EXPLANATORY MEMORANDUM TO

THE BIRMINGHAM COMMONWEALTH GAMES (ADVERTISING AND TRADING) REGULATIONS 2021

2021 No. 1198

1. Introduction

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

2. Purpose of the instrument

2.1 The Birmingham Commonwealth Games Act 2020 ("the 2020 Act") created offences for unauthorised advertising and unauthorised trading in and around specified Games locations at specified times in the run up to and during the Games. These regulations provide further detail and specify the Games locations (where), and timings (when), for the purposes of the advertising offence (section 13 of the 2020 Act) and the trading offence (section 16 of the 2020 Act) and provide when a person will be treated as advertising/trading in, or in the vicinity of, a Games location for the purpose of the offences. The regulations also provide a number of exceptions (activity that will not be caught by the offences) under sections 15(2) and 19(1) of the 2020 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2020 Act provides a small number of temporary measures to ensure a successful delivery of the Birmingham 2022 Commonwealth Games, including criminal offences for unauthorised advertising or trading in and around specified Games locations at specified times. The provisions apply to England only.

6.2 These measures are designed to protect the rights of commercial sponsors and to ensure spectators can move to and from Games locations easily and safely. The offences supersede any existing licences to trade or advertise. Similar measures were brought forward for the London Olympics and Paralympics in 2012 and the Commonwealth Games in Glasgow in 2014.

6.3 The 2020 Act provides the Secretary of State with the power to make regulations under the following sections:

- Sections 13(2) and 16(2) of the 2020 Act provide the power to specify the Games locations and time periods for the purposes of the definitions of "Games location advertising" and "Games location trading".
- Sections 13(3) and 16(3) provide that the advertising and trading restrictions can begin no earlier than 21 days before the start of the Games (i.e. 7 July), and end no later than five days after the Games conclude (i.e. 13 August).
- Sections 13(4) provides a power to specify what it means to be, or be doing something, in or in the vicinity of a Games location for the purposes of the advertising offence.
- Sections 16(4) provides a power to specify what it means to be doing something in or in the vicinity of a Games location for the purposes of the trading offence.
- Sections 15(2) and 19(1) provide a power to specify exceptions to the advertising and trading offences.
- Sections 15(3) and 19(2) of the Act required the Secretary of State to consult the Organising Committee, local authorities and any other persons considered appropriate before making regulations about exceptions.

6.4 A number of exceptions to the trading offence are already provided for under section 18 of the 2020 Act, including; exceptions for trading activity associated with premises adjoining a highway; exceptions for selling or offering an item for sale or providing or offering a service to such premises. The 2020 Act also provides a power for the Organising Committee to authorise advertising and trading activity.

7. Policy background

What is being done and why?

7.1 The UK will host an inspiring and inclusive Commonwealth Games in Birmingham and the West Midlands from 28 July to 8 August 2022. It will be the biggest sporting and cultural event ever held in the city, featuring around 6,500 world-class athletes and officials and over a million spectators. With an estimated TV audience of 1.5 billion, the Games offers a unique opportunity to showcase Birmingham, the West Midlands and the UK to the rest of the world as a destination for international trade, education, world class sport and tourism and act as a catalyst as we look to level up across the UK. This legacy will be more important now than ever, and Birmingham 2022 will be at the heart of the economic, cultural and social renewal of the region as we look to build back better in the aftermath of the pandemic.

7.2 The advertising and trading measures in the 2020 Act, respectively, provide the commercial protections necessary to help secure sponsorship of the Games and ensure spectator safety for those moving in and around Games locations.

7.3 This instrument sets out the details of where and when temporary restrictions on unauthorised advertising and trading under the 2020 Act will apply and exceptions to those restrictions. Generally, it will be an offence to advertise inside part of a building which is being used for a Games sporting event and to advertise or trade in an area around it, which is likely to include designated walking routes, key transport hubs and sites at high risk from ambush marketing.

7.4 For the advertising and trading offences, a person is to be treated as in, or in the vicinity of, a Games location when they are in or on:

a) a railway station (where any part of that station is in the non-shaded area bounded by a dotted green line [as shown on a relevant map in Schedule 2]);

b) an event road (a road where the marathon course, road race course or time trial course is taking place);

c) any other place within the non-shaded area;

d) the pavement outside the non-shaded area that is on any side of any part of a road (including an event road) within that area (or where there is no pavement or the pavement extends less than two metres from the side of the road), the land or water outside the non-shaded area but within two metres of any side of any part of a road within that area. **For the road race course or time trial course, this does not include advertising on the frontage of any building on that pavement or land.**

e) advertising on any part of a bridge outside the non-shaded area which carries an event road;

f) advertising on the frontage or roof of a building or frontage of a bridge, where the building or bridge can be seen from the places set out at (a)-(e), and any part of it is within 25 metres of those places (to ensure that prominent buildings in close proximity cannot be used for ambush marketing purposes). **This does not apply to the road race course or the time trial course.**

7.5 This includes the airspace above a place in (a)-(e).

7.6 The timing of the restrictions have been informed by when and how Games locations are used - primarily driven by the Games competition schedule. We have worked closely with the Birmingham 2022 Organising Committee ("the Organising Committee"), an arm's length body of the Department for Digital, Culture, Media and Sport, to ensure that restrictions are in place for the shortest possible time. Generally, restrictions will start to take effect shortly before a competition or event takes place; in the most part one day before activity starts, and end the same day that activity at that location ends. There are a small number of venues where restrictions are needed for slightly longer to take account of their use at Games-time.

7.7 These regulations also provide a number of exceptions to the restrictions. Primarily, these exceptions are aimed at minimising disruption to existing businesses. For example, for the advertising offence, exceptions are provided for advertising on business premises which relates to goods sold or services provided by that business (which have deemed consent or do not currently require planning permission) and for advertising charitable services (such as a suicide prevention helpline). For the trading offence, exceptions have been provided, for example, for a cafe, bar or restaurant providing outdoor seating on private land and for the provision of public transport services (including trains, buses and trams).

7.8 The exceptions will help to ensure that restrictions are focused on activity with the greatest potential to undermine the safety of spectators and which poses the greatest threat to commercial sponsorship rights (for example, ambush marketing attempts), without unduly harming the usual operation of businesses in the area. The majority of exceptions to the advertising offence are modelled on classes of exceptions under schedule 1 or 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("2007 Regulations"); this is to help minimise disruption on 'business as usual' advertising activity and, where possible, align with the existing controls around the display of adverts. The exceptions to the advertising offence do

not replace the requirement that any advert will still need to comply with the 2007 Regulations as relevant (as set out under section 22 of the Act).

7.9 Where there are concerns about the use of adverts permitted under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, a different approach has been adopted. For example, we have proposed a modified approach for specified classes of adverts, including adverts displayed on enclosed land or inside a building that is a railway or bus station, sports stadium or any other enclosed land, or a (part of) a building, where a Birmingham 2022 sporting event is taking place, is to take place or has taken place. Further, we do not intend exceptions to apply in any way to a number of classes of adverts under Schedule 3; adverts on hoardings and highway structure (Class 8 & 9); sites used for preceding ten years for display of advertisements without express consent (Class 13), adverts displayed after expiry of express consent and on balloons (Class 14 & 15).

7.10 Schedule 4 sets out exceptions for providers of information society services from the advertising and trading offences. These exceptions are relevant to anyone providing a service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of a service. As television and radio broadcasting services are not provided at the individual request of a recipient, they do not fall within scope of the exception.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 Before bringing forward exceptions to the advertising and trading offences under section 15(2) and 19(1) of the 2020 Act, the Secretary of State is required, under section 15(3) and 19(2), to consult with certain persons, including the Organising Committee, the local authority for an area that includes any place where the regulations would have effect, and; any other persons whom the Secretary of State considers it appropriate to consult. To support this requirement, DCMS ran a public consultation for over ten weeks from 5 November 2020 to 18 January 2021.

10.2 In developing our position for the consultation, we engaged with over 30 organisations, including relevant government departments, the Organising Committee, Transport for West Midlands, Birmingham City Council, West Midlands Police, transport operators, venue local authorities and representative industry groups such as out-of-home advertisers and media owners. The consultation was open to anyone to respond and a number of key stakeholders and Games partners were invited to submit responses.

10.3 The Organising Committee also invited venue owners, local and regional businesses and their representative groups to respond, including the regional federation of small businesses, chambers of commerce and local enterprise partnerships. In addition, host venue local authorities were asked to share information with local businesses, traders and their representative groups that could be affected, based on the principles around

where the restrictions are likely to apply. We have continued to work closely with the Organising Committee, venue local authorities and representative bodies on the approach to the restrictions and to identify individuals and organisations that may be affected.

10.4 In total, 28 responses were received from a wide range of stakeholders including Games partners, local authorities, advertising industry representatives, local business organisations and individuals. Many respondents agreed in principle with the exceptions proposed in the consultation but sought further clarity about the detail or operation of the proposed exceptions or the process for seeking authorisation to advertise or trade while restrictions in place (which will be set out in guidance to be published by the Organising Committee).

10.5 Given the broad support received we have brought forward, in these regulations, the exceptions set out in the consultation. We have, however, amended our approach in a small number of areas - for example, including taxis and private hire vehicles in the trading exception for public transport services and to clarify how the offences apply to activity on hand-held devices - given feedback received through the consultation. The consultation response can be found at: https://www.gov.uk/government/consultations/exceptions-to-birmingham-2022-advertising-and-trading-restrictions.

11. Guidance

11.1 As required under section 23 of the 2020 Act, the Organising Committee will publish guidance on the operation of the advertising and trading restrictions; we expect this to take place on the date, or shortly after, the regulations come into force. Local authorities affected by the restrictions are required to share a copy of this guidance with traders in the area that could be affected by the trading offence.

12. Impact

12.1 The regulations will have a small impact on business, charities and voluntary bodies. However, the measures are temporary and a number of mitigations will be in place, including the exceptions. Affected organisations will be able to apply to the Organising Committee for authorisation to advertise or trade while the restrictions are in place; and, as set out under section 14(4) of the 2020 Act, the Organising Committee may have regard to any existing licences to advertise or trade.

12.2 There will be a small impact on local weights and measures authorities, who will be responsible for enforcing the advertising and trading restrictions at Games-time. The Organising Committee is working with local authorities to develop a proportionate approach to enforcement which takes into account resources available, the aims of the legislation and hosting commitments for the Games, with appropriate training and guidance will be provided to enforcement officers and Organising Committee personnel. A Joint Authorities Regulatory Service has been established to develop a coordinated approach to the regulatory services required for the Games, including the use of available resources. As well as trading standards officers, local authorities will be able to authorise other officers or employees to undertake enforcement, for example, environmental health or licensing officers.

12.3 As only a small number of businesses are expected to be affected by this instrument over a short period of time, a De Minimis Impact Assessment was carried out. The assessment estimated the net impact on businesses to be no more than £1.3 million,

with a central estimate of £0.3m. These estimates also do not take into account the positive indirect benefits to local businesses as a result of hosting the Games.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. To minimise the impact of the requirements on small businesses (employing up to 50 people) a number of mitigations will be in place. For instance, many businesses will be subject to exceptions for their advertising or trading activity. Further, where necessary, they will be able to seek authorisation from the Organising Committee to advertise or trade while restrictions are in place. When considering applications, the Organising Committee may have regard to any existing licences to advertise or trade.

13.2 Local authorities are also under a duty to share the Organising Committee's guidance on the operation of the advertising and trading restrictions with licenced traders who are likely to be affected by the trading offence and to provide information to help them mitigate the impact of the trading offence (for example, identifying an alternative location to trade).

14. Monitoring & review

14.1 We have worked with the Organising Committee and affected local authorities on the development of the provisions and will continue to engage these bodies as the restrictions are implemented.

14.2 Given the short-term nature of the restrictions, a statutory review clause has not been included in this instrument. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Sport, Tourism, Heritage and Civil Society has made the following statement:

"A statutory review clause would not be appropriate for this instrument as the measures are temporary in nature and there is not expected to be a significant annualised net impact on business."

14.3 However, the Organising Committee is expected to undertake an evaluation of the measures in this instrument following the Games, and the Government's broader evaluation of the legacy and benefits of the Games will assess economic indicators in the region.

15. Contact

15.1 Tim Dwyer at the Department for Digital, Media, Culture and Sport, email: tim.dwyer@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Giles Smith, Deputy Director at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Sport, Tourism, Heritage and Civil Society can confirm that this Explanatory Memorandum meets the required standard.

15.4 Copies of the maps provided in Schedule 2 of the regulations (a map of a specified Games location and its vicinity) are available by appointment (by email at cwgcbt@dcms.gov.uk or brandprotection@birmingham2022.com) for inspection during normal office hours at:

a) the Department for Digital, Culture, Media and Sport, 100 Parliament Street, Westminster, London, SW1A 2BQ;

b) the Birmingham Organising Committee for the 2022 Commonwealth Games, One Brindley Place, Birmingham, West Midlands, B1 2JB.

15.5 Information about enclosed land and (parts of) buildings where Games sporting events are taking place is available online on the Organising Committee's website (www.birmingham2022.com) or upon request at brandprotection@birmingham2022.com or by writing to the Organising Committee at its office at One Brindley Place, Birmingham, West Midlands, B1 2JB.