

EXPLANATORY MEMORANDUM TO
THE BIRMINGHAM COMMONWEALTH GAMES (COMPENSATION FOR
ENFORCEMENT ACTION) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 These regulations make provision to supplement the provisions in paragraph 15 of Schedule 3 to the Birmingham Commonwealth Games Act 2020 (“the 2020 Act”), which sets out a right to compensation in certain circumstances. This instrument sets out the processes, including routes of appeal, for making and dealing with claims for compensation made under paragraph 15 of Schedule 3 to the 2020 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters of relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 This reflects the territorial application of the ticketing offence in the 2020 Act, which extends and applies in England and Wales, Scotland and Northern Ireland. Note that the advertising and trading offences in the 2020 Act extend to England and Wales and apply to England only.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England, Scotland, Wales and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Scotland, Wales and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister for Sport and Tourism has made the following statement regarding Human Rights:

“In my view the provisions of the Birmingham Commonwealth Games (Compensation for Enforcement) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Birmingham Commonwealth Games Act 2020 (“the 2020 Act”) prohibits the touting of tickets that are being sold for profit, in the course of business, or in public.

- 6.2 The 2020 Act also makes it an offence to undertake unauthorised advertising or trading in or in the vicinity of a specified Games location at a specified time, the details of which will be set out in further regulations once operational planning is further developed. For the purpose of this Memorandum, the ticketing offence, advertising offence and trading offence are referred to as the ‘relevant offences’.
- 6.3 Enforcement of the ticketing offence in the 2020 Act can be undertaken in England, Scotland and Wales by a local weights and measures authority, and in Northern Ireland by an officer of the Department for the Economy (section 20(1)).
- 6.4 Enforcement of the advertising and trading offences in the Act can be undertaken by a local weights and measures authority in England (section 20(3)).
- 6.5 We anticipate that enforcement activity will be undertaken primarily by local trading standards or otherwise authorised officers within a local weights and measures authority. The Birmingham 2022 Commonwealth Games will take place at venues across the West Midlands (with one venue in London). Although enforcement of the ticketing offence can take place across the UK, we anticipate the majority of enforcement activity associated with the Games offences will take place in or around local authorities hosting the Games, either during, or in the immediate run up to, competition events.
- 6.6 A range of powers are available to ensure effective enforcement of the relevant offences. These powers include permitting the use of the investigatory powers provided for within Schedule 5 to the Consumer Rights Act 2015 for Games purposes, including the seizing and detaining of goods, and seizing and detaining documents for the purpose of preventing or ending the commission of a relevant offence or enabling the goods or documents to be used as evidence in proceedings for a relevant offence.
- 6.7 The 2020 Act also provides a small number of additional powers in Schedule 3 - including the ability (in certain circumstances) to search and examine anything that appears to be in a person’s control - such as a vehicle or suitcase (paragraph 3 of Schedule 3 to the 2020 Act).
- 6.8 It is possible that an officer taking enforcement action in respect of a relevant offence might damage property. If the property was damaged as a result of unlawful enforcement activity, or where unreasonable force was used, paragraph 15 of Schedule 3 to the 2020 Act allows that person to seek compensation from the relevant authority whose officer exercised or purported to exercise the power. A relevant authority is defined as “a local weights measures authority in Great Britain, or the Department for the Economy in Northern Ireland” (paragraph 1 of Schedule 3 to the 2020 Act).
- 6.9 Paragraph 15 of Schedule 3 to the 2020 Act also provides the amount of compensation that can be claimed is the cost of repairing the property, or if it is not possible to repair it, the cost of replacing it, and the amount of any other loss that is the direct result of the damage to the property.
- 6.10 This instrument is made under section 31(2) and paragraph 16(1) of Schedule 3 to the 2020 Act.

7. Policy background

What is being done and why?

- 7.1 This instrument sets out the details of the process for claiming compensation for damage to property that occurs as a result of unlawful or unreasonably forceful enforcement action; the timescales for each party at each stage, and an appeals mechanism.
- 7.2 The instrument provides that:
 - 7.2.1 The claimant should send a notice in writing of their claim to the relevant authority and that this should be received by the relevant authority by the end of the period of 90 days beginning the day after the closing ceremony of the Games (unless a longer period is agreed with the relevant authority in writing). This is to help ensure that claims for compensation may be made should there be delays in the person who owns the property becoming aware that any damage has occurred (for example, at a vacant property or if a tenant delays notifying a landlord);
 - 7.2.2 If the relevant authority does not consider that a claim is for them to consider, for example, where enforcement action was undertaken by another relevant authority at the boundary between those authorities, the authority considering the claim is under a duty to take steps that it considers reasonable to assist the claimant in identifying the authority that the claim should be directed to;
 - 7.2.3 If a person making a claim is informed that the relevant authority is unable to consider a claim, the re-directed claim should be received by the relevant authority by the end of the period of 90 days of the day after the closing ceremony of the Games, or within 14 days of receiving a notice that the claim cannot be considered by an authority, whichever is the greater time period, unless a longer period is agreed in writing with the relevant authority.
 - 7.2.4 The relevant authority must determine within 14 days of the claim notice whether it has enough evidence to make a decision about the claim, and send a written notice to the claimant if it does not; a claimant must then provide further information or confirm that they do not hold the information requested, within 14 days (unless a longer timescale has been agreed by the relevant authority in writing) to assist the authority in considering the claim. If the authority decides that it is unable to decide the claim without the information or evidence (which the claimant has informed the authority they do not have), the authority must notify the claimant of this;
 - 7.2.5 Once the relevant authority has determined that it has sufficient information and evidence to make a decision, they have 28 days to decide whether the claimant is entitled to compensation and, if so, the amount of compensation due in accordance with the amounts of compensation payable in paragraph 15(3) of Schedule 3 to the 2020 Act (see paragraph 6.7). The relevant authority must then write to the person with their decision within a reasonable period;
 - 7.2.6 If dissatisfied with the authority's decision, the claimant can request the authority to review the decision, and that request should be received by the relevant authority within 14 days beginning with the day the claimant received the decision notice (unless a longer timescale has been agreed by the relevant authority in writing). The authority should review the claim within 14 days of receiving the review request and, within a reasonable period, send a written notice to the claimant stating its decision on the review and its reason for that decision;

- 7.2.7 If the claimant does still not agree with the decision, they can make an appeal to the relevant court within 21 days of receiving the decision from the review.
- 7.3 The instrument also sets out the information that should be provided when making a claim. This includes providing a full name, setting out the date the damage occurred or was noticed, the full address where the damage occurred (including a postcode), the amount of compensation claimed and what this is based on, a description of the damage, a description of any loss occurring as a result of the damage, and may also include other documentation such as photographs of the damage, quotes for repair of the damage, invoices or receipts, or proof of ownership of the damaged property, amongst other things. A claimant is also required to explain why they consider that the enforcement power was exercised unlawfully or any force used was unreasonable, and to include any relevant evidence (for example, documentation presented by enforcement officers at the time the damage occurred).

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There are no plans for consolidation.

10. Consultation outcome

- 10.1 As this instrument concerns administrative processes for enforcement agencies (local weights and measures authorities and the Department for the Economy in Northern Ireland), no public consultation has taken place.
- 10.2 However, as most enforcement activity is likely to take place in and around locations used in connection with the Games, informal consultation also took place with local authorities who will host a Games location, including Birmingham City Council, Coventry City Council, London Borough of Newham, Sandwell Metropolitan Borough Council, Solihull Metropolitan Borough Council, Staffordshire County Council and Warwickshire County Council. The department has provided briefing to these local authorities on the purpose of the instrument and will continue to work with them on its implementation.
- 10.3 It should be noted that as operational planning for the Games continues, not all Games locations are currently known, however engagement with any further local authorities as and when identified will be undertaken as necessary.
- 10.4 The instrument was also developed with input from the Devolved Administrations.

11. Guidance

- 11.1 No guidance is being produced at this time to accompany this instrument. The regulations and this memorandum are constructed to set out the process for claiming compensation and managing such a claim as clearly as possible. However, engagement with local authorities as part of preparations for the hosting of the Games will continue to answer any questions on the implementation of this instrument, including considering with local authorities how best to ensure that the public have any information they may need. It should be noted that the 2020 Act does require that the Organising Committee produce guidance on the operation of the advertising and

trading restrictions (including enforcement considerations) and this is expected to be published once regulations setting out further detail of those restrictions have been brought forward.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is expected to be minimal overall. We are not aware of any claims for compensation that were brought forward under regulations for the London 2012 Olympic and Paralympic Games, nor under regulations brought forward by the Scottish Government for the Glasgow 2014 Commonwealth Games.
- 12.3 We acknowledge that there may be some familiarisation costs for local weights and measures authorities and the Department for the Economy in implementing the processes set out in the instrument within existing complaints procedures. As noted above, engagement with local authorities as part of preparations for the hosting of the Games will continue.
- 12.4 An Impact Assessment has not been prepared for this instrument as no impact on business is expected.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 It should be noted that there are sunset provisions on the Games offences; the ticketing offence will cease after the Closing Ceremony and that the advertising and trading restrictions can only be in place for a maximum of 38 days in the immediate run up to and after the Games. As such, the offences will only be in place for a limited time. Given this limited time frame, and the fact that this instrument does not regulate business, there is no requirement to review the legislation set out in the 2020 Act. However, the Government will continue to engage with relevant authorities after the Games to understand if any claims for compensation are made under paragraph 15 of Schedule 3 and whether there is still a need for these regulations.

15. Contact

- 15.1 Tim Dwyer at the Department for Digital, Culture, Media and Sport, email: tim.dwyer@dcms.gov.uk can answer any queries regarding the instrument.
- 15.2 Giles Smith, Deputy Director, Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Sport and Tourism can confirm that this Explanatory Memorandum meets the required standard.