that Act. Second, they amend the definition of a publicly owned company for the purposes of the FOIA so that it includes companies owned by two or more public authorities. Third, they extend to Northern Ireland amendments made to the FOIA by the Constitutional Reform and Governance Act 2010. Finally, they amend the FOIA and DPA to revise the arrangements in respect of the appointment and tenure of the office of the Information Commissioner and to make changes to the role of the Secretary of State in relation to the exercise of certain functions by the Information Commissioner.

The Legislative Consent Memorandum

5. An earlier Legislative Consent Motion in relation to this Bill was considered by the Assembly on 15th March 2011 (NDM4680) :"To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions of the Protection of Freedoms Bill in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament." Although that Motion was expressed in very general terms, the Assembly's legislative competence at that time was very limited. It was substantially extended following the coming into force of Part 4 of the Government of Wales Act 2006, and a further LCM has been considered by the Government to be necessary.

6. The new motion read as follows : ""That the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motion NDM4680, those further provisions which have been brought forward in the Protection of Freedoms Bill relating to freedom of information and data protection, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament."

7. The motion arises from amendments proposed by the Home Secretary at Report Stage in the House of Commons, and they now appear as parts of clause 100 of the Bill. The text of that clause appears as Annex 1 to this paper, with the text inserted by the amendments underlined. A detailed explanation of Clause 100 taken from the Explanatory Memorandum prepared by the Home Office for the purpose of the Parliamentary proceedings appears as Annex 2.

8. It will be seen that the amendments deal specifically with the charging of fees by public authorities in connection with the making available of copyright work for re-use. The Welsh Government, in its LCM at paragraph 7 explains the reason for the amendments as follows:
"The amendments were to the charging provisions which would have had the unintended effect of eliminating the possibility of charging for any datasets requested from a public authority. The amendments seek to preserve existing statutory powers to charge and to provide a power to make new regulations to enable charging. These amendments would ensure that (1) all public authorities which have existing statutory powers (other than under the Re-use of Public Sector Information Regulations 2005 (RPSI)) may continue to use those powers to charge and that (2) all public authorities which do not have their own statutory powers but who may use the RPSI regulations to charge, or who charge under a non-statutory power (e.g. common law or prerogative powers) may continue to charge under the new regulations."

Conclusion

9. The matter is clearly within the legislative competence of the Assembly, as 'Access to information held by open access public authorities' is specifically included under Public Administration in Schedule 7 to the Government of Wales Act 2006. The Welsh Government has confirmed that the amendments are consistent with its own policy objective of protecting funding streams for public authorities. It is a very specific change to the Bill that was the subject of the previous Motion approved by the Assembly which covered legislating at Westminster on the subject of the release of datasets. There is no likelihood of an Assembly Bill in the near future that would provide a suitable vehicle for these provisions. For users of the legislation, and particularly local authorities, it is helpful for the question of charging to be dealt with at the same time and in the same legislation as the duties to which it relates. In these circumstances, a Legislative Consent Motion is considered an appropriate way to deal with the matter.

10. **The Committee is recommended to consider whether it agrees with this view or whether it wishes to receive further evidence before coming to a conclusion and reporting to the Assembly.**

Legal Services November 2011

ANNEX

Part 6

Freedom of information and data protection

Publication of certain datasets

100 Release and publication of datasets held by public authorities .

(1) The Freedom of Information Act 2000 is amended as follows. .
(2) In section 11 (means by which communication to be made)— .
(a) after subsection (1) insert— .
"(1A) Where— .
(a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and .
(b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form, .
the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use."
(b) In subsection (4), for "subsection (1)" substitute "subsections (1) and 20(1A)". .
(c) After subsection (4) insert— .
"(5) In this Act "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection— .
(a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority, .
(b) is factual information which— .
(i) is not the product of analysis or interpretation other than calculation, and
(ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and .
(c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded." .
(3) After section 11 (means by which communication to be made) insert— .
"11A Release of datasets for re-use
(1) This section applies where— .
(a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority, .
(b) any of the dataset or part of a dataset so requested is a relevant copyright work, .
(c) the public authority is the only owner of the relevant copyright work, and
(d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act. .
(2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence. .
(3) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with subsection (2). .

(4) Nothing in this section or section 11B prevents a public authority which is subject to a duty under subsection (2) from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .
(5) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (4)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a "re-use fee notice") stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with subsection (2). .
(6) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with subsection (2) while any part of the fee which is required to be paid is unpaid. .
(7) Where a public authority intends to charge a fee as mentioned in subsection (4), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged. .
(8) In this section— .

"copyright owner" has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);
"copyright work" has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);
"database" has the meaning given by section 3A of the Act of 1988;
"database right" has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);
"owner", in relation to a relevant copyright work, means—
(a)the copyright owner, or
(b)the owner of the database right in the database;
"relevant copyright work" means—
(a) a copyright work, or
(b) a database subject to a database right,
but excludes a relevant Crown work or a relevant Parliamentary work;
"relevant Crown work" means—
(a) a copyright work in relation to which the Crown is the copyright owner, or
(b) a database in relation to which the Crown is the owner of the database right;
"relevant Parliamentary work" means—
(a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
(b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;
"the specified licence" is the licence specified by the Secretary of State in a code of practice issued under section 45, and the Secretary of State may specify different licences for different purposes.

11B Power to charge fees in relation to release of datasets for re-use .
(1) The Secretary of State may, with the consent of the Treasury, make provision by regulations about the charging of fees by public authorities in connection with making relevant copyright works available for re-use under section 11A(2) or by virtue of section 19(2A)(c). .
(2) Regulations under this section may, in particular— .

(a) prescribe cases in which fees may, or may not, be charged, .
(b) prescribe the amount of any fee payable or provide for any such amount to be determined in such manner as may be prescribed, .

(c) prescribe, or otherwise provide for, times at which fees, or parts of fees, are payable, .
(d) require the provision of information about the manner in which amounts of fees are determined, .
(e) make different provision for different purposes. .
(3) Regulations under this section may, in prescribing the amount of any fee payable or providing for any such amount to be determined in such manner as may be prescribed, provide for a reasonable return on investment. .
(4) In this section "relevant copyright work" has the meaning given by section 11A(8)." .
(4) In section 19 (publication schemes)— .
(a) after subsection (2) insert— .
"(2A) A publication scheme must, in particular, include a requirement for the public authority concerned— .
(a) to publish— .
(i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and .
(ii) any up-dated version held by the authority of such a dataset, .
unless the authority is satisfied that it is not appropriate for the dataset to be published,
(b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use, .
(c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence. .
(2B) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with a requirement imposed by virtue of subsection (2A)(c). .
(2C) Nothing in this section or section 11B prevents a public authority which is subject to such a requirement from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .
(2D) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (2C)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a "re-use fee notice") stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with the requirement imposed by virtue of subsection (2A)(c). .
(2E) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with the requirement imposed by virtue of subsection (2A)(c) while any part of the fee which is required to be paid is unpaid. .
(2F) Where a public authority intends to charge a fee as mentioned in subsection (2C), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged." .
(b) after subsection (7) insert— .
"(8) In this section— .
"copyright owner" has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

"copyright work" has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);
"database" has the meaning given by section 3A of the Act of 1988;
"database right" has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032S.I. 1997/3032);
"owner", in relation to a relevant copyright work, means—
(a)the copyright owner, or
(b)the owner of the database right in the database;
"relevant copyright work" means—
(a) a copyright work, or
(b) a database subject to a database right,
but excludes a relevant Crown work or a relevant Parliamentary work;
"relevant Crown work" means—
(a) a copyright work in relation to which the Crown is the copyright owner, or
(b)a database in relation to which the Crown is the owner of the database right;
"relevant Parliamentary work" means—
(a)a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
(b)a database in relation to which the House of Commons or the House of Lords is the owner of the database right;
"the specified licence" has the meaning given by section 11A(8)."

(5) In section 45 (issue of code of practice)— .

(a) in subsection (2), after paragraph (d) (and before the word "and" at the end of the paragraph), insert— .

"(da) the disclosure by public authorities of datasets held by them,", .

(b) after subsection (2) insert— .

"(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to— .

(a) the giving of permission for datasets to be re-used, .

(b) the disclosure of datasets in an electronic form which is capable of re-use, .

(c) the making of datasets available for re-use in accordance with the terms of a licence, .

(d) other matters relating to the making of datasets available for re-use, .

(e) standards applicable to public authorities in connection with the disclosure of datasets.", and .

(c) in subsection (3) for "The code" substitute "Any code under this section". .

(6) In section 84 (interpretation), after the definition of "the Commissioner", insert—

""dataset" has the meaning given by section 11(5);".

ANNEX 2

Extract from Explanatory Memorandum for the Protection of Freedoms Bill as transferred to the Lords.

"Part 6: Freedom of information and data protection

Clause 100: Release and publication of datasets held by public authorities

377. Clause 100 amends the Freedom of Information Act 2000 ("FOIA") which currently provides for access to information held by public authorities.

378. Subsection (2) amends section 11 of the FOIA (means by which communication to be made). Paragraph (a) inserts a new subsection (1A) which provides that where a request is made for information that is a dataset, or which forms part of a dataset, held by the public authority, and the applicant requests that information be communicated in an electronic form, then the public authority must, as far as is reasonably practicable, provide the information to the applicant in an electronic form that is capable of re-use, in other words a re-usable format.

379. There is no absolute duty for datasets to be provided in a re-useable format as it is recognised that, in some instances, there may be practical difficulties in relation to costs and IT to convert the format of the information. A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation. If the applicant does not want to have the dataset communicated in electronic form, because for example, he or she wants the dataset in hard copy only, then the new duty in section 11(1A) will not arise. However, the public authority would still need to comply with the preference expressed, by virtue of the existing duty in section 11(1)(a) of the FOIA, and must provide the dataset in hard copy so far as it is reasonably practicable to do so.

380. Paragraph (b) amends section 11(4) by providing that the discretion which a public authority has in relation to the means by which communication of the information is to be made (which is already subject to the duty in section 11(1) of the FOIA) is now additionally subject to the new duty in section 11(1A).

381. Paragraph (c) of subsection (2) inserts new subsection (5) and provides for the definition of "dataset" for the purposes of the Act. The definition makes it clear that a dataset is a subset of information within the meaning of the FOIA. The definition provides that a dataset is a collection of information held in electronic form where all or most of the information meets the criteria set out in the following paragraphs of the new section 11(5).

382. The new subsection (5)(a) requires that the information in a dataset has to have been obtained or recorded by a public authority for the purpose of providing the authority with information in connection with the provision of a service by that authority or the carrying out of any other function of the authority.

383. New subsection (5)(b) requires that the information is factual in nature and (a) is not the product of interpretation or analysis other than calculation, in other words that it is the 'raw' or 'source' data; and (b) provides that it is not an official statistic within the meaning given by the Statistics and Registration Service Act

2007 ("SRSA 2007"). Official statistics have been excluded from the definition of datasets as the production and publication of official statistics is provided for separately in the SRSA 2007.

384. New subsection (5)(c) requires that the information within datasets has not been materially altered since it was obtained or recorded. Datasets which have had 'value' added to them or which have been materially altered, for example in the form of analysis, representation or application of other expertise, would not fall within the definition for the purposes of new subsection (5). Examples of the types of datasets which meet the definition, though not a comprehensive list, will include datasets comprising combinations of letters and numbers used to identify property or locations, such as postcodes and references; datasets comprising numbers and information related to numbers such as spend data; and datasets comprising text or words such as information about job roles in a public authority.

385. Subsection (3) inserts new sections 11A and 11B into the FOIA which provide for the new duty to make a dataset available for re-use and the charging of fees. New section 11A(1) provides for the four criteria which must be met for the new section to apply: (a) that a person must have made a request for a dataset; (b) that the dataset requested includes a 'relevant copyright work'; (c) that the public authority is the only owner of the 'relevant copyright work', in other words that it is not jointly owned with another party or that it is not owned in whole or in part by a third party; and (d) that the public authority is communicating the relevant copyright work to the requester under the FOIA, in other words that the dataset requested is not being withheld under one of the exemptions provided for in the FOIA.

386. New section 11A(2) provides that when communicating such a dataset to an applicant, the public authority must make the dataset available for re-use in accordance with the terms of a specified licence. New section 11A(3) to (7) makes provision for the charging of fees by public authorities for making datasets available for re-use. New subsection (3) provides that a public authority may charge a fee by virtue of regulations made under new section 11B and new subsection (4) preserves existing statutory powers for public authorities to charge a fee. New subsection (5) provides that where a public authority intends to charge a fee, it must give the applicant a "re-use fee notice", which states the amount of the fee which must be paid before the dataset is available for re-use. New subsection (6) provides that where the public authority has given the applicant a re-use notice, it is not required to make the dataset available for re-use until the fee is paid in accordance with the notice; and new subsection (7) provides that if a public authority is exercising any existing statutory power to charge, the authority may combine the re-use fee notice with any other notice in accordance with the relevant statutory power being exercised.

387. New section 11A(8) adds definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work", and "the specified licence" to section 11A of the FOIA. The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

388. Crown owned works are excluded from the requirement on public authorities to make datasets available for re-use under the terms of a licence specified by the Secretary of State. This is because the Controller of Her Majesty's Stationery Office, who is appointed by letters patent from the Queen to manage Crown owned works,

already has the authority to require these works and databases to be made available for re-use under the terms of a licence.

389. Parliamentary owned works and databases are excluded from the requirement on public authorities to make such datasets available for re-use because it would not be appropriate to make Parliament subject to a direction of the Secretary of State as new section 11A of the FOIA would in effect do by way of the specified licence in the code of practice under section 45 of the FOIA.

390. New section 11B makes further provision about the charging of fees by public authorities for making datasets (containing relevant copyright works) available for re-use. Subsection (1) confers a power on the Secretary of State to make regulations (subject to the negative resolution procedure) about the charging of fees in connection with making the datasets available for re-use in response to requests under the FOIA and publication schemes. Subsections (2) and (3) set out what the regulations may prescribe, such as when a fee may or may not be charged and how much that fee might be.

391. Subsection (4) amends section 19 (publication schemes) of the FOIA. Paragraph (a) inserts new subsections (2A) to (2F) into section 19 of the FOIA. Under new section 19(2A), publication schemes must include a requirement for the public authority to publish any dataset it holds, which is requested by an applicant, and any updated version of a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be so published (new subsection (2A)(a)). It requires public authorities, where reasonably practicable, to publish any dataset under new subsection (2A)(a) in an electronic form which is capable of re-use (new subsection (2A)(b)) Subject to new subsection(2B), it also requires public authorities to make any relevant copyright work (if the authority is the only owner) available for re-use in accordance with the terms of the specified licence. New subsections (2B) to (2F) mirror new section 11A(2A) to (2E) by making equivalent provision in respect of publication schemes for the charging of fees by public authorities for making datasets (where they contain relevant copyright works) available for re-use.

392. Paragraph (b) of subsection (4) inserts a new subsection (8) into section 19 of the FOIA which provides definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work" and "the specified licence". The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

393. Subsection (5) amends section 45 of the FOIA (issue of code of practice). Paragraph (a) amends the list in section 45(2) of the FOIA, which sets out the matters that must be included in the code of practice made under that section, to insert a new requirement for the code of practice to include provision relating to the disclosure by public authorities of datasets held by them. Paragraph (b) sets out the different provisions relating to the re-use and disclosure of datasets that may, in particular, be included in the code of practice under section 45 of the FOIA. Paragraph (c) amends section 45(3) of the FOIA so as to provide for the possibility of making more than one code of practice under section 45, each of which makes different provision for different public authorities.

394. Subsection (6) inserts into section 84 of the FOIA, which defines the terms used in that Act, a definition of the new term "dataset". “

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Leighton Andrews AM
Minister for Education and Skills
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

27 September 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

The Constitutional and Legislative Affairs Committee considered the above Statutory Instruments at its meeting on 19 September 2011 and agreed that I should bring to your attention the Committee's reports made under Standing Order 21.3 on the merits of the Instruments.

The Committee agreed to invite the Assembly to pay special attention to these Instruments on the grounds that they are "of political or legal importance or give rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's reports were laid in the Table Office on 23 September 2011 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

You will note that the Committee concluded that article 5 of the Order contains an unusual provision that allows the Welsh Ministers to make further provision about the Order without the need to make an amending Order that would be subject to Assembly scrutiny. The Committee would be grateful for clarification on whether Ministers have any current intention to use the powers under article 5 and, if the power is used in future, whether you would consider keeping Assembly Members informed by publishing a written statement on the matter.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA31
Ein cyf/Our ref LA/06014/11

David Melding AM
Chair - Constitutional and Legislative Affairs Committee

committeebusiness@Wales.gsi.gov.uk

4 October 2011

Dear David,

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 27 September when you provided the Constitutional and Legislative Affairs Committee reports on the above Statutory Instruments.

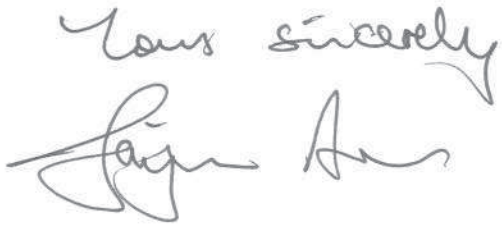
I note that the Committee agrees that the power in article 5 of the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and in the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011 is within the scope of section 108(11) of the Education Act 2002. I also note that the inclusion of the article 5 power in an order setting out assessment arrangements for the National Curriculum is not unusual. For example, this power is included in the National Curriculum (Key stage 2 Assessment Arrangements) (Wales) Order 2004 (S.I. 2004/2915) and also the National Curriculum (Key stage 3 Assessment Arrangements) (Wales) Order 2005 (S.I. 2005/1393). Indeed, earlier orders (now revoked) made under the Education Reform Act 1988 and the Education Act 1996 setting out the assessment arrangements for the Key Stages in the National Curriculum also contained this provision. I am not aware that the inclusion of this power in such orders has not been subject to similar comment previously.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Leighton.Andrews@wales.gsi.gov.uk

I note you state that whilst the use of the power is not unusual, you consider the power is itself unusual and therefore important. Whilst I agree the power is important and not that common, I would draw your attention to the fact that there is similar power for the Secretary of State to make such provision in section 87(11) and (12) of the Education Act 2002. In light of the above I consider the use of the power in the Order to be appropriate.

I do not currently have any plans to make use of the powers under article 5, but any future provision made under the power will be published on the internet.



Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Leighton Andrews AM
Minister for Education and Skills
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

19 October 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

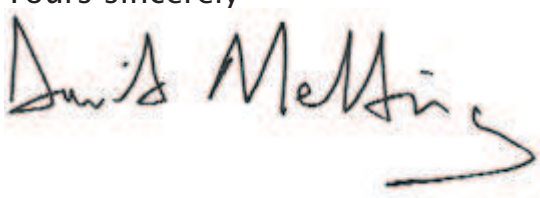
CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your reply of 4 October to my letter of 27 September. The Constitutional and Legislative Affairs Committee considered your letter at its meeting on 17 October.

The Committee was grateful for your clarification that Ministers do not have any current intention to use the powers under article 5 and noted that any future provisions made using this power will be published on the internet. However, Committee Members also noted that this falls somewhat short of informing Assembly Members in a written statement as I suggested in my original letter.

The Committee agreed that I should ask you to ensure that, if this power is used, Ministers will write to the Chair of the Constitutional and Legislative Affairs Committee to inform him or her of its use. I hope you will be able to agree that this is neither an onerous nor an unreasonable request.

Yours sincerely



David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA31 - CLA32
Ein cyf/Our ref LA/06202/11

David Melding AM
Chair - Constitutional & Legislative Affairs Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA
committeebusiness@Wales.gsi.gov.uk

31 October 2011

Dear David

CLA31 – the National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

And;

CLA32 – the National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 19 October.

In my reply to your letter of 27 September I confirmed that I currently have no plans to use the powers under article 5 of the above Statutory Instruments and any further provision would be published on the internet.

I anticipate that any provision proposed under article 5 of the above statutory instruments would be the subject of consultation and consequently would appear on the Welsh Government internet site for public scrutiny. Through that consultation process the Constitutional and Legislative Affairs Committee would be free to consider and comment upon any proposed use of the provision. I, therefore, feel that it is unnecessary for me to write separately to the Chair of the Committee to inform him or her of its proposed use.

Yours sincerely

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Leighton.Andrews@wales.gsi.gov.uk

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

Leighton Andrews AM
Minister for Education and Skills
5th Floor, Tŷ Hywel
Cardiff Bay
CF99 1NA

14 November 2011

Dear Minister

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Thank you for your letter of 31 October, which the Committee discussed on 7 November.

The Committee noted that you do not feel it is necessary for you to inform it separately of the proposed use of the provisions set out in article 5 of the above instruments. Your main reason appears to be that you envisage use of the power being subject to consultation, which would allow the Committee to consider any use of the power at the time.

The Committee had some misgivings about your approach, which may you may have based on a misapprehension of the way in which the Committee (or indeed any Assembly Committee) works in practice. The Committee does not routinely check consultations on the Welsh Government's website. Although this is in part a matter of resources, it also reflects the fact that consultations are an exercise for the Government to listen to and engage with stakeholders and the public.

I hope you will agree that the Committee has a reasonable expectation that the Government will bring directly to its attention matters in which they have a legitimate interest or where they have expressed a specific and reasonable interest in receiving information from the Government.

In the light of this, I hope you will be able to reconsider your approach on this matter.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LA/06384/11

David Melding AM

Chair - Constitutional & Legislative Affairs Committee

committeebusiness@Wales.gsi.gov.uk

Dear David,

29 November 2011

Thank you for your further letter of 14 November about the above Statutory Instruments and in particular the use of article 5.

Whilst I can fully appreciate that the Committee has expressed an interest in any provision that may come forward under article 5 you will be aware that there are no formal procedures in place for it to scrutinise that provision. As I outlined in my earlier letter the committee would, of course, be free to offer comment and observation as part of any public consultation about the proposed use of the relevant powers.

The purpose of the Article 5 power is to allow the Welsh Ministers to make further provision which gives full effect to, or is supplementary to, provisions in the Order. Any substantial provisions relating to the assessment arrangements for children when they enter and leave the Foundation Phase would have to be contained in an Order which would be scrutinised by the National Assembly for Wales. Article 5, therefore, is intended to provide an appropriate administrative mechanism to give effect to or supplement what is in the Order.

This approach does not in any way diminish or disrespect the work of the Committee - indeed I would encourage the Committee to play a full part in any consultation - it does, however, respect the procedures which Parliament has deemed appropriate for this provision, which I also deem to be appropriate and proportionate. The Education Act 2002, under which these Statutory Instruments have been made, does not allow for any additional scrutiny procedures being applied prior to the powers in article 5 being used.

I therefore, feel it would not be appropriate to introduce a further administrative step which could not serve any purpose in respect of the scrutiny procedures.

Yours sincerely

Leighton Andrews

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Leighton.Andrews@wales.gsi.gov.uk

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Constitutional and Legislative Affairs Committee

Report: CLA(4)-13-11 : 28 November 2011

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA58 – The Substance Misuse (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011
Procedure: Negative.
Date made: 1 November 2011
Date laid: 14 November 2011
Coming into force date: 5 December 2011

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA57 – The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011
Procedure: Negative.
Date made: 6 November 2011
Date laid before Parliament: 14 November 2011.
Date laid before the National Assembly for Wales: 14 November 2011.
Coming into force date: 5 December 2011

Affirmative Resolution Instruments

CLA59 – The Carers Strategies (Wales) Regulations 2011
Procedure: Affirmative.
Date made: 2011.
Date laid: not stated.

Coming into force date: 1 January 2012

CLA60 – The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012
Procedure: Affirmative.
Date made: not stated.
Date laid: not stated.
Coming into force date: 31 January 2012

The Committee agreed the Reports under S.O.21.2 and S.O.21.3 on these statutory instruments, which are attached as Annexes 1 – 3.

Other Business

Committee Correspondence

CLA46 – The Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011

The Committee noted the Minister's response to the Chair's letter dated 18 October 2011 on the merits of the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011.

Consideration of Future Committee Inquiries

Committee Inquiries: A Welsh Jurisdiction

The Committee agreed to conduct an Inquiry into the establishment of a separate Welsh Jurisdiction. The Committee also agreed terms of reference for the Inquiry.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

28 November 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA57

Constitutional and Legislative Affairs Committee Report

Title: The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations provide for the simplification of the provisions relating to strategy groups and the preparation of strategies in the Crime and Disorder (Formulation and Implementation of Strategy) (Wales) Regulations 2007 with effect from 5th December 2011.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. The Order is required to be made jointly by Welsh Ministers and the Secretary of State by section 6(9) of the Crime and Disorder Act 1998. It will therefore be laid before Parliament and has therefore been prepared in English only.

[Standing Order 21.2(ix) – that it has not been made in both English and Welsh]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

28 November 2011

The Government has responded as follows:

The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

As indicated in the report, these amending Regulations have been prepared in English only. It is practice to prepare statutory instruments in English only when instruments are joint and are to be laid in Parliament. For that reason the Regulations to be amended, ie those made in 2007, were also prepared in English only.

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA59

Constitutional and Legislative Affairs Committee Report

Title: The Carers Strategies (Wales) Regulations 2011

Procedure: Affirmative

These Regulations made under the Carers Strategies (Wales) Measure 2010:-

- apply to Local Health Boards and Local Authorities and in part to Velindre NHS Trust and the Welsh Ambulance Services NHS Trust;
- require Local Health Boards in Wales and Local Authorities which fall within their area to work together in preparing and publishing a strategy setting out how they will work together to assist and include carers in arrangements for those they care for; and
- make provision for consultation in preparing strategies, the content of strategies, providing appropriate information and advice, consultation with carers or persons cared for, submission of draft strategies to Welsh Ministers, and the preparation of joint strategies.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this draft instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

(1) These Regulations are the first to be made under the Carers Strategies (Wales) Measure 2010.
[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of a public policy likely to be of interest to the Assembly].

(2) Regulation 9(7) states that the Carers strategy must be published in both Welsh and English *"unless it is not reasonably practicable to do so".*

Given the detailed provisions in the Regulations regarding the preparation of the strategies, and that such strategies are intended to cover a three year period, there do not appear to be any circumstances in which it would not be reasonably practicable to publish them bilingually.

Furthermore, the qualification in Regulations 9(7) runs counter to the principle set out in section 156(1) of the Government of Wales Act 2006 which states:-

"(1) The English and Welsh texts of—

(a) any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or

(b) any subordinate legislation which is in both English and Welsh when it is made,

are to be treated for all purposes as being of equal standing".

The principle is that the texts are only of equal standing if enacted or made bilingually. Whilst the current regulations relate to strategies rather legislation, unless the draft submitted for approval (under regulation 9(3)) or amendment (under regulation 9(6)) is submitted bilingually, the draft approved will constitute the strategy, and any translation will be exactly that.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of a public policy likely to be of interest to the Assembly.]

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

28 November 2011

The Government has responded as follows:

The Carers Strategies (Wales) Regulations 2011

Merits scrutiny

No response is offered on the observation that these regulations are the first to be made under the Carers Strategies (Wales) Measure 2010.

On the language question, the Committee's draft report highlights that authorities must publish strategies in English and Welsh "*unless not reasonably practicable to do so*".

The report points out that this is not consistent with the requirement for legislation to be made bilingually, to which section 156 of the Government of Wales Act 2006 applies. In the case of legislation, a failure to ensure that a Welsh enactment is passed in both English and Welsh will mean that if the enactment is subsequently translated into a second language, the second language text will not have equal status with the text of the language in which the enactment was passed.

As the strategies to be prepared by “designated authorities” are not legislation, and not one of the enactments mentioned in section 156, they would not stand to benefit from the effect of that section in any event.

Section 156 is the provision which gives effect to the principle that when legislation is passed in both English and Welsh, then both texts have equal standing. It does not establish a principle that legislation requiring publication of documents by public authorities must include a requirement that they are produced in both English and Welsh and through a process which guarantees equal status to both languages.

All the public authorities affected by these regulations are subject to a duty to have a Welsh Language Scheme under section 5 of the Welsh Language Act 1993. They will need to observe the requirements of their own schemes.

The draft report notes that, given the nature of the strategy, there do not appear to be any circumstances in which it would not be reasonably practicable to publish the strategy bilingually. It is agreed that circumstances when it would not be reasonably practicable to publish the strategy bilingually are likely to be very few.

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA60

Constitutional and Legislative Affairs Committee Report

Title: The Planning Permission (Withdrawal of Development Order or Local Development Order (Compensation) (Wales) Order 2012

Procedure: Affirmative

This draft Order amends Section 108 of the Town and Country Planning Act 1990 ("TCPA") as it applies in Wales. The Welsh Government intends to commence sections 61A to 61D of the TCPA (inserted by sections 40 and 41 of the Planning and Compulsory Purchase Act 2004) to enable local planning authorities to introduce, after consultation, local development orders which would remove the requirement for planning permission for developments as specified in a local development order. Section 107 of the TCPA provides for compensation to be payable where planning permission granted by a local planning authority is subsequently revoked or modified. Section 108 of that Act extends the entitlement to compensation to circumstances where planning permission granted by a development order is withdrawn. This draft order extends the entitlement to compensation to certain circumstances where planning permission granted by a local development order is withdrawn and restricts in other circumstances the entitlement to compensation on withdrawal of planning permission granted by a development order or local development order. A further amendment confers power on the Welsh Ministers to prescribe certain matters in relation to the entitlement to compensation.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this draft instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this draft instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

This draft order forms part of a suite of instruments. Paragraph 3.3 of the explanatory memorandum provides that:-

> *Further instruments subject to negative procedure will be made in due course and laid before the National Assembly for Wales giving full effect to provisions relating to local development orders and in exercise of powers conferred by section 108 of the 1990 Act, as amended by this instrument.*

Whilst this instrument only provides for compensation arrangements where planning permission granted by a local development order is withdrawn, local development orders are a new addition to the current development management system. A local development order is an order made by a local planning authority through which permitted development rights (i.e. reducing the need to seek planning permission), additional to those granted nationally by the Welsh Government, are granted to certain types of development (specified in the order) within a certain area (also specified in the order).

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

28 November 2011

The Calman Commission & Asylum Seeking Children
2011

Welsh Refugee Council
Cyngor Ffoaduriaid Cymru

Background

The Welsh Refugee Council has over twenty-one years experience of working with refugees, asylum seekers and refused asylum seekers. It provides confidential and independent advice services across Wales, advocates for the rights of refugees and asylum seekers, supports capacity building for refugee community organisations, and promotes good community relations. Its vision is to ensure that refugees and asylum seekers are safe, and that they get the support they need to rebuild their lives in Wales.

The Welsh Refugee Council's work is guided by the core principle that the right to seek asylum is a fundamental right. This year marks the 60th anniversary of the 1951 UN Convention Relating to the Status of Refugees, an international standard that has provided the essential protection to save hundreds and thousands of lives since it was established.

Findings and Recommendations from the Calman Commission following a submission of evidence from the Scottish Refugee Council

1. The Scottish Refugee Council responded in 2008 to a consultation to the Calman Commission (a Commission organised by Labour, Lib Dems and Conservatives in Scotland looking at what further powers should be devolved). They stated:

2. *'The key concern we have is the extent to which the UK Government has interpreted its reserved competence of immigration to treat any issue related to asylum seekers, asylum-seeking children and refugees as reserved including those areas which are devolved competences of the Scottish Parliament. We contend that this has in many instances run counter to the Scottish Parliament's foundations on human rights, equality and children's rights and raises fundamental questions of democratic and financial accountability.'*

3. This was picked up in the final report of Calman (2009) which stated that:

'RECOMMENDATION 5.7: In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland'.

Welsh Refugee Council
Phoenix House 389 Newport Road Cardiff CF24 1TP T: +44 (0)29 2048 9800 F: +44 (0)29 2043 2980
www.welshrefugeecouncil.org

http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf

4. In 2010 the UK Government published its White Paper on the Scotland Bill. The Bill will implement recommendations of the Final Report of the Commission on Scottish Devolution (the Calman Commission). It will make changes to the finances of the Scottish Parliament, including a new Scottish rate of income tax, and make a number of adjustments to the boundary of devolved responsibilities. The Bill is currently going through Westminster and the majority SNP government are asking for further powers to be devolved.

5. *The Government agrees with the Commission that there should be a single framework for managing immigration in the UK, with the flexibility to meet Scottish needs. The UK Border Agency works closely with Scottish authorities to discuss approaches to immigration policy which work best for Scotland. The Migration Advisory Committee oversees a Scottish Shortage Occupation list to address specific gaps in the Scottish labour market. In respect of another of the Commission's recommendations, the Government is committed to working with Scottish authorities to ensure that their statutory obligations towards the children of asylum seekers are respected.*

6. *UKBA recognises the statutory responsibility of Scottish authorities for the well-being of children in Scotland. The UKBA regional office hosts quarterly meeting of corporate partners from across the asylum community, including refugee charities, to provide a forum to discuss pertinent asylum issues.*

7. For further details please see: '*Strengthening Scotland's Future'* (November 2010) Available online http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/30_11_10_scotlandbill.pdf

Daisy Cole
Head of Influencing, PR and Child Policy

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