



## BRIEFING PAPER

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# Birmingham Commonwealth Games Bill [HL] 2019-20

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## Summary

The 2022 Commonwealth Games will take place in Birmingham between 27 July and 7 August 2022.

The *Birmingham Commonwealth Games Bill [HL] 2019-20* (HC Bill 8) was introduced in the House of Commons on 24 October 2019. This paper has been prepared for the Bill's Second Reading. A date has not been announced.

The Bill would introduce temporary measures to support the delivery of the 2022 Games. These would:

- enable the Government to provide financial assistance to the Organising Committee for the Games;
- criminalise the unauthorised resale of Games tickets;
- create criminal offences for unauthorised trading and advertising in specified Games locations;
- prohibit unauthorised association with the Games;
- ensure road regulation for Games purposes and effective coordination between the relevant transport and traffic authorities.

The Bill has been carried over from the 2017-19 session. It was originally introduced in the House of Lords on 5 June 2019 where it was broadly welcomed by the opposition parties.

The Bill, Explanatory Notes, and documents relating to the Bill are available from the parliamentary [website](#).

# 1. Background

The Commonwealth Games are held every four years. The UK has hosted the Games six times:

- London in 1934;
- Cardiff in 1958;
- Edinburgh in 1970 and 1986;
- Manchester in 2002;
- Glasgow in 2014.<sup>1</sup>

The Commonwealth Games Federation (CGF) originally awarded the 2022 Games to Durban. However, the CGF withdrew its offer in March 2017 after finding that Durban had not met several obligations and commitments in its original bid.<sup>2</sup>

In April 2017, the CGF said that the UK, Australia, Canada, and Malaysia had submitted expressions of interest in hosting the 2022 Games.<sup>3</sup>

On 21 April 2017, the Department for Digital, Culture, Media and Sport (DCMS) invited cities across the UK to put forward proposals for hosting the Games.<sup>4</sup> In September 2017, it was announced that Birmingham had been chosen ahead of Liverpool.<sup>5</sup>

In December 2017, the CGF announced that Birmingham had been selected to host the 2022 Games.<sup>6</sup> There is a delivery time of four and a half years, rather than the usual seven.<sup>7</sup> The Games will take place between 27 July and 7 August 2022.

## Delivering the Games

The Birmingham Organising Committee for the 2022 Commonwealth Games Ltd ("[the Organising Committee](#)"), a non-departmental public body, is responsible for delivering the Games. A [Management Agreement](#) sets out the framework within which the Committee operates. It also includes the DCMS' priorities for the Committee and performance indicators. Further information on the Committee's work is available from its [website](#).

Birmingham City Council is overseeing capital projects for the Games. West Midlands Police has overall responsibility for Games security.

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<sup>1</sup> Commonwealth Games Federation (CGF) [website](#) [accessed 31 October 2019]

<sup>2</sup> CGF, [Statement on 2022 Commonwealth Games](#), 13 March 2017

<sup>3</sup> "[Update on 2022 Commonwealth Games](#)", CGF Media Release, 28 April 2017

<sup>4</sup> "[UK eyes up Commonwealth Games 2022 bid](#)", DCMS press release, 21 April 2017

<sup>5</sup> "[Commonwealth Games 2022: Birmingham beats Liverpool to lead England bid](#)", BBC Sport, 7 September 2017

<sup>6</sup> "[Commonwealth Games Federation selects Birmingham as Host City Partner of the 2022 Commonwealth Games](#)", CGF media release, 21 December 2017

<sup>7</sup> DCMS, [Explanatory Notes to Bill 8 2019-20](#), para 4

## Budget

According to a June 2019 DCMS [press release](#), the total budget for the Games is £778 million, split approximately 75:25 between central Government (£594 million) and Birmingham City Council and its partners (£184 million).<sup>8</sup>

## Benefits of hosting the Games

The DCMS' [press release](#) claims that the Games will “open up a wealth of opportunities for people across the West Midlands region and the UK, including cultural engagement, business and trade, volunteering, physical activity, jobs and skills, education and tourism”:

With an estimated global audience of 1.5 billion, Birmingham 2022 offers a unique opportunity to harness the power of sport and cultural activities to boost the West Midlands region and to promote Global Britain across the Commonwealth as we leave the EU.

The evidence from previous host cities demonstrates the significant benefits of staging the Games. Gold Coast 2018 Games is expected to have delivered a £1.3 billion boost to the Queensland economy.

It also refers to existing projects in the region that “will deliver long-lasting benefits” and help to deliver the Games:

This includes the £496 million development of 1,400 new homes at Perry Barr which will serve as the Commonwealth Games Village during the Games in 2022, the delivery of which Birmingham City Council is responsible. The Perry Barr development will be supported by £165m of government funding from the Ministry of Housing, Communities and Local Government, as announced in October 2018.

The Commonwealth Games will act as a catalyst for the regeneration of the Perry Barr area with the development of a high-quality new residential neighbourhood. Post-Games, the development will be converted into more than 1,400 homes, the first phase of a long-term regeneration plan for Perry Barr and surrounding areas that will provide 5,000 new homes in total.

The Games will also benefit from investment in transport infrastructure including by Transport for West Midlands. This includes improvements at Perry Barr and University stations and new SPRINT rapid bus routes, subject to the necessary approvals. Passengers across the region will benefit from these proposals long after the Games end in 2022.

An August 2018 [briefing paper](#) from the Greater Birmingham Chambers of Commerce notes the “incredible opportunity” for the region:

[The Games are] an opportunity to boost skills with up to 12,500 trained volunteers needed for the games and over 4,500 jobs a year expected to be created up to 2022.

(...)

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<sup>8</sup> [“£778m investment in Birmingham and the West Midlands to deliver 2022 Commonwealth Games”](#), DCMS press release, 25 June 2019

The Games are also an opportunity to develop and expand trading links between local businesses and Commonwealth markets. There are 2.3 billion people living in Commonwealth nations. By 2020 it is forecast that the Commonwealth will have more than a billion middle class consumers, yet currently only 9% of British exports go to Commonwealth nations...<sup>9</sup>

### **Birmingham Commonwealth Games Bill [HL] 2019-20**

The [Birmingham Commonwealth Games Bill \[HL\] 2019-20](#) introduces a number of temporary measures to support the delivery of the Games. The measures are in line with those introduced through legislation for earlier major sporting events held in the UK:

- London 2012 Olympic and Paralympic Games - the *London Olympic Games and Paralympic Games Act 2006* as amended by the *London Olympic Games and Paralympic Games (Amendment) Act 2011*
- Glasgow 2014 Commonwealth Games - the *Glasgow Commonwealth Games Act 2008* and the *Glasgow Commonwealth Games Act 2008 (Games Association Right) Order 2009*.

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<sup>9</sup> GBCC, [Birmingham Commonwealth Games 2022- Briefing Paper](#), August 2018, p3

## 2. The Bill

### 2.1 Introduction

The *Birmingham Commonwealth Games Bill [HL] 2019-20* (HC Bill 8) was introduced in the House of Commons on 24 October 2019.

The Bill has been carried over from the 2017-19 session.<sup>10</sup> It was originally introduced in the House of Lords on 5 June 2019 where it was broadly welcomed by the opposition parties.

According to a DCMS [press release](#), the Bill will help to deliver a successful Games by ensuring:

- unauthorised sales of Games tickets is prohibited;
- transport around Games locations flows effectively;
- commercial rights are protected;
- the government's funding of the Organising Committee complies with financial propriety rules.<sup>11</sup>

The Bill has been welcomed by the Chief Executive of the Commonwealth Games Federation (David Grevenberg), the Mayor of the West Midlands (Andy Street), the Chairman of Birmingham 2022 (John Crabtree), and the Leader of Birmingham City Council (Ian Ward).

The Bill [[Bill 8 2019-20](#)] and [Explanatory Notes](#) are available from the [Bill page](#) on the parliamentary website.

The DCMS provided a [Memorandum](#) (5 June 2019) to the Delegated Powers and Regulatory Reform Committee (DPRRC). The DPRRC published its [report](#) (HL Paper 391) on 1 July 2019 and the [Government's response](#) (HL Paper 414) was published on 19 July 2019.

#### **Territorial extent and application**

The Bill's provisions on advertising, trading and transport extend to England and Wales only. The remaining provisions extend to England and Wales, Scotland and Northern. For further detail see the [Explanatory Notes](#) to the Bill.<sup>12</sup>

#### **Debate in the House of Lords**

The Bill received cross-party support when it had [Second Reading](#) in the House of Lords. However, concerns were raised about:

- funding and financial liability;<sup>13</sup>

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<sup>10</sup> A [carry-over motion](#) was agreed, without division, in the House of Lords on 9 September 2019

<sup>11</sup> "[Government introduces Commonwealth Games Bill for Birmingham 2022](#)", DCMS press release, 6 June 2019

<sup>12</sup> [Explanatory Notes to Bill 8 2019-20](#), p4 and Annex A

<sup>13</sup> Lord Hunt of Kings Heath (Labour), [HL Deb 25 June 2019 cc1015-16](#); Lord Rooker (Labour), [HL Deb 25 June 2019 c1021](#); Lord Addington (Liberal Democrat), [HL Deb 25 June 2019 cc1033-4](#)

## 8 Birmingham Commonwealth Games Bill [HL] 2019-20

- the legacy of the Games;<sup>14</sup>
- scrutiny – i.e. the use of the negative resolution procedure, rather than affirmative, for regulations that would be made under the Bill.<sup>15</sup>

The Bill was [considered](#) in Public Bill Committee on 9 July 2019. It was not amended.

At [Report Stage](#) on 24 July 2019, Government amendments were agreed that would:

- require the Organising Committee to send annual reports to the Secretary of State on its work to deliver the Games;<sup>16</sup>
- place the Games transport plan on a statutory footing;<sup>17</sup>
- apply the draft affirmative procedure to the regulations on the procedures for compensation claims in certain circumstances following enforcement action.<sup>18</sup>

A [carry-over motion](#) was agreed on 9 September 2019. Formal Second Reading, Committee and Report Stage took place on 16 October 2019.

[Third Reading](#) took place on 23 October 2019. No amendments were made to the Bill.

## 2.2 Financial assistance to the Organising Committee

Under **clause 1(1)**, the Secretary of State for Digital, Culture, Media and Sport can provide financial assistance to the Organising Committee for:

- delivering the Games;
- any other purpose connected to, or arising from, the Games.

The financial assistance can take the form of grants, loans, guarantees or indemnities. It may be subject to conditions e.g. relating to repayment with or without interest.<sup>19</sup>

### Annual reporting

At Committee and Report Stage in the Lords, amendments to clause 1 were tabled on, among other things:

- the publication of a legacy plan by the Organising Committee;<sup>20</sup>
- the publication of annual reports by the Organising Committee;<sup>21</sup>

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<sup>14</sup> Lord Hunt of Kings Heath Labour, [HL Deb 25 June 2019 cc1016-7](#); Baroness Burt of Solihull (Liberal Democrat), [HL Deb 25 June 2019 cc1017-8](#)

<sup>15</sup> Lord Moynihan (Conservative), [HL Deb 25 June 2019 cc1027-8](#)

<sup>16</sup> [HL Deb 24 July 2019 c787](#)

<sup>17</sup> [HL Deb 24 July 2019 cc787-8](#)

<sup>18</sup> [HL Deb 24 July 2019 cc789-92](#)

<sup>19</sup> Clause 1(2)

<sup>20</sup> Lord Rooker (Labour) at [HL Deb 9 July 2019 cc1720-2](#)

<sup>21</sup> Lord Rooker at [HL Deb 9 July 2019 cc1752-3](#)

- the accessibility of the Games;<sup>22</sup>
- the sustainability of the Games.<sup>23</sup>

At [Report Stage](#), the Government acknowledged the above issues by moving an amendment to add a new **clause 2** to the Bill.<sup>24</sup> The amendment was agreed without division. **Clause 2** would require the Organising Committee to send an annual report to the Secretary of State on its work to deliver the Games. The report would include:

- an assessment of the Organising Committee's progress towards delivery of the Games;
- details of what the Organising Committee had done to ensure that its delivery of the Games promoted the values of the Commonwealth Games Federation;
- details of what the Organising Committee had done to ensure that Games events were accessible to disabled people;
- details of what the Organising Committee had done to promote sustainability in its delivery of the Games;
- details of what the Organising Committee had done to maximise benefits from the Games.

## 2.3 Association with the Games

**Part 2** of the Bill (**clauses 3 to 9**) provides measures to protect against unauthorised association with the Games. Specifically, **clause 3(1)** provides that a person acting in the course of a business may not use any representation in a manner likely to suggest to the public that there is an association between the Games and either goods or services or a person who provides goods or services. An infringement of this provision does not occur where the Organising Committee has authorised the use of that representation.<sup>25</sup>

**Clause 4(2)** provides that the Organising Committee can grant authorisations to a person or a class of persons. Authorisation may also be granted in respect of a particular type of representation. The organising Committee can also attach conditions to such an authorisation and has the power to revoke an authorisation. It is anticipated that an association will be permitted where an organisation has made the financial or other commitments required of an authorised business.<sup>26</sup>

Examples of an association between the Games and a person providing goods or services would include:

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<sup>22</sup> Lord Moynihan (Conservative) at [HL Deb 9 July 2019 cc1738-9](#); Lord Moynihan also tabled amendments on accessibility at Report Stage – see [HL Deb 24 July 2019 cc761-4](#)

<sup>23</sup> Lord McNicol of West Kilbride (Labour) at [HL Deb 9 July 2019 c1728](#)

<sup>24</sup> Amendment 4; Lord Ashton of Hyde (Parliamentary Under-Secretary of State at the DCMS) speaks to the amendment at [HL Deb 24 July 2019 cc771-4](#)

<sup>25</sup> Clause 4(1)

<sup>26</sup> "[Government introduces Commonwealth Games Bill for Birmingham 2022](#)", DCMS press release, 6 June 2019

- a contractual relationship;
- a commercial relationship
- a corporate or structural connection;
- the provision of financial or other assistance.

The Organising Committee is empowered to take enforcement action against those persons infringing the prohibition (clause 3(6) (b)). An infringement would apply to those acting “in the course of a business”. For example, action could be taken against a trader who sold t-shirts that infringe a protected trade mark such as the Games logo.

According to the Explanatory Notes, **exceptions** to the prohibition on unauthorised association (**clause 5**) would include:

- businesses that have a name or provide goods or services that suggest an association with the Games, if that business has operated or offered the product or service continuously since before 21 December 2017 (when Birmingham was named the host city for the 2022 Games) (for example if a business name, good or service included the word “commonwealth”);<sup>27</sup>
- the use of certain factual information when providing goods or services (for example, the location of a restaurant in relation to a Games event venue);<sup>28</sup>
- reporting on the Games (for example, in a news broadcast);<sup>29</sup> and
- any incidental association in an artistic endeavour.<sup>30</sup>

To ensure that members of the public are fully aware of the implications of the prohibition, the Organising Committee has a duty under **clause 8** to publish guidance within 31 days of Royal Assent. According to the DCMS, the Organising Committee will be undertaking a campaign of public engagement to reduce the risk of businesses unwittingly infringing Part 2 and to help businesses understand what they can and cannot do in relation to the Games.<sup>31</sup>

During Second Reading of the Bill, Lord Ashton of Hyde, Parliamentary Under-Secretary of State for DCMS, explained that commercial protections were key to the successful delivery of the Games. Similar protections had been provided for in respect of the London Games and the Glasgow Games. He said:

Securing commercial sponsorship is critical to staging a world-class event and managing public investment in the Games. This can be achieved only when the rights of sponsors are protected. By way of comparison, the Glasgow Games raised over £100 million in commercial revenue.<sup>32</sup>

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<sup>27</sup> Clause 5(2) of the Bill – the continuous use exemption

<sup>28</sup> Clause 5(3) of the Bill – the fair use exemption

<sup>29</sup> Clause 5(4) of the Bill – the fair use exemption

<sup>30</sup> Explanatory Notes, pp7-8

<sup>31</sup> DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), para 12

<sup>32</sup> [HL Deb 25 June 2019 c1013](#)

The Minister stressed that the aim of guidance is to let people know how they can show their support for the Games without falling foul of the law:

We recognise that residents, schools, faith and community groups want to show their support, so the organising committee is developing a “community brand” for use by not-for-profit organisations that share the Games’ vision and mission and want to proudly celebrate their community association. Information is key, which is why the Bill places a duty on the organising committee to produce guidance to ensure that people are clear about activity that may be an infringement.<sup>33</sup>

In its Memorandum to the Delegated Powers and Regulatory Reform Committee, the DCMS justified the powers taken in Part 2 of the Bill by arguing that they were needed to “prevent the use of inventive tactics” by those trying to gain commercial benefit from associating with the Commonwealth Games “without having to make the financial and reputational commitments of an authorised party, thereby preventing a diminution in the value of sponsorship agreements that are necessary to minimise the overall cost of hosting the Games.”<sup>34</sup>

## 2.4 Touting, advertising and trading

The Bill provides for “essential” and “temporary” operational measures required to support the delivery of the 2022 Commonwealth Games.<sup>35</sup> Specifically, **Part 3** prohibits the following activities:

- the unauthorised sale of Games tickets (**clauses 10 to 12**);
- the promotion of non-sponsor products, services or businesses, including as part of advertising-related “ambushes” of locations or coverage during the Games (**clauses 13 to 15**); and
- trading at or near Games locations at certain times, including providing entertainment for gain or reward or appealing for money or other property (**clauses 16 to 19**).

Detailed regulations will be brought forward specifying exactly when and where the advertising and trading provisions will apply – driven by when and how Games locations are used.<sup>36</sup> The stated aim is to ensure that all restrictions are proportionate and “take effect for the shortest possible time and only in the immediate vicinity of Games locations.”<sup>37</sup> The Government has said it would consult on whether further **exceptions** to the advertising and trading offences should apply.

During Second Reading, Lord Ashton explained why these measures were needed and emphasised their temporary nature:

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<sup>33</sup> [HL Deb 25 June 2019 c1013](#)

<sup>34</sup> DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paragraph 7

<sup>35</sup> [“Government introduces Commonwealth Games Bill for Birmingham 2022”](#), DCMS press release, 6 June 2019

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

The restrictions on unauthorised trading will improve the spectator experience by ensuring that trading does not obstruct easy movement in the vicinity of Games locations, and the restrictions on unauthorised advertising will ensure that Games locations and their surrounding areas offer a consistent celebratory look and feel. These measures are proportionate and temporary. These restrictions can be in place for no more than 38 days; we will ensure that they take effect for the shortest possible time.<sup>38</sup>

Further detailed information is set out below.

## Ticket touting

In line with legislation for previous main sporting events, only those authorised to sell tickets will be permitted to do so. **Clause 10(2)(b)** of the Bill provides that the Organising Committee can grant such authorisations and, pursuant to **clause 12**, that these can be made subject to conditions. According to the DCMS, “this will ensure that, for those who want to attend the Games, buying tickets will be clear, simple and affordable”.<sup>39</sup>

**Clause 10(1)** creates the offence of touting a Games ticket otherwise than in accordance with a written authorisation granted by the Organising Committee. This offence would apply to any unauthorised attempt to sell tickets, whether carried out in a public place, in the course of business, or for profit. Importantly, a UK person who touts tickets for the Games outside the UK would be caught by the Clause 10 offence.<sup>40</sup>

According to the DCMS, the touting of tickets is criminalised in order to prevent the resale of tickets for profit and in the vicinity of Games venues. It should help ensure that tickets are affordable and accessible to a wide range of people:

The intent is not to make it an offence for a person to give their tickets informally to family or friends for free or for a nominal payment up to the ticket’s face value, unless this activity takes place in a public place.<sup>41</sup>

The following points about the sale and resale of Games tickets should be noted:

- the Organising Committee is expected to set up a mechanism to authorise the sale and resale of tickets. In contrast with the provisions for the London Games, the Organising Committee will not be permitted to charge for these authorisations.<sup>42</sup>
- the Organising Committee will establish a mechanism to provide assurance to those purchasing tickets that they are doing so from official ticketing platforms for the Games, and for those

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<sup>38</sup> [HL Deb 25 June 2019 cc1013-1014](#)

<sup>39</sup> [Government introduces Commonwealth Games Bill for Birmingham 2022](#), DCMS press release, 6 June 2019

<sup>40</sup> Clause 11(1)

<sup>41</sup> DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), para 15

<sup>42</sup> *Ibid*, para 16

purchasing tickets to be able to seek refunds or authorisation for resales if they can no longer attend the Games.<sup>43</sup>

## Advertising

**Clause 13(1)** of the Bill would make it an offence for a person to:

- carry out unauthorised Games location advertising;
- to arrange for such advertising to be carried out;
- to permit the carrying out of such advertising.

In other words, the clause criminalises advertising (or arranging or permitting advertising) in a prohibited place at the prohibited time. However, a person does not permit the carrying out of Games location advertising if he/she took all reasonable steps to prevent the advertising from occurring or (as the case may be) continuing.

The expression “Games location advertising” is defined in subsection (2) to mean:

[...] the doing of something in, or in the vicinity of, a **specified** Games location at any time during **a specified period**, where the thing is being done wholly or partly for the purpose of promoting a product, service or business specifically to members of the public who are either in, or in the vicinity of, the Games location, or watching or listening to a broadcast of a Games event.

The power at **clause 13(2)** provides for the Secretary of State to make regulations specifying the Games locations in relation to which the advertising offence will apply and, in relation to any given specified Games location, the time during which unauthorised advertising will be prohibited (unless excepted or authorised). However, under **clause 13(3)**, any “specified period” cannot start earlier than 21 days before the Games begin, and it cannot end more than 5 days after the Games finish. The power at **clause 13(4)** provides for the Secretary of State to make provision in regulations as to when a person is, or is not, to be treated as doing something, or as being, in or in the vicinity of a Games location.

In addition to **clause 14(1)** enabling the Organising Committee to authorise advertising that would otherwise be prohibited, **clause 15(2)** provides that the Secretary of State may, by regulations, specify **exceptions**. However, before doing so, the Secretary of State must consult certain people (the Organising Committee, the local authority for an area where the regulations would have effect, and any other appropriate persons).<sup>44</sup> According to the DCMS, by retaining the power to make exceptions, the Secretary of State has the flexibility to address any issues that may arise.<sup>45</sup> Importantly, any new advertising regulations would be subject to the negative resolution procedure.

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<sup>43</sup> Ibid, para 16

<sup>44</sup> Clause 15(3)

<sup>45</sup> DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paragraph 34

In its Memorandum to the Delegated Powers and Regulatory Reform Committee,<sup>46</sup> the DCMS considered that the negative resolution procedure would provide a suitable level of scrutiny for various reasons, including:

- the regulation powers are narrowly drawn, particularly in contrast to the equivalent powers taken in the *London Olympic Games and Paralympic Games Act 2006*<sup>47</sup> and the *Glasgow Commonwealth Games Act 2008*.<sup>48</sup>
- the regulations would primarily address matters of detail - namely the dates, times and specific areas at which advertising would be restricted.
- the Secretary of State could only use the power to add exceptions to the advertising offence – he could not expand the scope of the offence.
- the regulation powers (and the negative resolution procedure) would give the Secretary of State the flexibility required to respond to any changing circumstances (e.g. a modification of the Games competition programme). The schedule for the Games is not yet known and may be subject to last minute changes. Flexibility would also allow for the restrictions to be in place for as limited a time as possible.

## Trading

**Part 3** of the Bill also makes provision in relation to trading in Games locations. Specifically, **clause 16(1)** would make it an offence for a person to:

- carry out Games location trading;
- to arrange for such trading to be carried out; or
- to permit the carrying out of such trading.

For the purposes of this new criminal offence, “Games location trading” would mean:

- trading in a specified Games location at any time during a specified period, or
- trading in a relevant public place in the vicinity of a Games location at any time during a specified period.

**Clause 16(2)** allows the Secretary of State to make regulations specifying the Games locations in relation to which the trading offence will apply and, in relation to any given specified Games location, the time during which unauthorised trading will be prohibited (unless excepted or authorised). As with the equivalent power in respect of the advertising offence, any regulations can only take effect for a limited period. Specifically, each prohibited period must not begin earlier than

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<sup>46</sup> Ibid

<sup>47</sup> ss19-20

<sup>48</sup> ss10-11

21 days before the day of the opening ceremony and must end within 5 days of the closing ceremony.<sup>49</sup>

The power in **clause 16(4)** allows the Secretary of State to make provision in regulations as to when a person is, or is not, to be treated as doing something, or as being, in or in the vicinity of a Games location.

Exceptions to the trading offence are included on the face of the Bill in **clause 18**. However, under **clause 19** the Secretary of State has the power to specify further exceptions to the offence should it be necessary. As with the advertising restrictions, before making these regulations, the Secretary of State must first consult the Organising Committee; the relevant local authority for the area where the regulations would have effect; and any other appropriate persons. Again, it is important to note that any new trading regulations would be subject to the negative resolution procedure.

In terms of enforcement, the Bill provides for offences under Part 3 (ticket touting offences, the advertising offence and the trading offence) to be enforced primarily by local authority trading standards.<sup>50</sup> Further provision is made in Schedule 2 about enforcement which includes powers of seizure and detention of property and documents. During Second Reading of the Bill, Lord Ashton confirmed that work was already under way with the Organising Committee, police and trading standards to ensure that enforcement activity is proportionate:

Experience demonstrates that the effect of these powers is mainly one of deterrence: we are not aware of any court cases for similar offences at Glasgow 2014 and only a small number of court cases in London for the ticketing offence.<sup>51</sup>

**Paragraph 15** of **Schedule 2** makes provision for compensation to be paid where a person's property is damaged as a result of the exercise of an enforcement power, where the exercise was unlawful, or any force used in the exercise of the power was unreasonable. Paragraph 15 sets out the basis on which the amount of the compensation is to be determined, however, the rest of the compensation provisions are left to be set out in regulations. **Paragraph 16** sets out the scope of the regulation making power, it provides that regulations may (among other things) include provision about:

- how and to whom a claim is to be made;
- the person or body which is to determine whether a person making a claim is entitled to receive compensation; and
- rights of review or appeal.

As a result of a Government amendment debated during the Report Stage, the parliamentary procedure for the exercise of powers under paragraph 16 of Schedule 2 was changed from negative to affirmative

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<sup>49</sup> Clause 16(3)

<sup>50</sup> Clause 20

<sup>51</sup> [HL Deb 25 June 2019 c1014](#)

in line with the Delegated Powers and Regulatory Reform Committee's recommendation.<sup>52</sup> The Government's amendment was passed without division.<sup>53</sup>

Finally, **clause 23(1)** requires the Organising Committee to publish guidance about the operation of the advertising and trading provisions and any new regulations made under Part 3.

During Second Reading of the Bill, Lord Ashton commented on what the advertising and trading restrictions might mean for traders:

Affected traders could [...] seek authorisation, free of charge, from the organising committee to continue trading or apply to the local authority for consent to trade on a street not specified in the regulations. Similarly, should an advertiser wish to carry out Games location advertising at a restricted time, it will be able to make an application, without cost, to the organising committee.<sup>54</sup>

### Issues of Parliamentary scrutiny

During its passage through the House of Lords, there was debate regarding the delegated powers in this Bill and whether certain powers should be subject to the affirmative procedure rather than the negative procedure. Notably, arguments were raised in Committee and recommendations were made in the Delegated Powers and Regulatory Reform Committee's report. Lord Ashton issued a written response to the chair of the DPRRC on 19 July 2019.<sup>55</sup> Further detailed information is set out below.

During Second Reading, Lord Moynihan highlighted issues regarding Parliamentary scrutiny in respect of **clauses 13** and **16** and **paragraph 15 of Schedule 2**. In response, Lord Ashton said that the Government sought to ensure that the delegated powers in the Bill are as narrow as possible:

We have learned from the experience of the *London Olympics Act* and have sought to ensure that the delegated powers in the Bill are as narrow as possible. We have included things in the Bill not included in the 2006 Act. There are no Henry VIII powers. Those that have been included are limited to matters that cannot be determined until the detailed operational planning for the Games is further advanced, or when further consultation is needed. For example, what it means to be, "in, or in the vicinity of", a Games location will depend on the Games schedule, which will not be known until much closer to Games time. Regulations about time periods and Games locations may need to be quickly amended in the event of a change in a competition venue.<sup>56</sup>

The DCMS explained why it had taken powers in **clause 13** (the advertising offence) in its Delegated Powers [Memorandum](#) provided to

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<sup>52</sup> [Delegated Powers and Regulatory Reform Committee – 60<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response

<sup>53</sup> [HL Deb 24 July 2019 cc789-792](#)

<sup>54</sup> [HL Deb 25 June 2019 c1014](#)

<sup>55</sup> [Delegated Powers and Regulatory Reform Committee – 60<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response

<sup>56</sup> [HL Deb 25 June 2019 c.1040](#)

the DPRRC.<sup>57</sup> The DPRRC summarised the Department's reasons in its own [report](#):

The primary reason is flexibility. Operational planning for the Games is still underway, and it is not yet known where all the Games locations will be or when they will be needed for Games events. Leaving to regulations the detail of the specific Games locations, and the period during which the advertising offence will apply, will allow the offence to be shaped so that it does not go beyond the minimum necessary.

The Department argues this is appropriate because the powers are narrowly drawn. They are limited to dealing with matters of detail; namely, the specific dates, times and areas for which advertising will be restricted. The power is further restricted because the limit on the period in clause 12(3) [now **clause 13(3)**] ensures that the advertising provisions, including the provision made by the regulations, will only operate during a relatively short period of time. Also, the negative procedure is appropriate because it would allow urgent action to be taken to accommodate last minute changes in the schedule for the Games.<sup>58</sup>

However, the DPRRC did not agree that the powers contained in **clause 13** were narrowly drawn.<sup>59</sup> In its report, the Committee argued that the powers would allow Ministers to determine the places where the advertising ban would apply. Although the power is limited to "Games locations", that term is given a wide meaning and is not limited to places used for Games events but also includes other places used "in connection with" the Games. Further, under clause 13(4), regulations would be able to determine what is meant by a person "doing something" or "being in the vicinity of" a Games location. According to the Committee, since the expression "in the vicinity of" is capable of a broad range of meanings, it gives Ministers a broad discretion in determining the extent of the areas around Games locations which are to be covered by the advertising offence. The powers would allow actions, which might not themselves be done "in the vicinity of" a Games location, to be treated as if they had been done in a Games location.

The DPRRC recommended that any exercise of powers under clause 13 should be subject to the affirmative rather than the negative procedure. In making this recommendation, it argued that the powers were wide, and their exercise would have a significant impact because the offence covers such a wide range of activities. The relevant paragraphs from the report are reproduced below:

8. The definition of advertising in clause 12 [now **clause 13**] is very broad. It covers all forms of advertising. The only restriction is that it is done wholly or partly for the purpose of promoting a product, service or business specifically to members of the public who are in, or in the vicinity of, a Games location. It would therefore cover advertising of any services, products etc. aimed at

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<sup>57</sup> DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paras 20 to 25

<sup>58</sup> [Delegated Powers and Regulatory Reform Committee – 58<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL], HL Paper 391, 1 July 2019

<sup>59</sup> Ibid

persons in the relevant area irrespective of whether or not the thing being advertised had any connection with the Games.

9. We acknowledge that the limit placed on the period for which the advertising offence may apply mitigates against the width of the powers. However, we are not convinced that this is sufficient to make the negative procedure appropriate.

10. One of the points made by the Department is that the negative procedure will provide the flexibility to accommodate the fact that the schedule for the Games is not yet known and may be subject to last minute changes. However, it seems to us that this could be addressed in the same way that this issue was addressed in the *London Olympic Games and Paralympic Games Act 2006*. Initially, the advertising regulations under that Act were subject to the affirmative procedure in all cases. However, changes were subsequently made in the *London Olympic Games and Paralympic Games (Amendment) Act 2011*, which allowed the negative procedure to apply where the Secretary of State considered there was an urgent need for the regulations to be made without a draft first having been approved by Parliament. We consider the same approach should be adopted here.

11. Accordingly, we recommend that any exercise of powers under clause 12 [now clause 13] should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead.<sup>60</sup>

Similarly, the DPRRC recommended that any exercise of powers under **clause 16** (the trading offence) should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead.<sup>61</sup> The DPRRC argued that the range of matters caught by the trading offence would be broad and not limited to activities connected to the Games. It highlighted the fact that wide powers are conferred on the Secretary of State to determine the places to which the trading ban would apply and the extent of the areas over which the ban would apply.

As already mentioned, the Government responded to the DPRRC's report by way of a letter from Lord Ashton to Lord Blencathra, Chairman of the DPRRC.<sup>62</sup> The Government did not agree with the Committee's recommendations that regulations concerning advertising and trading made under clauses 13 and 16 should be subject to the affirmative procedure. It considered the negative procedure was appropriate and would provide a suitable level of scrutiny for new regulations.<sup>63</sup> Whilst acknowledging that the affirmative procedure was used for the regulation making powers for both the Olympics and Glasgow Games, it argued that the delegated powers in the Bill are not as broad in nature and there is more detail on the face of the Bill.

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<sup>60</sup> [Delegated Powers and Regulatory Reform Committee – 58<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL]

<sup>61</sup> [Delegated Powers and Regulatory Reform Committee – 58<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL]

<sup>62</sup> [Delegated Powers and Regulatory Reform Committee – 60<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response, 19 July 2019

<sup>63</sup> Ibid

The main thrust of Lord Ashton's letter was that a proportionate approach would be taken by the Government to these delegated powers.<sup>64</sup> An extract is reproduced below:

[...] 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.<sup>65</sup>

In its report, the DPRRC had raised concerns that advertising activity not connected to the Commonwealth Games would be caught by the **clause 13** offence. In his letter, Lord Ashton reassured the Committee that the advertising and trading restrictions would only apply when and where necessary.<sup>66</sup> The DCMS would also consult on what other forms of promotion might sensibly be excluded from the offence.<sup>67</sup>

In respect of the definition for unauthorised trading around Games locations used in **clause 16**, Lord Aston wrote that the Government's concern is not only to control 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)".<sup>68</sup> The restrictions would enable the Organising Committee to decide which traders should be authorised and subject their activities to conditions tied directly to places and times at which Games events are taking place.

The Government also elaborated on other definitions used in the Bill. It explained that the expression "Games locations" was not restricted to "competition venues" because there would be other non-competition venues where it would need to ensure protections are in place (for example, training venues, fan zones, and some locations involved in

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<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Ibid

operational delivery). However, it reassured the DPRRC that a Games location would 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.<sup>69</sup>

Some Games locations might only be in use for a few days, and as such the time periods that restrictions are in place would be limited. In any event, no restriction would be in place for longer than 38 days – the restrictions for the London 2012 Games were in place for around 92 days.

As well as the “vicinity” being a geographical area, regulations could specify, for example, that an advertisement outside of this area, but visible from inside it, could be captured by the offence. According to Lord Ashton’s letter, if regulations were able to capture advertising on the front of a building that could be seen within the vicinity, this would remove the need to widen the restricted area to capture further advertising locations.

As already mentioned, the DPRRC had also raised concerns about issues of Parliamentary scrutiny in respect of **paragraph 16 of Schedule 2** (i.e. determination for the rights of individuals to compensation arising from enforcement action in relation to the touting, advertising and trading offences). The Committee did not accept the Government’s justification for the scope of the powers and the use of the negative procedure:

23. We consider it wrong to describe the regulations as solely dealing with matters of procedural detail. The regulations include the power to determine:

- which person or body is to have the function of determining claims for compensation (without imposing any requirements or limits on the person or body on whom this function may be conferred);
- whether or not there is to be a right of review or appeal and (if so) to whom the review or appeal may be made and what the grounds of appeal would be available.

All of these are matters which will have a significant impact on the nature, structure and operation of the provisions on compensation.

24. Given the wide scope of the powers, and the fact that they affect the determination of the rights of individuals to compensation, we take the view that the affirmative rather than the negative procedure should apply to regulations under paragraph 16 of Schedule 2 and recommend accordingly.<sup>70</sup>

In his letter, Lord Ashton confirmed that a Government amendment had been tabled on 17 July 2019 to change the parliamentary procedure for the exercise of powers under paragraph 16 of Schedule 2 to affirmative,

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<sup>69</sup> Ibid

<sup>70</sup> [Delegated Powers and Regulatory Reform Committee – 58<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL]

in line with the Committee's recommendation.<sup>71</sup> This amendment was debated during Report Stage and passed without division.<sup>72</sup>

## 2.5 Transport

Part 4 of the Bill provides the Games organisers and relevant authorities with the power to implement the necessary transport arrangements to support the event. As summarised by the Government upon introduction of the Bill:

The measures in the bill will allow short term changes of road use - where needed - to ensure those travelling to and from the Games can do so quickly, safely and with minimal disruption.<sup>73</sup>

**Clause 25(1)** allows the Secretary of State to place a requirement on a "local authority or combined authority" (i.e. an authority) to produce a Games transport plan. As explained in paragraph 57 of the delegated powers memorandum:

The purpose of such a Plan would be to set out a strategic approach to the planning and coordination of transport to support the Games, covering the transportation of spectators, athletes and the Games Family, whilst at the same time ensuring that any disruption to everyday users of the relevant transport networks is kept to a minimum.<sup>74</sup>

Subsection (3) provides that this authority will be required to prepare the plan, keep it under review, make appropriate revisions and publish the plan and any revisions, unless there are security reasons preventing this. Under subsection (6) local traffic authorities for roads affected by the plan will be required to undertake their transport functions with a view to securing the implementation of the proposals contained in the plan.<sup>75</sup>

**Clause 26(1)** allows a traffic authority for a road in England to make a temporary traffic regulation order (TTRO) or issue a temporary traffic regulation notice (TTRN) for the purposes of implementing the Games transport plan, facilitating transport services in connection with the Games, and facilitating travel by any person for a purpose connected to the Games. Both TTROs and TTRNs can be used to impose restrictions or prohibitions upon road use, including footpaths, cycle tracks and other types of highway, that the traffic authority may consider necessary. They can apply to identified classes of vehicle, motorised or not, or pedestrians.<sup>76</sup> This Clause adds to the conditions mentioned in section 14(1) of the *Road Traffic Regulation Act (RTRA) 1984* by enabling

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<sup>71</sup> [Delegated Powers and Regulatory Reform Committee – 60<sup>th</sup> Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response

<sup>72</sup> [HL Deb 24 July 2019 cs.789-792](#)

<sup>73</sup> ["Government introduces Commonwealth Games Bill for Birmingham 2022"](#), DCMS press release, 6 June 2019

<sup>74</sup> House of Lords, [Birmingham Commonwealth Games Bill \[HL\]: Delegated Powers Memorandum](#), 5 June 2019, p19

<sup>75</sup> House of Lords, [Birmingham Commonwealth Games Bill \[HL Bill 179\], Explanatory Notes](#), 5 June 2019, p17

<sup>76</sup> *Ibid*, p17

vehicular or pedestrian traffic restrictions beyond the usual conditions around road works, safety and cleaning.<sup>77</sup>

Subsection (2) provides that the durations for which TTROs and TTRNs may ordinarily be in place, as per section 15 of the RTRA, shall not apply in the case of Games TTROs or Games TTRNs. Regulation 8(3) of the *Road Traffic (Temporary Restrictions) Procedure Regulations 1992* is disapplied for Games TTROs to ensure that they can be revoked as soon as they become unnecessary. Subsection (3) provides that Games TTROs or Games TTRNs cannot come into operation any earlier than 21 days before the Games Opening Ceremony. Subsection (4) provides that Games TTROs cannot remain in effect any later than 5 days after the Games Closing Ceremony.<sup>78</sup>

**Clause 27(1)** grants the power to make Games TTROs and issue Games TTRNs to the authority appointed to produce the Games transport plan as per clause 25(1) as if they were the local traffic authority for the roads being regulated. An order made or notice issued by this authority will be treated as if it were an order made or notice issued by the local traffic authority. Subsections (2) and (3) establish that this power is dependent on the consent of the relevant local traffic authority and subsequently on this local traffic authority being identified in future regulations issued by the Secretary of State. The authority directed to prepare the plan will only be able to make a Games order or issue a Games notice if the local traffic authority for the road agrees to it (subsection (4)).<sup>79</sup> According to paragraph 57 of the delegated powers memorandum:

Where one or more local traffic authorities agree this course of action it will allow economies of scale through measures being administered centrally and simplify the process when traffic regulation measures cross local traffic authority boundaries.<sup>80</sup>

Provisions similar to clauses 25 to 27 were contained in the London Olympic Games and Paralympic Games Act 2006 and the Glasgow Commonwealth Games the Games transport plan and exercising road traffic regulation powers were conferred on bodies specified on the face of the primary legislation, respectively the Olympic Delivery Authority and the Organising Committee of the 2008 Commonwealth Games.<sup>81</sup> No such body is specified in this Bill. Clause 24 of the Bill as introduced in the Lords [now clause 25 of HC Bill 8] originally referred to the Secretary of State directing “a person” to prepare a Games transport plan without placing any limits on who that person may be. Because of

<sup>77</sup> op cit., [Birmingham Commonwealth Games Bill \[HL\]: Delegated Powers Memorandum](#), p21

<sup>78</sup> op. cit., [Birmingham Commonwealth Games Bill \[HL Bill 179\], Explanatory Notes](#), pp17-18

<sup>79</sup> Ibid, p18

<sup>80</sup> op cit., [Birmingham Commonwealth Games Bill \[HL\]: Delegated Powers Memorandum](#), p24

<sup>81</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [Birmingham Commonwealth Games Bill \[HL\]](#), 58th Report of Session 2017–19, 1 July 2019, p4

this, the House of Lords Delegated Powers and Regulatory Reform Committee concluded:

In the absence of any explanation justifying why it is needed, we consider the delegation of this power to the Secretary of State to be inappropriate.<sup>82</sup>

In response, the Government acknowledged that they had not followed the approach set by the London and Glasgow Acts, but believed that “the proposed approach is appropriate for Birmingham 2022.”<sup>83</sup> In justifying the lack of a specified body, the Government explained that:

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.<sup>84</sup>

Having “carefully considered this issue”, the Government brought “forward amendments 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’.”<sup>85</sup> These amendments were agreed at Report Stage of the Bill’s progress through the Lords.<sup>86</sup>

**Clause 28(1)** allows the Secretary of State to direct a local traffic authority to make a Games TTRO or issue a Games TTRN. The Secretary of State may make such a direction only if satisfied that such action is necessary for any of the purposes specified in clause 25 and the relevant local traffic authority has failed to take that action within 7 days of being asked by the Secretary of State. If a direction is not complied with, the Secretary of State may make an order or issue a notice implementing those measures in place of the local traffic authority and recover costs incurred in connection with this as if they were a debt.<sup>87</sup>

According to paragraphs 78-79 of the delegated powers memorandum:

This power provides a backstop whereby the Secretary of State can ensure that adequate levels of traffic regulation measures are in place for the Games.

A similar power exists in Part 1 of Schedule 9 to the RTRA 1984 and allows the Secretary of State to issue a direction to the traffic

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<sup>82</sup> Ibid

<sup>83</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [Birmingham Commonwealth Games Bill \[HL\]: Government Response](#), 60th Report of Session 2017–19, 19 July 2019, p4

<sup>84</sup> op cit., [Birmingham Commonwealth Games Bill \[HL\]: Government Response](#), p5

<sup>85</sup> Ibid

<sup>86</sup> House of Lords, Birmingham Commonwealth Games Bill [HL], [Marshaled List of Amendments To be Moved on Report](#), 22 July 2019

<sup>87</sup> op. cit., [Birmingham Commonwealth Games Bill \[HL Bill 179\]. Explanatory Notes](#), p18

authority concerned requiring them to make, amend or revoke one or a number of various traffic regulation measures.<sup>88</sup>

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<sup>88</sup> op cit., [Birmingham Commonwealth Games Bill \[HL\]: Delegated Powers Memorandum](#), p27

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