

**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<sup>[1]</sup>; and

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[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 there 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 updated 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<br>yes or no |
| <b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?                               | no                  |
| <b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?                               | no                  |
| <b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?          | no                  |
| <b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?   | yes                 |
| <b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?              | no                  |
| <b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?  | no                  |
| <b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | no                  |
| <b>Q8:</b> Is the sector characterised by rapid technological change?  | no                  |
| <b>Q9:</b> 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.