



BRIEFING PAPER

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Birmingham Commonwealth Games Bill [HL] 2019-21

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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] 2019-21* would introduce temporary measures to:

- 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 is substantially the same as one introduced in the last Parliament that did not proceed further than First Reading in the Commons before the General Election.

The current Bill had its [Second Reading](#) on 9 March 2020 where it received cross-party support. It was considered in [Public Bill Committee](#) on 17 March 2020 where one technical amendment was made. A date for Report Stage has not been announced.

The Bill, Explanatory Notes, and related documents 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 2014.¹

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.²

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

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.⁴ In September 2017, it was announced that Birmingham had been chosen ahead of Liverpool.⁵

In December 2017, the CGF announced that Birmingham had been selected to host the 2022 Games.⁶ There is a delivery time of four and a half years, rather than the usual seven. 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.

The Committee's [Social Values Charter](#) states that the following values will guide the design and delivery of the Games:

Sustainability: sustainability is an ongoing process to ensure environmental, economic and social aspects are considered in all key decisions. By balancing these aspects, we can meet the needs of our Games without compromising the needs of future generations.

¹ Commonwealth Games Federation (CGF) [website](#) [accessed 27 March 2020]

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

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

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

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

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

Health and Wellbeing: we want to maximise the opportunities presented by the Games to improve levels of physical activity and wellbeing of communities.

Inclusivity: we want the Games to be accessible to all and to promote a culture that reflects the diversity of the local communities.

Human Rights: we want to ensure that in our delivery of the Games we always have the UN Guiding Principles on Business and Human Rights in mind, and we respect, protect and promote those rights and freedoms guaranteed to all individuals under law.

Local Benefit: we want to use the Games to contribute to the local economy, improve our local communities, and provide opportunities for our local people.

The Charter also notes that human rights, sustainable development and protecting the environment have influenced the Committee's strategic focus for Birmingham 2022. Documents on these areas are available from the Committee's [website](#).

Birmingham City Council is overseeing capital projects for the Games. The Council's [website](#) includes Games related material.

West Midlands Police has overall responsibility for security. The Games will be the largest operation in the force's history.⁷

Budget

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).⁸

Benefits of hosting the Games

According to the DCMS, 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.⁹

Existing projects in the West Midlands will help to deliver the Games and bring "long-lasting benefits" to the region:

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

⁷ ["Work starts on police Commonwealth Games suite"](#), West Midlands Police and Crime Commissioner news release, 23 July 2019

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

⁹ Ibid

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 2022.¹⁰

A [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.

(...)

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...¹¹

¹⁰ Ibid

¹¹ Greater Birmingham Chambers of Commerce, [Birmingham Commonwealth Games 2022- Briefing Paper](#), August 2018, p3

2. The Bill

2.1 Introduction

The *Birmingham Commonwealth Games Bill [HL] 2019-21* would introduce temporary measures to support the delivery of the 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 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*.

The Bill is substantially the same as one introduced in the last Parliament that did not proceed further than First Reading in the Commons before the General Election.¹²

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.¹³

Debate in the House of Lords

The Bill was originally introduced in the House of Lords on 7 January 2020 where it received cross-party support. It was considered in Committee of the whole House on 25 February 2020. Amendments were discussed on issues such as the legacy of the Games, accessibility, ticket touting and advertising. However, there were no divisions and the Bill was reported without amendment. There was a short Third Reading on 4 March 2020. No amendments were made. Further detail on some

¹² For details see Library [Library Briefing Paper CBP 8668](#), 31 October 2019

¹³ DCMS, [HC Bill 103–EN](#), pp4-5 and annex A

of the issues raised in the Lords is given in the following sections of this Paper.

Debate in the Commons

The Bill received cross-party support when it had its [Second Reading](#) on 9 March 2020. However concerns were raised on issues such as:

- the legacy of the Games;
- coverage on free-to-air television;
- sponsorship by gambling companies;
- road infrastructure and safety in Birmingham centre;
- paying the living wage.

A technical amendment to the Bill was agreed without debate when the Bill was [considered in Committee](#) on 17 March 2020.¹⁴ A number of new clauses were moved by Labour. These were all withdrawn (see pp12-4 below). A date for Report Stage has not been announced.

2.2 The Organising Committee

Part 1 of the Bill (**clauses 1 to 2**) covers financial assistance to the Organising Committee as well as the reporting requirements of the Committee.

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

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

The financial assistance could take the form of grants, loans, guarantees or indemnities.

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;

¹⁴ i.e. amendment 1 at [Public Bill Committee debate 17 March 2020 c4](#). This removed the Lords [privilege amendment](#) in clause 34(2) of [HC Bill 103](#)

- details of what the Organising Committee had done to maximise benefits from the Games.

The annual reports would be laid before Parliament.¹⁵ The final reporting period would run from 1 April 2022 to December 2022.¹⁶

Issues raised at Lords Committee Stage

When clause 1 of the Bill was [debated](#) in Committee on 25 February 2020, a number of amendments were considered. Some of these are briefly discussed below. None were voted on.

Funding for the Games

Amendment 3, in the name of Lord Hunt of Kings Heath, would have required the Secretary of State to produce a report looking at, among other things, how the Government could support Birmingham City Council to raise additional funds to deliver the Games. The report would provide an assessment of the case for introducing a temporary hotel occupancy levy during the Games.¹⁷

Amendment 5, in the name of Lord Moynihan, Lord Foster of Bath and Lord Bilimoria, would have required the Secretary of State to direct the Organising Committee to prepare a report about:

- the process of financial underwriting for the Games and Games events;
- the budget and revenue sources for all Games events, including shooting and archery.

Amendment 11, in the name of Lord Addington, would have required the Secretary of State to publish a report on the funding of the Games. This would include consideration of the merits of a local lottery, a locally generated tax, or other forms of fundraising powers.¹⁸

In her response to the amendments, Baroness Barran, Parliamentary Under Secretary of State at the DCMS said:

...The Government have supported the council by agreeing that we will provide the majority of the contributions in capital and profiling its revenue for the final year 2022-23, as the council requested. A number of noble Lords raised concerns about the ability of the council to meet this. The Cabinet approved the council's financial plan for 2020-24 at its most recent meeting on 11 February, with the funding requirement to be met from partner contributions, prudential borrowing and council-generated funding, such as capital receipts...¹⁹

On ensuring the Games remained on budget, the Minister explained:

...There is robust financial governance and the budget has been subject to significant scrutiny. Contingency is held by the strategic board, including the Minister, the Mayor of the West Midlands and the leader of Birmingham City Council...the budget has a

¹⁵ Clause 2(4)

¹⁶ Clause 2(5)

¹⁷ [HL Deb 25 February 2020 cc153-4](#)

¹⁸ [Marshaled list of amendments for Committee of the Whole House](#), 21 February 2020

¹⁹ [HL Deb 25 February 2020 cc159-60](#)

significant but realistic level of contingency within it. As joint funders, it is in both the Government's and the city council's interest to keep within the cost envelope. Importantly, it should be remembered that, when Birmingham bid to host the Games, 95% of the venues were already in place, reducing some of the risk around the Games. The Government have also committed to providing Parliament with updates on expenditure during the project.²⁰

Baroness Barran also said that it wasn't necessary for the Council to introduce a hotel tax:

...The council recently submitted a proposal to my department requesting to pilot a statutory hotel occupancy tax, such as that outlined by the noble Lord, Lord Hunt of Kings Heath. The tax is not necessary for the council to meet its share of the costs and the council's own figures show that it would provide only a small contribution towards its revenue requirement. In any case, as I said at Second Reading, if the council wants to raise proposals for a new tax, the Bill is not the appropriate vehicle, as it is not a money Bill.²¹

Amendment 5 referred to shooting and archery because of plans to hold a Commonwealth Championships for these sports in India in January 2022.²² Baroness Barran stressed that this event was not part of the Birmingham Games in 2022 and would involve no cost to the Government or the Council.²³

Sporting legacy

Amendment 6, in the name of Lord Moynihan, would have required the Organising Committee to prepare a sports legacy plan setting out how the Games would promote sporting participation. In speaking to his amendment, Lord Moynihan said that the Games "should be a catalyst for a transformational sports legacy" and that there should be "a step change in sport and recreation opportunities for those inspired by the Games".²⁴

In her response, Baroness Barran, referred to the new and existing sporting facilities in the region:

(...) The new facilities will include: the redevelopment of athletics facilities at Alexander Stadium, to increase permanently the number of seats from 12,000 to 18,000 post-Games; the creation of a brand new aquatics centre in Sandwell which, in legacy, will provide a 50-metre Olympic-sized swimming pool, a 25-metre diving pool and 1,000 spectator seats for community use; and the addition of new cycle lanes across the city...²⁵

She noted that that the Government had an important role in "catalysing" the impact of the facilities:

²⁰ [HL Deb 25 February 2020 c160](#)

²¹ [HL Deb 25 February 2020 c160 and cc169-70](#)

²² ["Dame Louise Martin: Chandigarh 2022 and Birmingham 2022 set us up for an unprecedented year for Commonwealth Sport"](#), CGF media release, 28 February 2020; ["2022 Commonwealth Archery and Shooting Championships set to take place in India"](#), CGF media release, 23 February 2020

²³ [HL Deb 25 February 2020 c160](#)

²⁴ [HL Deb 25 February 2020 c174](#)

²⁵ [HL Deb 25 February 2020 c182](#)

...We are therefore working with all the Games' delivery partners and local stakeholders in the region to develop programmes that will harness the power of the Games to promote sport and physical activity. For example, the Department for Education recently announced £20,000 of funding in Birmingham to encourage more young people to become volunteers and coaches in sports clubs and the local community in the run-up to the Games. This will provide a boost for Birmingham and develop a pipeline youth volunteer workforce ahead of the Games. We will also draw on the evidence from Sport England's £10 million local delivery pilot investment to promote physical activity among hard-to-reach groups in Birmingham and Solihull...²⁶

The Minister also noted that a commitment to publish a legacy plan had been given when the earlier Bill was considered in the Lords.²⁷

Lord Moynihan withdrew his amendment but said that there needed to be "a concerted sports legacy policy - not just a plan but a series of policies - to open up our schools to dual use and make the sports legacy a reality".²⁸

Accessibility

Amendment 8, in the name of Lord Moynihan, would have required the Secretary of State to make regulations in relation to the access of disabled athletes, employees, volunteers and spectators to Games sport venues and events. Venue design, planning and sporting events' operations would have to satisfy the International Paralympic Committee's (IPC) Accessibility Guide (June 2013).²⁹

In her response, Baroness Barran said that the Organising Committee was developing an accessibility strategy, to be published in spring 2020, and that the Games would meet the IPC's guidelines on accessible seating provision. She continued:

(...) While such standards will act as a marker and consideration for accessibility planning for Birmingham 2022, the Games will look to encompass a range of accessibility guidance, best practice and regulations, taking an approach that reflects the size and scale of the Games. This will include areas such as ticketing and the recruitment and support of volunteers to ensure that accessibility is at the forefront of thinking...

I also understand that the International Paralympic Committee's guidelines are currently being updated, which my noble friend referred to. That is one of the reasons that Birmingham 2022 plans to design and deliver the Birmingham inclusive Games standards. This will be an evolving and bespoke set of access and inclusion standards which we hope will be applied not only across these Games but potentially for future events.

As noble Lords will know, the Government tabled an amendment in the previous Session requiring the organising committee to report on what it has done to ensure that Games events are

²⁶ [HL Deb 25 February 2020 c182](#)

²⁷ [HL Deb 25 February 2020 c182](#)

²⁸ [HL Deb 25 February 2020 c184](#)

²⁹ [HL Deb 25 February 2020 cc184-5](#)

accessible to disabled people. It will also produce quarterly reports on Games delivery, including updates on this area...³⁰

Lord Moynihan thanked the Minister for the Government's "very firm commitments" and withdrew his amendment.³¹

Social Charter

Lord Moynihan also moved **amendment 8** that would have required the Secretary of State to direct the Organising Committee to prepare a Charter for the Games to "protect and respect human rights":

(...) It is essential that the host country refrains from any act involving fraud or corruption, above all to prohibit any form of discrimination, and to carry out all activities in a manner that embraces sustainable development and contributes to the UN sustainable development goals.³²

Baroness Grey-Thompson said the amendment was "really important":

(...) Given that homosexuality is illegal in 37 of the 53 Commonwealth countries, it is clear there is still a very long way to go in ensuring people's human rights. This amendment brought to my attention the fact that a lot of disabled athletes who are part of the Commonwealth Games teams are treated far less favourably than their non-disabled counterparts...³³

Baroness Barran noted that the Organising Committee had published a Social Values Charter in October 2019: a living document that focuses on sustainability, health and well-being, inclusivity, human rights, and local benefit. She also said that the Committee had to report on what it had done to ensure that Games delivery promoted the values of the Commonwealth Games Federation.³⁴

Issues raised at Commons Committee stage

At [Committee Stage](#) on 17 March 2020, Catherine West, the Shadow Sports Minister, moved a number of new clauses.

New clause 1 would have required the Secretary of State to make regulations so that local authorities could levy charges on hotel occupancy and short-term rentals in their areas during the Games. According to Ms West, there was an "argument for a hotel levy to be spent exclusively in the [West Midlands] region, in order to help tourism and to help the region in general pay for what is going to be quite an expensive project".³⁵

For the Government, Nigel Huddleston, Parliamentary Under-Secretary of State at the DCMS, acknowledged that a levy had been widely debated. However he said that the money raised from a statutory hotel tax would be "negligible" and not necessary for the council to meet its share of the cost of the Games.³⁶

³⁰ [HL Deb 25 February 2020 cc191-2](#)

³¹ [HL Deb 25 February 2020 cc193-4](#)

³² [HL Deb 25 February 2020 cc194-5](#)

³³ [HL Deb 25 February 2020 c196](#)

³⁴ [HL Deb 25 February 2020 c197](#)

³⁵ [Public Bill Committee 17 March 2020 c5](#)

³⁶ [Public Bill Committee 17 March 2020 c6](#)

Catherine West did not put the new clause to a vote but said that she might return to it at a later stage.³⁷

New clause 2 would have required the Secretary of State to direct the Organising Committee to prepare a strategy for ensuring that a living wage would be paid to:

- staff employed directly by the Organising Committee; and
- by organisations awarded contracts to deliver the Games.

For the purposes of the new clause, the living wage for 2020 would be:

- £9.30 outside London; and
- £10.75 inside London.

Catherine West said that receiving a living wage would make an “enormous difference” for members of the workforce as well as doing an “enormous service” to the West Midlands region.³⁸

In his response, Nigel Huddleston referred to the April 2020 Budget and increases to the living wage and to the national insurance threshold. He also said there was “huge” Government investment in the West Midlands and noted that the Social Charter for the Games required organisations bidding for contracts to promote local employment opportunities and skills development.³⁹

Catherine West did not put the new clause to a vote but said that she might return to it at a later stage.⁴⁰

New clause 3 would have prevented the Organising Committee from receiving sponsorship from gambling companies. Ms West said that she wanted the House’s “considerable concern” about gambling advertising reflected in the Bill.⁴¹

Nigel Huddleston said that securing sponsorship and granting authorisations to associate with the Games were matters for the Organising Committee and the Commonwealth Games Federation. Potential sponsors would have to demonstrate their alignment with Birmingham 2022’s vision and mission, as well as a commitment to the Organising Committee’s Social Values Charter. Limiting sponsorship arrangements or prohibiting certain types of sponsors on the face of the Bill was therefore not proportionate or necessary.⁴² Mr Huddleston also referred to Government action to tackle gambling-related harm.

Ms West withdrew the clause.⁴³

New clause 4 related to the televising of the Games and would have required the Secretary of State to designate the Games as a Group A

³⁷ [Public Bill Committee 17 March 2020 c7](#)

³⁸ [Public Bill Committee 17 March 2020 c8](#)

³⁹ [Public Bill Committee 17 March 2020 c9](#)

⁴⁰ [Public Bill Committee 17 March 2020 c9](#)

⁴¹ [Public Bill Committee 17 March 2020 c10](#)

⁴² [Public Bill Committee 17 March 2020 cc10-1](#)

⁴³ [Public Bill Committee 17 March 2020 c11](#)

listed sporting event. At present the Games are in Group B.⁴⁴ Catherine West said she was interested in the Government's current thinking on free-to-air broadcasting.⁴⁵

Nigel Huddleston said that he appreciated and shared the spirit of the new clause in seeking to ensure that everyone would have the opportunity to access and experience the Games. However, he defended the current listing regime and said that reconsidering which group the Commonwealth Games was in would not be appropriate because the Organising Committee was "in the middle of a competitive commercial process with potential rights holders".⁴⁶

Ms West withdrew the clause.⁴⁷

2.3 Association with the Games

Part 2 of the Bill (**clauses 3 to 9**) sets out 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.⁴⁸

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.⁴⁹

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

- 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.⁵⁰ An infringement would apply to those acting "in the course of a business". For example,

⁴⁴ For background, see the Library Paper [Broadcasting: listed sporting events](#) (CBP 802, 16 March 2020)

⁴⁵ [Public Bill Committee 17 March 2020 c12](#)

⁴⁶ [Public Bill Committee 17 March 2020 cc13-4](#)

⁴⁷ [Public Bill Committee 17 March 2020 c14](#)

⁴⁸ Clause 4(1)

⁴⁹ "[Government introduces Commonwealth Games Bill for Birmingham 2022](#)", DCMS press release, 6 June 2019

⁵⁰ Clause 3(7) (b)

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”);
- 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);
- reporting on the Games (for example, in a news broadcast); and
- any incidental association in an artistic endeavour.

Schedule 1 would add a further exception for the providers of information society service providers. At Second Reading in the Lords, Baroness Barran explained why the schedule had been added to the Bill:

As introduced last Session, the Bill covered exceptions such as where there are pre-existing registered trademarks, fair use or use in literary, dramatic or artistic works, among others. We are of the view that an additional exception for certain providers of information society services is required. This change simply ensures that the Bill fully takes account of the protections, in line with the e-commerce directive, intended to apply to online intermediaries...⁵¹

To ensure that members of the public were fully aware of the implications of the prohibition on unauthorised association, the Organising Committee would have a duty under **clause 8** to publish guidance within 31 days of Royal Assent. According to the DCMS, the Organising Committee would 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.⁵²

2.4 Touting, advertising and trading

Part 3 of the Bill (**clauses 10-24**) provides for “essential” and “temporary” operational measures required to support the delivery of the 2022 Commonwealth Games.⁵³ Specifically, Part 3 would prohibit the following activities:

- ticket touting, the unauthorised sale of Games tickets (**clauses 10 to 12**);

⁵¹ [HL Deb 3 February 2020 c1626](#)

⁵² DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), para 12

⁵³ [HL Deb 3 February 2020 c1625](#)

- 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**).

Part 3 sets out the **offences** brought forward in this legislation (in respect of unauthorised and non-exempt ticket touting, advertising and trading) which, as with most other measures, have precedence in previous Games legislation. Detailed regulations are to be brought forward specifying exactly when and where the advertising and trading provisions would apply, driven by when and how Games locations are used. The stated aim being to ensure that all restrictions are proportionate and “take effect for the shortest possible time and only in the immediate vicinity of Games locations.”⁵⁴ The Government has already said it would consult on whether further statutory **exceptions** to the advertising and trading offences should apply.⁵⁵

During Second Reading of the Bill, Baroness Barran explained why the measures were needed:

Under Part 3, the touting of Games tickets will be prohibited; this is aimed at helping the Organising Committee to ensure that tickets are accessible and affordable.

Part 3 also creates offences for unauthorised advertising and trading in and around Games locations. These restrictions will be in place only when and where they are necessary and for no longer than 38 days, ensuring that trading does not obstruct easy movement in the vicinity of Games locations and to provide a consistent look at each venue.⁵⁶

Further detailed information on Part 3 is set out below.

Ticket touting offence

Clause 10(1) sets out the criminal offence of touting a Games ticket otherwise than in accordance with a written authorisation granted by the Organising Committee. The stated policy rationale is to prevent the resale of tickets for profit and in the vicinity of Games venues to ensure that Games tickets are affordable and accessible to a wide range of people.⁵⁷ For those wanting to attend the Games, buying tickets should be clear, simple and affordable.⁵⁸

In line with legislation for previous main sporting events, only those authorised to sell Games tickets would be permitted to do so, the Organising Committee granting such authorisations.⁵⁹ Under **clause 12** of the Bill, this written authorisation may:

⁵⁴ DCMS, “[Government Introduces Commonwealth Games Bill for Birmingham 2022](#)”, 6 June 2019

⁵⁵ Ibid

⁵⁶ [HL Deb 3 February 2020 c1625](#)

⁵⁷ DCMS, “[Government Introduces Commonwealth Games Bill for Birmingham 2022](#)”, 6 June 2019

⁵⁸ Ibid

⁵⁹ Clause 10(2)(b)

- be granted in respect of a person or a description of a person;
- be subject to conditions;
- and can be revoked.

In considering whether to grant an authorisation, the Organising Committee may consider, among other things, any agreements entered into by the Secretary of State or otherwise for the purposes of the Games.

The offence of touting a Games ticket, otherwise than in accordance with a written authorisation granted by the Organising Committee, is committed where an attempt to sell Games tickets is made:

- in a public place, in the course of business (including at face value or below), or
- where the intention is for any person to make a profit from the sale of the ticket.

Examples of the types of unauthorised activities that would fall within the offence include: selling a Games ticket; offering to sell a Games ticket; or exposing a Games ticket for sale (for example in a shop window).⁶⁰ The offence would also apply in circumstances where a ticket is offered to a person paying for other goods and services (for example, as part of a promotional offer where a ticket is given to a consumer if they purchase a certain amount of other goods or services).⁶¹

However, the offence would not cover a person giving away their ticket informally for free or for payment of up to the value of the ticket, unless this activity takes place in a public place. According to the DCMS, the primary aim is to ensure that Games tickets are available and affordable:

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.⁶²

The Organising Committee is expected to establish a mechanism to provide assurance to those purchasing tickets that they are doing so from official ticketing platforms for the Games, and to be able to seek refunds or authorisation for resales if they can no longer attend the Games.⁶³

It is important to note that for the purposes of the touting offence, the term "Games ticket" covers a ticket for any event forming part of the Birmingham Games. This includes non-sporting events organised by or on behalf of the Organising Committee, for example, the Opening and Closing Ceremonies.⁶⁴

⁶⁰ Clause 10(3)

⁶¹ Clause 10(5)

⁶² DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paragraph 15, undated, [online] (accessed 2 March 2020)

⁶³ Ibid, para 16

⁶⁴ Clause 10(6)

Under **clause 11**, if a UK person⁶⁵ carries out activity outside the UK that would constitute a ticket touting offence if carried out in the UK, they would also commit an offence under clause 10.⁶⁶ Similarly, a service provider established in the UK⁶⁷ also commits a ticket touting offence under clause 10 if:

- the service provider does something in an EEA state other than the UK in the course of providing information society services, and
- the action, if done in the UK, would constitute an offence under clause 10.⁶⁸

Schedule 2 makes further provision regarding the liability of UK and non-UK providers of information society services in relation to the touting offence. It provides exceptions from the commission of the offence (subject to conditions) for service providers who act as mere conduits, who cache information, or who store information.⁶⁹

A person guilty of a ticket touting offence would be liable on summary conviction in England and Wales to an uncapped fine; on summary conviction in Scotland or Northern Ireland to a fine not exceeding £50,000.⁷⁰ The Bill also makes provision regarding the recovery of fines in Scotland.⁷¹ Significantly, **clause 11(3)** of the Bill establishes that proceedings for any ticket touting offence committed outside the UK may be taken in any place in the UK⁷² and subsection (4) makes provision regarding the application of this provision in Scotland.⁷³ However, paragraph 1 of Schedule 2 sets out restrictions on the institution of proceedings against service providers established in an EEA state other than the UK.

Advertising offence

Clause 13(1) of Part 3 sets out the advertising offence. Specifically, it would be an offence for a person to:

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

⁶⁵ For the purposes of clause 11 of the Bill, a “UK person” means: a UK national; an individual habitually resident in the UK; a body incorporated under the law of a part of the UK; a Scottish partnership

⁶⁶ Clause 11(1)

⁶⁷ Clause 11(6) defines what is meant by “established” in relation to a service provider, but is not a UK person

⁶⁸ Clause 11(2)

⁶⁹ **Schedule 2** also provides that non-UK service providers (as defined in **sub paragraph (3)**) cannot be prosecuted for the commission of the offence regarding their provision of information society services, unless the **derogation condition** is met. The derogation condition is established where an information society service prejudices, or presents a serious risk of prejudicing, the pursuit of public policy and action is deemed to be proportionate.

⁷⁰ Clause 10(8)

⁷¹ Clause 10(9)

⁷² Clause 11(3)

⁷³ Clause 11(4)

- in, or in the vicinity of, a specified Games location during a specified period.

According to the [Explanatory Notes](#), the policy rationale for the offence is as follows:

The offence is introduced to ensure that Games locations and the areas around them provide a welcoming atmosphere for spectators and have a consistent celebratory look and feel in line with Commonwealth Games branding. This is intended to prevent activity where an advertiser “ambushes” an event to compete for exposure (both at live events and via broadcast) against other advertisers who may be official sponsors of the Games. This in turn will help safeguard public investment in the Games by ensuring the rights of commercial sponsors can be robustly protected.⁷⁴

The scope of the offence is wide, it is not only an offence to “carry out” Games location advertising, it is also an offence to “permit” Games location advertising (for example, on private land) or to “arrange” for someone else to carry out Games location advertising. The expression “Games location advertising” is carefully 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.

Crucially, Games location advertising is “something done wholly or partly for the purposes of promoting a product, service or business”. This means that other activities, such as promoting a cause or belief, would not be prohibited (unless they also promoted a product, service or business).

The Secretary of State is required to make regulations specifying the Games locations in relation to which the advertising offence would apply and, in relation to any given specified Games location, the time during which unauthorised advertising would be prohibited (unless excepted or authorised). However, under **clause 13(3)**, any “specified period” could not start earlier than 21 days before the Games begin, and it could not end more than 5 days after the Games finish. Additionally, the Secretary of State is given a power (**clause 13(4)**) 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.

A person guilty of the offence is liable on summary conviction to an unlimited fine.⁷⁵ 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.⁷⁶ Picking-up from our previous example, if the offence took

⁷⁴ DCMS, [Bill 103-EN](#), para 64

⁷⁵ Clause 13(7)

⁷⁶ Clause 13(5)

place on private land, and the landowner took all reasonable steps to try to prevent the offence, he would not be considered to be “permitting” advertising for the purposes of the offence.

Part 3 (**clause 14(1)**) makes it clear that it is not an offence to carry out Games location advertising in accordance with an **authorisation** granted by the Organising Committee, or to arrange for or to permit advertising that is so authorised. Written authorisation may:

- be granted in respect of a person or a description of person;
- be granted by reference to the nature, purpose or circumstances of the advertising;
- be subject to conditions;
- and can be revoked.

The Bill details the sorts of conditions which might be imposed by the Organising Committee on authorisations.⁷⁷ They include:

- specifying places where advertising may, or may not, be carried out;
- specifying periods during which advertising may, or may not, be carried out;
- requiring certain steps to be taken for a particular purpose, such as to protect the safety of any person or preventing or reducing congestion, litter or noise.

In considering whether to grant an authorisation, the Organising Committee may take into account any agreements already entered into by the Secretary of State or otherwise for the purposes of the Games, and any existing advertising licences (whether granted under clause 14 of the Bill or otherwise).⁷⁸

It is clear, however, that no advertising offence is committed if the advertising in question has been excepted. **Clause 15(2)** of the Bill would give the Secretary of State a power to bring forward regulations to specify **exceptions** to the Games location advertising offence, having first consulted with the Organising Committee, the local authority for an area where the regulations would have effect, and any other appropriate persons.⁷⁹ According to the DCMS, by retaining a power to make exceptions, the Secretary of State has the flexibility to address any issues that may arise.⁸⁰

Trading offence

According to the [Explanatory Notes](#), the policy rationale for the trading offence is to “improve the spectator experience by helping ensure that trading does not obstruct the easy movement around Games areas such as from transport hubs to Games venues.”⁸¹

⁷⁷ Clause 14(3)

⁷⁸ Clause 14(4)

⁷⁹ Clause 15(3)

⁸⁰ DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paragraph 34, undated, [online] (accessed 2 March 2020)

⁸¹ DCMS, [Bill 103-EN](#), para 79

Specifically, **clause 16(1)** of the Bill would make it an offence for a person to:

- carry out Games location trading;
- arrange for such trading to be carried out; or
- permit the carrying out of such trading
- in a specified Games location at any time during a specified period, or in a relevant public place⁸² in the vicinity of a Games location at any time during a specified period (the “trading offence”).

In other words, it is not just an offence to “carry out” Games location trading, it is also an offence to “permit” Games location trading (for example, on private land) or to “arrange” for someone else to carry out Games location trading. “Trading” is defined widely. It obviously includes selling, offering or exposing an item for sale but would also include:

- providing, or offering to provide, a service for gain or reward;
- providing public entertainment for gain or reward; and
- appealing for money or other property (whether for charitable or other purposes).⁸³

Again, the Secretary of State has the power to specify in regulations the specific Games locations to which the trading offence would apply and, in relation to any specified location, the time during which unauthorised trading would be prohibited (unless excepted or authorised).⁸⁴ Each prohibited period must not begin earlier than 21 days before the day of the opening ceremony and must end within 5 days of the closing ceremony.⁸⁵ Importantly, **clause 16(4)** would provide a power for the Secretary of State to make regulations about when a person will be treated, or not, as doing something, in or in the vicinity of a Games location.

A person guilty of a trading offence is liable on summary conviction to an unlimited fine.⁸⁶ However, a person does not “permit” Games location trading if they took all reasonable steps to prevent the trading from taking place or continuing to take place.⁸⁷

It is clear from **clause 17(1)** that no trading offence would be committed if prior written authorisation to carry out, arrange or permit Games location trading is granted by the Organising Committee.⁸⁸ Authorisation may:

- be granted in respect of a person or a description of person;

⁸² Clause 16(8) defines a relevant public place as a highway, indoor carpark, or any outdoor space to which the public have access

⁸³ Clause 16(2)

⁸⁴ Clause 16(2)

⁸⁵ Clause 16(3)

⁸⁶ Clause 16(7)

⁸⁷ Clause 16(5)

⁸⁸ Clause 17(1)

- be granted by reference to the nature, purpose or circumstances of the trading;
- be subject to conditions; and
- can be revoked.⁸⁹

As with the advertising offence, the Bill details the sorts of conditions which may be imposed by the Organising Committee when granting authorisation to trade. They include:

- specifying where trading may, or may not, be carried out;
- specifying periods during which trading may, or may not, be carried out; or
- specifying steps that must be taken to protect the public or prevent or reduce congestion, litter or noise.

Again, in considering whether to grant an authorisation, the Organising Committee may take into account any agreements already entered into by the Secretary of State and others for the purposes of the Games, and any existing trading licences.⁹⁰

The Bill (**clause 18**) contains exceptions for certain kinds of trading. For example, the trading offence would not apply to selling an item or service to a person who is in a premises adjoining a highway (so deliveries of groceries or window cleaning services would not be caught).⁹¹ The provision of certain public amenities would also be excepted from the offence (such as the provision of public toilets, cash machines or permanent telephone kiosks).⁹² A range of activities relating to motor vehicle services would also be excepted (such as the provision of a car park or selling a motor vehicle).⁹³ However, the [Explanatory Notes](#) are careful to make the following distinction:

Whist it would not be an offence to provide motor vehicle parking services from a place usually used for such services, it would be an offence to undertake other types of unauthorised trading in car parks within the prohibited area during the prohibited period (unless they are excepted in clause 18).⁹⁴

Importantly, **clause 19** would give the Secretary of State a power to specify in regulations additional exceptions to the trading offence should it be necessary. Before making such regulations, the Secretary of State is required to consult with the Organising Committee, the relevant local authority for the area where the regulations would have effect, and any other appropriate persons.⁹⁵

It is worth noting that since the last Session of Parliament, a small change has been made to **clause 24(2)(a)** to ensure that a person is considered as carrying out Games location trading if, for example, a

⁸⁹ Clause 17(2)

⁹⁰ Clause 17(4)

⁹¹ Clause 18(2)

⁹² Clause 18(3)

⁹³ Clause 18(5)

⁹⁴ DCMS, [Bill 103-EN](#), para 93

⁹⁵ Clause 19(3) provides that this requirement can be satisfied by consultation undertaken before clause 19 comes into force

seller is inside a Games location but selling to a buyer outside a Games location. The example given in the Explanatory Notes is of a kiosk inside a Games location selling an ice cream to a customer outside a Games location, it would still be a trading offence unless the activity was otherwise authorised by the Organising Committee or excepted. This aligns with the government's approach to trading in a relevant public place, where the same principle applies.

Requirement to publish guidance and information

The Organising Committee is required to publish guidance about the operation of the advertising and trading provisions of the Bill and any new regulations made under Part 3.⁹⁶ The guidance is intended to provide an accessible and user-friendly explanation of the impact of these provisions including where and when restrictions will be in place, how advertising and trading will be authorised, and to provide more detail about enforcement action.

Importantly, **clause 23(4)** requires local authorities to share this guidance with traders who hold a licence or consent to trade from that local authority (or who have applied for one) and who the authority considers could be affected by the trading offence. Local authorities are also required to provide any additional information as appropriate which could assist with mitigating the impact of the trading offence.

Enforcement of offences

Clause 20 provides for the enforcement of the three offences set out in Part 3 (ticket touting, advertising and trading offences) and gives effect to **Schedule 3**. Enforcement would differ between the three offences as follows:

- The ticket touting offence would be enforced by a local weights and measures authority in England, Scotland or Wales, or by the Department for the Economy in Northern Ireland.⁹⁷ The Bill does not authorise a local weights and measures authority in Scotland to undertake a prosecution under this offence.⁹⁸
- The Advertising and trading offences would be enforced by a local weights and measures authority in England.⁹⁹

In effect, the offences would be enforced primarily by local authority trading standards officers.¹⁰⁰ The Bill provides that trading standards and the Department for the Economy would be able to use the investigatory powers set out at [Schedule 5](#) to the [Consumer Rights Act 2015](#) (CRA 2015).¹⁰¹ Importantly, **Schedule 3** to the Bill sets out additional powers of search and seizure (see **Box 1** below).

⁹⁶ Clause 23(1)

⁹⁷ Clause 20(1)

⁹⁸ Clause 20(2)

⁹⁹ Clause 20(3)

¹⁰⁰ Under paragraph 14 of Schedule 3 of the Bill, a trading standards authority may exercise a power contained by this Schedule outside of their area

¹⁰¹ Clause 20(4) and (5)

Box 1: Schedule 3 to the Birmingham Commonwealth Games Bill [HL]

Schedule 3 to the Bill sets out additional powers of search and seizure available to those enforcing the ticket touting, advertising and trading offences. These include:

- **Powers of seizure and detention of goods or documents.**¹⁰² Schedule 3 provides additional circumstances under which the powers to seize goods or documents under paragraph 28 or 29 of Schedule 5 to the [CRA 2015](#) may be used; namely to stop a relevant offence from occurring, or to prevent it from continuing. Powers of seizure and detention would enable goods or documents to be used as evidence in proceedings.¹⁰³
- **Additional powers of search and seizure where an officer is in a public place¹⁰⁴ and the officer reasonably suspects that a person has committed, is committing or is about to commit a relevant offence.**¹⁰⁵ The aim is for officers to act against itinerant traders in a public place who are not trading from premises.
- **Retention etc of items seized under Schedule 3 of the Bill.**¹⁰⁶
- **Disposal of items seized where they are no longer required by an enforcement authority.**¹⁰⁷ Items may only be disposed of when they have been held for a minimum of 3 months¹⁰⁸ and where it has not been possible to return them.¹⁰⁹ For example, if the items were seized from a person who gave a false address, and who could not be contacted by the enforcement authority in any other way, the authority could dispose of those items after 3 months.
- **Power to conceal or destroy prohibited advertising.**¹¹⁰ Where the seizure or concealment of an advertisement is not reasonably practicable, an enforcement officer may deface or destroy it (e.g. when a poster is stuck to the side of a building in the vicinity of a Games location).¹¹¹ In this context, an enforcement officer can exercise a power of entry and require the assistance of any person on the premises as provided in paragraphs 23 and 32 to 34(1) of [Schedule 5](#) to the CRA 2015.
- **Obstruction of officers - paragraph 13** of Schedule 3 of the Bill provides that in line with the powers in the CRA 2015, it is an offence to obstruct an enforcement officer.
- **Compensation - paragraph 15** of Schedule 3 provides that a person whose property is damaged as a result of the exercise (or purported exercise) of certain powers is entitled to compensation from a relevant authority if the exercise of the power was unlawful or any force used in the exercise of the power was unreasonable. **Paragraph 15(3)** 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 made by the Secretary of state. **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.

¹⁰² Paragraph 2(1) of Schedule 3

¹⁰³ Paragraph 2(1)(1) of Schedule 3

¹⁰⁴ Other than in reliance on a power in paragraph 23(1) or 32 of Schedule 5 to the Consumer Rights Act 2015

¹⁰⁵ Paragraph 3 of Schedule 3

¹⁰⁶ Paragraph 9 of Schedule 3

¹⁰⁷ Paragraph 11(1) of Schedule 3

¹⁰⁸ Perishable items (such as food) that no longer have any commercial value can be disposed of by an enforcing officer before the end of the 3-month period

¹⁰⁹ See paragraph 11(1)(c) to Schedule 3

¹¹⁰ Paragraph 12(1) of Schedule 3

¹¹¹ Paragraph 12(2) of Schedule 3

When the earlier version of the Bill was considered at Lords Report Stage on 24 July 2019, a Government amendment was agreed that changed the parliamentary procedure for the exercise of powers under **paragraph 16** of **Schedule 3** to affirmative (rather than negative) resolution. As outlined in **Box 1**, Paragraph 16 sets out the scope of the regulation making power, it provides that regulations may determine rights of individuals to compensation arising from enforcement action in relation to the touting, advertising and trading offences.¹¹² This government amendment was in line with the Delegated Powers and Regulatory Reform Committee's recommendation¹¹³ and was passed without division.¹¹⁴

During Second Reading of the current Bill, which took place in the House of Lords on 3 February 2020, Baroness Crawley argued that effective enforcement of Part 3 would be dependent on government support of Birmingham and West Midlands local authorities, especially their trading standards departments. She said:

[...] I ask the Minister to ensure that government support is continuously available to Birmingham and to West Midlands local authorities, especially their trading standards departments, which will be at the forefront of ensuring fair trading and minimising ticket touting. The Minister will be aware of the very difficult cuts that have been made over the last 12 years to trading standards departments, and of how important these local authority departments are to the smooth running of the Games.¹¹⁵

This issue was raised again during the Bill's Committee Stage on 25 February 2020. Baroness Barran reiterated that the offences set out in Part 3 were designed primarily as a deterrent.¹¹⁶ She said that the enforcement provisions in the Bill were informed by the experience of the Glasgow 2014 Commonwealth Games and the London 2012 Olympic and Paralympic Games,¹¹⁷ and outlined the approach that would be taken:

It is important to note that the Bill provides for ticket touting, advertising and trading offences to be enforced primarily by trading standards, as authorised by local weights and measures authorities. Nevertheless, the police may be asked to support trading standards carry out some enforcement activity, where this is operationally necessary, and we are working with the Organising Committee, local authorities and West Midlands Police

¹¹² [HL Deb 24 July 2019 cc790-2](#)

¹¹³ See [Delegated Powers and Regulatory Reform Committee – 58th Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL], 1 July 2019, HL Paper 391, and [Delegated Powers and Regulatory Reform Committee – 60th Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response, 19 July 2019, HL Paper 414, [both online].

¹¹⁴ [HL Deb 24 July 2019 cc789-92](#)

¹¹⁵ [HL Deb 3 February 2020 cc1639-40](#)

¹¹⁶ See [HL Deb 3 February 2020 c1674](#) and [HL 25 February 2020 c200](#)

¹¹⁷ [HL Deb 25 February 2020 cc199-200](#)

to develop a co-ordinated approach to enforcing the Bill's provisions.¹¹⁸

Supplementary provisions: offences by directors, partners etc

The Bill (**clause 21(1)**) provides that in certain circumstances, both a body corporate¹¹⁹ and an individual could be found guilty of a ticket touting, advertising or trading offence. Specifically, if it is proven that the offence was committed with the "consent or connivance" of a person falling within subsection 2 or is attributable to any "neglect" on the part of such a person, that person (as well as the corporate body) could also be found guilty. Those persons listed in subsection 2 with potential personal liability are:

- director;
- manager;
- secretary or other similar officer of the body;
- or any person who was purporting to act in such a capacity.¹²⁰

In addition, where a body corporate is managed by its members, clause 21(1) applies to a member as if they were a director.¹²¹ In other words, a member could also be liable for the offence in the same circumstances as a director could be. A similar provision is made in respect of the partners of a Scottish partnership.¹²²

Territorial extent

The provisions which relate solely to the **advertising and trading offences** in Part 3 of the Bill would apply only in England as the vicinity of Games locations fall in England. The remaining provisions would apply and extend to England, Scotland, Wales and Northern Ireland given the need to take enforcement action in relation to ticket touting.¹²³ **Clause 33(1)** provides that the regulation making powers provided on Part 3 and in Schedule 3 would come into force on Royal Assent.

Issues raised at Lords Committee Stage

The Bill was considered in Committee of the whole House on 25 February 2020. Several amendments on Part 3 were considered but there were no divisions and the whole Bill was reported without amendment. However, several interesting issues were raised in respect

¹¹⁸ [HL Deb 25 February 2020 cc199-200](#)

¹¹⁹ The term "**body corporate**" broadly includes a private company, public company, one personal company, small company, limited liability partnerships, foreign company etc.

¹²⁰ Clause 21(2)

¹²¹ Clause 21(3)

¹²² Clause 21(4). However, subsection 5 limits subsections (1) to (4) by providing that where the ticketing offence is carried out overseas by a body corporate or Scottish partnership, the offence only applies in respect of an officer where that officer is a UK national or habitually resident in the UK, a body incorporated under the law of a part of the UK, or a Scottish partnership

¹²³ Clause 32

of the operation of the ticket touting, advertising and trading offences. A brief summary is provided below.

Games ticket touting offence (clause 10)

During Second Reading of the Bill, Lord Moynihan spoke about the corrupting influence of some secondary ticketing websites currently under investigation by the [Competition and Markets Authority](#) (CMA) for suspected breaches of consumer protection law. He said that such sites should have, “no role in profiteering at the expense of true sports fans at the Commonwealth Games.”¹²⁴ Lord Holmes said it was critical for a genuine supporter to know, when they present their ticket, that it is a bona fide.¹²⁵ In arguing that the provisions in Part 3 were both necessary and proportionate, he said:

This might seem a small Bill, but it is incredibly important. Counterfeiting and corruption will be out, rogue trading and ticket touting will be out, and world-class athletes and local communities will be absolutely in”.¹²⁶

The ticket touting offence (clause 10) was also considered in Committee. Specifically, Lord Moynihan moved **Amendment 21** which sought to change the powers that could be used by the police for enforcement of the ticketing offence. Speaking to this amendment, Lord Moynihan said his principle concern was to encourage the Government to recognise that the issue is not so much one of abuse of the secondary market but the lack of enforcement powers. He said:

It is vital that those enforcement powers are made available. In the interests of time, I will discuss the subject with my colleagues in another place who, I know, are interested in tabling amendments to that effect. [...] There is real concern that those powers are not available at present.¹²⁷

Responding to this amendment, Baroness Barran did not agree that there was an “enforcement gap” in respect of ticket touting. She said:

Tickets can already be seized by trading standards under the Bill. Enforcement officers already have a suite of investigatory powers available to them through Schedule 5 to the *Consumer Rights Act 2015*, including the power to search and seize documents. We need to ensure that enforcement of this provision is proportionate. We should bear in mind that the provision is primarily intended as a deterrent. It would be disproportionate to add Games tickets to the list of prohibited articles, as this is intended to cover offensive weapons, and items intended to cause harm or assist in acts of burglary or theft.¹²⁸

In addition, Baroness Barran argued that the amendment did not reflect the changing landscape of ticket touting, since it concerned the enforcement of the ticketing offence against touts operating outside venues rather than those operating through online ticket resale platforms, where potential breaches of the offence are more likely to

¹²⁴ [HL Deb 3 February 2020 c1636](#)

¹²⁵ [HL Deb 3 February 2020 c1653](#)

¹²⁶ [HL Deb 3 February 2020 c654](#)

¹²⁷ [HL Deb 25 February 2020 c197](#)

¹²⁸ [HL Deb 25 February 2020 cc199-200](#)

take place.¹²⁹ The Minister said that as currently drafted, the Bill addresses the enforcement of the touting provision wherever it takes place.¹³⁰

Before withdrawing his amendment, Lord Moynihan stressed that trading standards was inadequately funded to deal with ticketing fraud. He said:

Ticketing abuse is a growing problem. I welcome the CMA's involvement with StubHub, Viagogo and others, but we must not underestimate the importance of enabling the police to take swift action and to search individuals suspected of committing offences on the ground under Section 1 of PACE.¹³¹

Advertising offence (clause 13)

At Committee Stage, Lord Moynihan tabled a group of amendments on the advertising offence¹³² with the following objectives:

- to limit the period in which the advertising and trading restrictions could be in place in the vicinity of Games locations;
- to provide that all news media would be excepted from the advertising and trading offences;
- and to apply the affirmative procedure to regulations setting out when and where the advertising and trading restrictions apply.

There was debate on each objective as outlined below.

Time limit advertising and trading restrictions

Amendment 22 sought to amend the Bill to time-limit the period in which the advertising and trading restrictions could be in place in the vicinity of Games locations, so that they begin no earlier than the day before the first event at a location and end no later than the day after the final event at a location. Speaking to the amendment, Lord Moynihan highlighted concerns raised by the [Advertising Association](#) about the breadth of the advertising restrictions, he said:

I tabled these amendments because the Advertising Association, with which I am in agreement, has expressed concern that the current clause on the timing of the vicinity restrictions is too open to interpretation, creating significant uncertainty for many businesses large and small, as well as for outdoor media owners with billboards near the event venues.¹³³

Lord Moynihan said that while he recognised the need to ensure that event venues and the vicinity around them are kept clean from advertising during the event itself, clause 13(3) of the Bill gives scope for the advertising ban to extend for nearly a month and possibly across a wide area of England (with sporting venues in Birmingham, Staffordshire, Leamington Spa, and the velodrome in London). He

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ [HL Deb 25 February 2020 cc201-2](#)

¹³² On the same subject there was also a ghost amendment, potentially, Amendment 28, which appeared suddenly overnight but was never tabled

¹³³ [HL Deb 25 February 2020 c197](#)

argued that this was unnecessary and went against the stated aim to limit advertising in the immediate vicinity of the event for the period when the event takes place.¹³⁴ He said:

I appreciate that planning for the event locations is still ongoing; the amendment does not impede that process but provides a more proportionate and balanced approach to the vicinity restrictions. Given that the Secretary of State will not publish the implementing regulations until after the Bill has received Royal Assent, I believe this amendment is essential to give businesses up and down the country appropriate clarity.¹³⁵

Lord Moynihan commented that his amendments followed the approach taken for the UEFA European Championships in Scotland, where regulations governing the trading and advertising arrangements have already been published for consultation by the Scottish Government. He said:

These [regulations] state if one venue hosted a single event that lasted only a day, the restrictions could apply for as little as a day before the event takes place and one day after. There is a strong case to align with this.¹³⁶

Amendment 24 covered much the same issues for the trading offence; there is a direct cross-read to Amendment 22 on the advertising offence.

Responding to Lord Moynihan's amendments, Baroness Barran said it was important to maintain operational flexibility with these advertising and trading restrictions, to protect the vicinity of Games locations from unauthorised advertising and trading.¹³⁷ She said:

Such areas within the vicinity of Games locations may be affected only for a number of days – for example, in the immediate run-up to the Games – but as a consequence of this amendment they could not be protected from ambush marketing for the duration of that period. However, I want to provide reassurance that these restrictions will be proportionate and temporary, lasting a maximum of 38 days, and potentially far fewer in many cases. It will be driven by when and how Games locations are used; some may be in use only for a very few days. Because we are seeking to underline that commitment to proportionality, the Bill includes a small number of exceptions and a power to provide further exceptions in the regulations.¹³⁸

Call to except news media from advertising and trading offences

As currently drafted, **clause 3(1)** of the Bill provides that a person acting in the course of a business may not use a representation to suggest an association between themselves (or any other person), or any goods or services, and the Birmingham Commonwealth Games 2022. However, **clause 5**, subsections (4) to (6), provides that it is not an unauthorised association to use a representation in a Games related publication or broadcast for reporting purposes. This is to ensure that

¹³⁴ [HL Deb 25 February 2020 cc197-8](#)

¹³⁵ [HL Deb 25 February 2020 c198](#)

¹³⁶ [HL Deb 25 February 2020 c198](#)

¹³⁷ [HL Deb 25 February 2020 cc200-201](#)

¹³⁸ [HL Deb 25 February 2020 c201](#)

information about the Games can be shared – such as in news broadcasts. In respect of the advertising offence (clause 13) and the trading offence (clause 16), the Secretary of State has a duty to consult specific people before making exceptions regulations. However, the [News Media Association](#) (NMA) has called for consultation and further exceptions in the Bill or regulations under it, to ensure that the advertising and trading offences would not impact negatively upon lawful newspaper reporting, advertising, sales and distribution during the Games.¹³⁹

During Second Reading of the Bill, Lord Foster asked if the Government would have further consultations with the news media industry.¹⁴⁰ Baroness Crawley said that since time was running short, the Government must deal constructively with concerns about the Bill, such as those of the NMA, representing local, regional and international media.¹⁴¹ Lord Hunt raised the issue of public bodies trying to control media access.¹⁴²

In Committee, consideration was given to **Amendments 25** and **26** to clause 18 (the exceptions clause), which together sought to provide a comprehensive statutory exemption for the sale and distribution of news media (whether online or in print) from the advertising and trading offences, as sought by the NMA.¹⁴³ Speaking to these amendments, Lord Moynihan said:

The NMA has welcomed the constructive response of the Government. It stresses the importance of the enactment of robust, comprehensive newspaper exceptions to both the advertising and trading offences, which will be created by the Bill, and that these protections must be no less than the newspaper protections provided by such exception regulations for past Games and similar events.

My amendment also includes the sale and distribution of magazines. Such statutory exceptions are necessary, simply to enable the normal, lawful, unimpeded sale, distribution and provision of newspapers and magazines, including their usual editorial and advertising content, to their readers.¹⁴⁴

Responding to the amendments, Baroness Barran reiterated that the Government was listening to concerns raised by the news media industry and was committed to considering whether additional exceptions should be brought forward. She said:

The Bill places an obligation on the Government to consult specific people on those potential exceptions. Indeed, I am grateful for the constructive engagement so far of the Advertising Association and the News Media Association, among others, and I look forward to that constructive engagement continuing. However, it is important that the Government have the

¹³⁹ "[Government 'keen to work with' NMA over Commonwealth Games Media Issues](#)", NMA News, 4 February 2020, see also [HL Deb 3 February 2020 c.1630](#)

¹⁴⁰ [HL Deb 3 February 2020 c1630](#)

¹⁴¹ [HL Deb 3 February 2020 c1639](#)

¹⁴² [HL Deb 3 February 2020 c1644](#)

¹⁴³ [HL Deb 25 February 2020 c.198](#)

¹⁴⁴ [HL Deb 25 February 2020 c.198-199](#)

opportunity to consider that consultation before determining which exceptions should be carved out in order to ensure that the regulations are as effective as possible.¹⁴⁵

Apply the affirmative procedure to advertising and trading regulations

During the last Session of Parliament, as an earlier version of this Bill progressed through the House of Lords, there was debate about the delegated powers contained in the Bill and whether certain powers should be subject to the affirmative rather than the negative procedure. A [report](#) on the Bill by the Delegated Powers and Regulatory Reform Committee (DPRRC) had also recommended that the advertising and trading regulation-making powers be made affirmative.¹⁴⁶ The Government responded by way of a letter from Lord Ashton to Lord Blencathra, Chairman of the DPRRC, on 19 July 2019.¹⁴⁷ Whilst acknowledging that the affirmative procedure was used for the regulation making powers for both the Olympics and Glasgow Games, Lord Ashton argued that the delegated powers in the Bill were not as broad in nature and there was more detail on the face of the Bill. The main thrust of Lord Ashton's letter was that a proportionate approach would be taken by the Government to these delegated powers.¹⁴⁸

In its [Delegated Powers Memorandum](#),¹⁴⁹ the DCMS also argued that the regulation powers were narrowly drawn and would primarily address matters of detail - namely the dates, times and specific areas at which advertising would be restricted. It stated that the 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) and would allow for the restrictions to be in place for as limited a time as possible. Crucially, 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. Further background information is provided on pp16 to 21 of the [Library Briefing Paper CBP 8668](#) (31 October 2019).

In respect of the current Bill, consideration was given in Committee to **Amendment 27** which sought to apply the affirmative procedure to advertising and trading regulations. Speaking to his amendment, Lord Moynihan explained why it was needed:

It is important to have public scrutiny of the implementation of these restrictions to ensure they are workable for businesses that would be affected and are proportionate in their application, because the Secretary of State is not obliged, under the Bill, to

¹⁴⁵ [HL Deb 25 February 2020 c.201](#)

¹⁴⁶ [Delegated Powers and Regulatory Reform Committee – 58th Report of Session 2017-19](#), Birmingham Commonwealth Games Bill [HL], 1 July 2019, HL Paper 391,

¹⁴⁷ [Delegated Powers and Regulatory Reform Committee – 60th Report of Session 2017-19](#), Birmingham Commonwealth Games [HL]: Government Response, 19 July 2019, HL Paper 414, [online] (2 March 2020)

¹⁴⁸ Ibid

¹⁴⁹ DCMS, [Delegated Powers Memorandum: Birmingham Commonwealth Games Bill \[HL\]](#), paragraphs 20 to 25, undated, [online] (2 March 2020)

publish the implementing regulations until Royal Assent, which reduces the opportunity for public scrutiny.¹⁵⁰

However, Baroness Barran thought the amendment unnecessary, arguing that the negative procedure was appropriate given the temporary nature of the offences set out in the Bill. She said:

The Government are of the view, given the temporary nature of the offences set out in the Bill, that the negative procedure is appropriate. However, I reiterate and provide the reassurance that it is not the Government's intention to place a blanket advertising ban or outdoor trading ban across Birmingham or the west Midlands. All Games partners are committed to engaging with those affected; indeed, business engagement across the city and region is already under way.¹⁵¹

Baroness Barran confirmed her intention to respond to the DPRRC's report shortly; a copy of her written response would be deposited in the Libraries of both Houses.

Issues raised at Commons Second Reading

Most of the Second Reading debate on Part 3 focused on the ticket touting offence.

Ticket touting offence

At Second Reading, Nigel Huddleston, Parliamentary Under-Secretary of State at the DCMS, said that over 1 million tickets would be made available for the Games but only those vendors authorised to sell tickets by the Organising Committee would be permitted to do so; any unauthorised attempt to sell tickets for profit in the course of a business or in a public place would be an offence. The Minister said that whilst there was a role for a responsible secondary ticketing market, professional touts were a scourge on major events, making tickets more expensive for genuine fans.

He summarised the Government's position as follows:

We have already legislated to ensure there is a responsible market, from strengthening requirements on secondary platforms to banning touts from using bots to dodge security measures. Those measures received the support of both sides of the House. These are robust powers that stop online touts hoovering up large numbers of tickets for profit and help consumers to make informed choices when buying tickets on the secondary market. However, these Games are a global, multi-sport event underpinned by significant public investment, so we want to go even further so that fans can buy tickets, confident that they will not be funding unscrupulous touts. That is vital if we are to act as a powerful deterrent to touts and protect the integrity of the Games. Only those vendors authorised to sell tickets by the Birmingham 2022 organising committee will be permitted to do so, meaning that buying tickets will be clear, simple and affordable for genuine fans.¹⁵²

During the debate, there was general agreement that tickets for the Games should end up in the hands of the fans, at the price intended,

¹⁵⁰ [HL Deb 25 February 2020 c199](#)

¹⁵¹ [HL Deb 25 February 2020 c200](#)

¹⁵² [HC Deb 9 March 2020 c46](#)

not vastly inflated prices. However, various Members raised the issue of effective enforcement. Sharon Hodgson MP asked if the government would consider extra funding for National Trading Standards to enforce the touting offence.¹⁵³ Lisa Cameron MP, who spoke at length about the touting offence, asked what support would be given to Birmingham Trading Standards to enforce the regulations and if West Midlands Police would be given additional funds to support Trading Standards. Recognising that much of the touting activity targeting the Games would be online, she also asked if the “National Trading Standards e-Crime Team” would receive additional funds.¹⁵⁴ She argued that even with the suite of investigatory powers available to enforcement officers under Schedule 5 to the [Consumer Rights Act 2015](#) (CRA 2015), officers do not have the funding and resources that they need, “there are simply too many touts for an under-resourced agency to deal with”.¹⁵⁵ Drawing attention to the fact that for most events, Google allows “paid-for ads” by secondary ticket sites to appear at the top of its search engine, Lisa Cameron asked if the Government would act to stop this happening in respect of the Games. She said:

Will the Government ensure that Google does not take sponsored ads for games tickets from secondary sites such as those of Viagogo and StubHub? As the Minister knows, ads for Viagogo that appear at the top of Google searches give consumers the impression that this is a trusted and verified website, but that could not be further from the truth.¹⁵⁶

Noting that the Organising Committee would be required to establish a mechanism, to reassure those who buy Games tickets that they are buying from an official site, Lisa Cameron questioned what support and guidance the committee would receive.¹⁵⁷ She argued that ticket touting regulations must be supranational:

As we saw in [London] 2012, ticketing regulations must be supranational, and ticket touting must be made an offence anywhere in the world. People operating abroad or using servers that are abroad, and selling tickets to the Games, must be subjected to these regulations if we are to protect consumers and the reputation of the games.¹⁵⁸

Responding to these concerns, Nigel Huddleston said that the Government was committed to tackling fraudulent practices in the secondary ticket market. He said:

We are working with the Organising Committee, local authorities, trading standards and West Midlands police to develop a co-ordinated approach to enforcement provisions. More generally, the Government are working closely with National Trading Standards to ensure that they have adequate funding to tackle consumer detriment in the ticketing market.¹⁵⁹

¹⁵³ [HC Deb 9 March 2020 c46](#)

¹⁵⁴ [HC Deb 9 March 2020 cc76-7](#)

¹⁵⁵ [HC Deb 9 March 2020 c77](#)

¹⁵⁶ [HC Deb 9 March 2020 c77](#)

¹⁵⁷ [HC Deb 9 March 2020 c77](#)

¹⁵⁸ [HC Deb 9 March 2020 cc77-8](#)

¹⁵⁹ [HC Deb 9 March 2020 c.81-82](#)

Advertising and trading offences

At Second Reading, Nigel Huddleston confirmed that the restrictions to advertising and trading in and around Games locations were in line with the approach of previous games. The restrictions would ensure that trading does not obstruct easy movement in the vicinity of Games locations and would provide a consistent look at each venue. The restrictions would be in place only when and where they were necessary and for no longer than 38 days, regulations would set out the detail of when and where the temporary restrictions would apply.

Commenting on the Minister's statement, Tom Randall emphasised the importance of corporate sponsorship to the success of the Games. He argued that without the kind of brand protection envisaged in the Bill, the Games would not be possible.¹⁶⁰

Part 3 of the Bill was not discussed when the Bill was considered in Committee on 17 March 2020.

2.5 Transport

Part 4 of the Bill (**clauses 25 to 29**) essentially does two things:

- Allows the Secretary of State for Transport to place a requirement on a local authority or combined authority in England to produce a **Games Transport Plan (GTP)**; and
- Provides various powers to **control traffic** during the event.

Games Transport Plan (GTP)

It is a common requirement that any host city of a major event like the Olympics or the Commonwealth Games should have plans in place to enable athletes, spectators and officials to get to and from events on time and to manage any associated disruption to the rest of the local transport network (see, e.g. the [London 2012](#) and [Glasgow 2014](#) transport plans).

Clause 25 of the Bill would allow the Secretary of State to require the relevant local authorities to produce a GTP for Birmingham 2022. This is already in progress, with a draft plan put out for [consultation](#) by the West Midlands Combined Authority (WMCA) and Transport for the West Midlands (TfWM), Birmingham City Council and Birmingham 2022 in September 2019. A final GTP will be published in 2020.

The draft GTP sets out [five key transport principles](#) for delivery of the Games:

- Clean and Green; a public transport Games
- Safe, secure, reliable and efficient transport
- Minimising disruption to everyday users
- Long term benefits to everyday users
- Access for all

¹⁶⁰ [HC Deb 9 March 2020 c.66](#)

A number of [specific schemes](#) will be required to achieve these principles. The draft GTP sets these out as follows:

Key transport milestones



At Committee Stage in the House of Lords the Minister, Baroness Barran, assured the House that accessibility would be a key part of the final GTP. She said that the final version of the GTP:

... will include the arrangements for all spectator and workforce transport modes, including buses and taxis ... I have been assured that there will be engagement with disabled people's organisations and other groups to ensure that the necessary accessibility requirements are fully considered...¹⁶¹

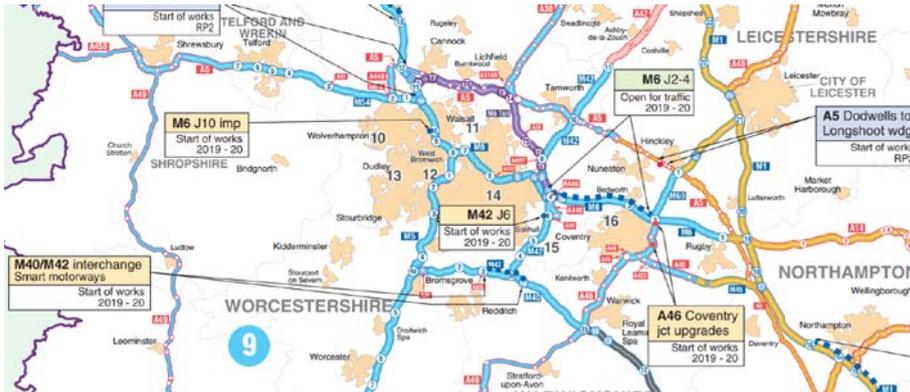
Traffic powers

Clause 26 provides that a traffic authority for a road in England may make a **temporary traffic regulation order (TTRO)** or issue a **temporary traffic regulation notice (TTRN)** for the purposes of implementing the GTP, 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. They would, for example, be used to create express 'Games Lanes' to ensure athletes can reach venues on time.

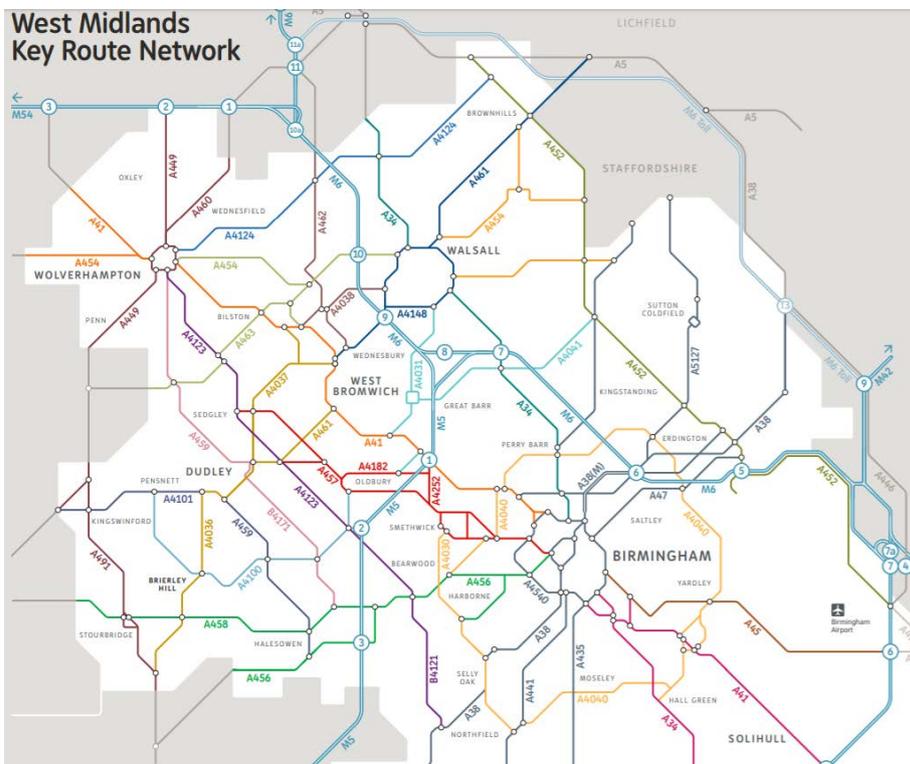
Clause 27 allows the power to make Games TTROs and issue Games TTRNs to be **exercised by the authority appointed to produce the GTP** as per **clause 25(1)** as if they were the local traffic authority for the roads being regulated. This is because highway powers in the West Midlands are held at a number of different levels, and will require coordination to secure the smooth running of the Games:

- **Highways England** is responsible for [the Strategic Road Network](#), including the main arteries around and connecting to Birmingham, including the M6, and the M42:

¹⁶¹ [HL Deb 25 February 2020, c193GC](#)



- TfWM, on behalf of the mayor and the WMCA is responsible for a [key route network](#) of major roads across the West Midlands:



- The county and unitary councils in the West Midlands region (e.g. [Birmingham City Council](#)) are responsible for all other ('local') roads maintainable at the public expense.
- Finally, there are roads that are designated as [private or unadopted](#), in that no public authority is legally responsible for their management and maintenance. These are usually residential roads.

Clause 28 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 26** and the relevant local traffic authority has failed to take that action within seven days of being asked by the Secretary of State.

The [draft GTP explains](#) what this is likely to mean in practice for local businesses and residents:

During the Games some temporary measures will be introduced to make efficient use of the network. Those attending the Games will be encouraged to use public transport to minimise disruption to the network. All events will be accessible by public transport and additional temporary services for people attending the Games will be provided (for example, dedicated shuttle services) to alleviate pressure on the transport network. Traffic management measures, such as changes to traffic light timings, will also be implemented in response to the Games-time demand on the road network to manage the roads in the most effective way. A permit system will be used to manage vehicle access and parking around key venues – the system will be designed to help residents maintain access to their properties and businesses, at no cost to them. Precise details, such as the area covered and how these will be enforced, will be determined as part of operational planning. Local communities will be engaged as part of this process. Where permits, temporary restrictions or closures are required, we will work with local residents and businesses to protect them from spectator parking so that they can still go about their daily lives.

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