EXPLANATORY MEMORANDUM TO

THE OLYMPICS, PARALYMPICS AND LONDON OLYMPICS ASSOCIATION RIGHTS (INFRINGEMENT PROCEEDINGS) REGULATIONS

2010 No. 2477

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

2. Purpose of the instrument

2.1 This instrument specifies the remedial orders that a court can make in relation to goods, materials or articles that infringe the "London Olympics association right". The London Olympics association right is an intellectual property right that is infringed by unauthorised commercial use of any representation which creates an association between the London Olympic Games or Paralympic Games and goods or services, or a person or organisation providing goods or services. This instrument also amends earlier regulations relating to other Olympics- and Paralympics-related intellectual property rights.

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

3.1 None

4. Legislative Context

4.1 The Olympic Symbol etc. (Protection) Act 1995 ("the 1995 Act") created the Olympics association right, an intellectual property right giving its proprietors exclusive control of representations of specific Olympic-related properties, such as the Olympic rings symbol. The joint proprietors of the Olympics association right are the London Organising Committee of the Olympic Games and Paralympic Games Limited ("LOCOG") and the British Olympic Association.

4.2 Section 7 of the 1995 Act allows the Secretary of State or Minister for the Olympics to make regulations (corresponding to provisions of the Trade Marks Act 1994) prescribing remedial orders which a court can make when the right is infringed, such as an order that infringing materials be destroyed or forfeited.

4.3 The first (and, to date, only) set of regulations made under section 7 of the 1995 Act were the Olympics Association Right (Infringement Proceedings) Regulations 1995 ("the 1995 Regulations"). Those regulations allow the court to make the following orders in relation to goods etc that infringe the Olympics association right:

a) an order that the infringing representation be erased or obliterated from the relevant goods etc;

b) an order that the goods etc be destroyed;

c) orders that the goods etc be delivered up to a proprietor of the right and destroyed by or forfeited to that proprietor.

4.4 The London Olympic Games and Paralympic Games Act 2006 ("the 2006 Act") amended the 1995 Act to create a second intellectual property right – the Paralympics association right. This provides its proprietors (LOCOG and the British Paralympic Association) with control of Paralympic-related properties identical to that provided in relation to Olympics-related properties by the Olympics association right.

4.5 The 2006 Act did not apply the 1995 Regulations to the Paralympics association right. Accordingly, this instrument amends the 1995 Regulations to apply them to the Paralympics association right in the same way as they apply to the Olympics association right. This ensures that the court has appropriate powers to remedy an infringement of the Paralympics association right.

4.6 The 2006 Act also created a third intellectual property right – the London Olympics association right. This gives LOCOG (and those it authorises) the exclusive right to use representations that create an association between the London 2012 Games and goods or services, or a person or organisation providing goods or services.

4.7 The 2006 Act applied various provisions of the 1995 Act to the London Olympics association right, including the regulation making power in section 7. In reliance on that power, this instrument makes similar provision in respect of the London Olympics association right as that made in the 1995 Regulations in relation to the Olympics and Paralympics association rights. It is necessary to ensure that the court has appropriate remedial powers when there has been an infringement of the London Olympics association right.

4.8 Finally, this instrument also amends the 1995 Regulations in the light of amendments to provisions of the Trade Mark Act 1994 (upon which the 1995 Regulations are based).

5. Territorial Extent and Application

5.1 This instrument extends to and applies within all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

Policy background to the Olympics, Paralympics, and London Olympics association rights

7.1 The London Olympics association right is a legal measure which gives LOCOG (and those it authorises) the exclusive right to create a commercial association with the London 2012 Olympic and Paralympic Games ('the 2012 Games'). It works with other legislation that provides for the control of Olympic and Paralympic intellectual property, such as the Olympics and Paralympics association rights, which control the use of Olympics-and Paralympics-related symbols, mottos and words.

7.2 These measures are necessary to safeguard the sponsorship funding bases of LOCOG (the company that is staging the 2012 Games) and the British Olympic and Paralympic teams. LOCOG has to raise almost all of the funds necessary to stage the 2012 Games through securing commercial sponsorship agreements. To do this, it must be able to ensure exclusivity in the association of goods and services with the 2012 Games, so that potential sponsors will view an association with the 2012 Games and the Olympic and Paralympic brands as a valuable and worthwhile commercial investment.

7.3 It is important to protect sponsors' interests, and the funding that flows from them, because, without such funding, there would be a greater call on the public purse to fund the staging of the 2012 Games. Indeed, without commercial support it might be impossible to stage the 2012 Games at all, or send large British teams to the Olympic and Paralympic Games.

7.4 However, it is also important to note that the London Olympics, Olympics and Paralympics association rights recognise the need for a balance to be struck between securing sponsors' and other authorised users' rights and potentially competing values, such as freedom of expression. That is why the association rights contain a number of exemptions and defences that limit how they can be applied. For example, making an association with the 2012 Games in the course of publishing or broadcasting information about the London Olympics would not infringe the London Olympics association right, provided that the information is not advertising material.

Policy background to this instrument

7.5 LOCOG, as the proprietor of the London Olympics association right, has the right to take enforcement action against individuals or organisations that infringe that right, including by issuing court proceedings. These regulations specify the remedial orders that a court can make in relation to goods, materials or articles that infringe the London Olympics association right. Without these regulations, a court may not be able to make orders that provide a sufficient deterrent and remedy to breaches of the association right. Hence, these regulations are needed to protect the value of the London Olympics association right, and, therefore, LOCOG's ability to raise sponsorship for staging the 2012 Games.

7.6 Similarly, these regulations apply the remedial orders specified in the 1995 Regulations to the Paralympics association right. This protects the value of the Paralympics association right, and, therefore, LOCOG's ability to raise sponsorship for staging the 2012 Games, by ensuring that a court can make appropriate orders to vindicate a breach of that right.

8. Consultation outcome

8.1 No consultation was undertaken as these regulations mirror the 1995 Regulations and do not make any changes of substance.

9. Guidance

9.1 These regulations will not be the subject of separate guidance.

10. Impact

10.1 The Olympics, Paralympics and London Olympics association rights were established in primary legislation. This instrument makes supplemental procedural provision only, corresponding to existing regulations.

10.2 The regulations will not impact on individuals or organisations that are operating legitimately, as they will only apply where the Olympics, Paralympics or London Olympics association rights have been infringed. Furthermore, the regulations will only impact on individuals or organisations if a court decides to make a remedial order under the Regulations (ordering, for example, that infringing goods etc are destroyed or delivered up or than any offending representation is removed from them).

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies equally to all business, including small business. However, the regulations will not impact on any businesses, large or small, that are operating legitimately, as they will only apply in relation to those found to be infringing the Olympics, Paralympics or London Olympics association rights. Furthermore, the regulations will only impact on a particular business if a court decides to make a remedial order in reliance on the Regulations (ordering, for example, that infringing goods etc in a business's possession are destroyed or delivered up or that any offending representation is removed from them).

12. Monitoring & review

12.1 The legislation is not kept under review at fixed periods.

13. Contact

Jean Foster at the Department for Culture, Media and Sport (Tel: 0207 211 2039 or email: jean.foster@culture.gsi.gov.uk) can answer any queries regarding the instrument.