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The Rt Hon Lord Blencathra
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Dear David

I am writing to respond to the 58th report of the Delegated Powers and Regulatory Reform Committee that considered the Birmingham Commonwealth Games Bill and which was published on 1 July 2019.

I am grateful to the Committee for their report on the delegated powers memorandum produced to support the Bill. I will set out the Government's response to the Committee's recommendations in turn.

Clauses 12 and 15: Advertising and trading regulations - Games locations, time periods and vicinity

I have carefully considered the DPRRC's recommendations for certain regulation making powers to be subject to the affirmative procedure unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead.

Whilst I note the concerns raised by the DPRRC, the Government does not agree with the Committee's recommendation that regulations concerning advertising and trading made under clauses 12 and 15 should be subject to the affirmative procedure. The Government believes that the negative procedure is appropriate and provides a suitable level of scrutiny for these regulations.

I wanted to provide further reassurances in relation to the concerns raised by the DPRRC in their report.

Differences between the Birmingham Commonwealth Games Bill and the London Olympics and Paralympics Games Act

The Committee suggested that the approach taken in respect of similar provisions of the London Olympic and Paralympic Games Act 2006, as amended, could be replicated in the Bill. However, the Government considers that the differences between this Bill and the London Act justify a departure from the approach taken there.

Whilst the affirmative procedure was used for the regulation making powers for the Olympics and Glasgow Games, the delegated powers in the Birmingham Commonwealth Games Bill are not as broad in nature as their predecessors - there is considerably more detail on the face of the legislation. For example, this Bill provides clear definitions of “trading” and “advertising”, “Games location trading”, and “Games location advertising”. In the London legislation, this type of detail was left to be specified in the regulations.

We have also defined what we mean by a “Games location” in the Bill so as to restrict the locations in which the offence could take effect, whereas the London Act allowed regulations to specify or provide criteria for determining the places in which the advertising and trading offence applied. Furthermore, London did not provide for any trading exceptions in the Act whereas Government have included a number of exceptions and a power to provide for more in the regulations (the regulations will not be able to remove exceptions included in the Bill).

The cumulative effect of this is that this Bill provides the Secretary of State with power only to specify where and at what times the offences will apply, and to provide for additional exceptions to those offences. The nature and scope of the offences, as well as detail on how they are to be enforced, is provided for on the face of the Bill. This is in clear contrast to the approach taken in the London and Glasgow legislation.

Definition of advertising

The Committee's report states that advertising activity not connected to the Games would be captured by the offence. We firmly believe that our approach is proportionate, capturing only advertising activity done in the vicinity of a specified Games location during a specified period which is wholly or partly for the purpose of promoting a product, service or business to people in that location or watching at home.

The definition is framed to cover advertising by businesses that seek to take advantage of a Games event without entering into sponsorship arrangements. It should not capture promotions of political causes or beliefs, protest more generally or other non-commercial activities.

It is important to take steps to minimise ambush marketing by non-sponsors in order to protect the value of sponsorship rights and maintain commercial income in the Games. In broader terms, the policy is designed to ensure that we can deliver Games events with a consistent celebratory look and feel, in line with Commonwealth Games branding.

The Government is committed to proportionate restrictions in this area, which will only be in place when and where necessary, and will continue to consult on what other forms of promotion might sensibly be excluded from the offence.

Definition of trading

The Bill would restrict unauthorised trading around Games locations. Our concern is not to control only trading that is specific to the Games, but any trading that is liable to disrupt access to events, impact the celebratory atmosphere around the Games, or affect the value of sponsorship rights (which often involve rights to sell food, drinks or merchandise near events). The restrictions will enable the Organising Committee to decide which traders should be authorised and subject their activities to conditions.

The restrictions would be tied directly to places and times at which Games events are taking place.

For both advertising and trading, the Bill provides a power for the Secretary of State to bring forward regulations to provide additional exceptions. The Government will run a public consultation on those exceptions. These can only serve to narrow the offence further.

Games locations

Games locations, as defined in the Bill, are not restricted to 'competition venues' because there will be a number of other non-competition venues where we need to ensure protections are in place. This echoes the approach taken for the Glasgow Commonwealth Games. This might include training venues and fan zones, but also some locations involved in operational delivery, such as uniform and accreditation centres. Unauthorised advertising and trading could have an adverse impact at these Games locations.

However, a Games location will only be specified in regulations where it is necessary for the advertising and/or trading restrictions to apply in, or in the vicinity of, that Games location in order to deliver a successful Games. Some Games locations may only be in use for a few days, and as such the time periods that restrictions are in place will be limited for those Games locations.

For Glasgow, the definition of "Games location" in the Glasgow Commonwealth Games Act 2008 included any other place which is used in connection with the Games and specified by order made by Ministers. This was subject to the negative procedure.

In any event, and as the Committee acknowledged, no restriction will be in place for longer than 38 days, which is considerably shorter than the restrictions for the London 2012 which were in place for around 92 days.

Vicinity

In defining vicinity, it is not as simple as providing a set distance from a Games location in which the offence applies. This needs to be tailored to each Games location, considering for example spectator routes and nearby transport hubs. As well as the vicinity being a geographical area, the regulations could specify, for example, that an advertisement outside of this area, but visible from inside it, could be captured by the offence. If we are able to capture advertising on the front of a building that can be seen within the vicinity, this will mean that we would not need to widen the restricted area to capture further advertising locations unnecessarily.

A proportionate approach will be taken to these delegated powers, and it is in all of our interests that advertising and trading restrictions only apply when and where necessary. As detailed above, the powers in the Birmingham Commonwealth Games Bill are not as broad as their predecessors, and as such, we deem the negative procedure to be suitable for these regulations.

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

I acknowledge that we have not followed the approach set by the London and Glasgow Acts, whereby the Olympic Delivery Authority (ODA) and the Organising Committee respectively were identified in legislation as responsible for the transport plan for those Games.

We do believe however, that the proposed approach is appropriate for Birmingham 2022. Local Games transport partners are already leading and working together on transport preparations and planning for the Games. Their approach reflects the transport expertise that already exists across Birmingham and the region and, importantly, the reduced timescale to deliver these Games. The views of local partners will strongly factor into the Secretary of State's decision on who will formally be directed to prepare the plan. The Bill also enables the Secretary of State to revoke a direction to prepare a Transport Plan. This is a safeguard that, whilst unlikely to be called on, will enable Government, in our role of providing Games assurance, to react quickly and flexibly to any unforeseen circumstances.

The report correctly identifies that the person directed to prepare the plan would be able to exercise the Games traffic management powers provided by Clause 25. We believe concurrent powers will facilitate the coordination of Games traffic management measures, especially where such measures transcend local traffic authority boundaries. I would highlight however, that both the acquisition and exercise of these powers is contingent on the agreement of the relevant local traffic authority. In addition, areas in which concurrent powers will operate will be specified in regulations under the negative procedure. By contrast, the London Olympics Act provided that the ODA both could make and was responsible for coordinating traffic management measures for the Games; in addition, traffic authorities required the ODA's consent before introducing such measures.

I have however, carefully considered the issues raised in the report of the DPRRC and recognise the concerns. We have therefore brought forward an amendment that the Secretary of State would be enabled to direct only a 'local authority or combined authority' to produce a Games Transport Plan, rather than 'a person'. I hope that this serves to reassure the Committee that it would be an appropriate body who would receive the Direction.

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

Paragraph 16: Power of Secretary of State to make provision about claims for compensation.

We note the views of the Committee that in relation to the determination for the rights of individuals to compensation that the affirmative procedure should apply. After careful consideration, the Government has on Wednesday 17 July tabled an amendment, ahead of Report stage, which will change the parliamentary procedure for regulations about claims for compensation to **affirmative** in line with the Committee's recommendation. This will enable Parliament to debate the proposals for any administrative procedures for compensation arising from enforcement action in relation to the touting, advertising and trading offences.

May I reiterate my gratitude to you and the Committee for your consideration of the Bill and for the important issues raised. I hope that the Committee is reassured by the Government's intentions in relation to the powers to the Bill.

A copy of this letter will also be placed into the library of both Houses, and a copy will also be sent to all Peers that spoke in the debate on the Commonwealth Games Bill at Second Reading and Committee stages.

Yours sincerely

Harry Asher

Lord Ashton of Hyde
Parliamentary Under Secretary of State