



department for
**culture, media
and sport**

improving
the quality
of life for all

Regulations on Advertising Activity and Trading around London 2012

A Consultation

March 2011



DCMS aims to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Summary

The UK, Scottish and Welsh Governments are jointly consulting on plans for regulating advertising and trading in open public places at Games time.

Scope of Consultation

The geographical scope of this consultation is Great Britain.

This is a public consultation. We particularly seek views from those likely to be affected such as street traders and their organisations, pedlars, advertisers and their organisations and local authorities. However, we also welcome views from others. While we are committed to regulating advertising and trading in open public places, we will consider all views on the scope of the regulations. All responses will be carefully considered.

The consultation period will run for 12 weeks from 7 March 2011 to 30 May 2011.

The consultation document is available online at www.culture.gov.uk/consultations. You can also order a hard copy by emailing trevor.dawes@culture.gsi.gov.uk or by telephone on 020 7211 6924. The line is open Monday to Friday from 9.30am to 4.30pm (excluding Bank Holidays).

Please respond before the closing date. You will find related questions at the end of each section and there is also a summary of questions in section 12. Please send responses to adtradeconsultation@culture.gsi.gov.uk If you do not have access to email, please respond to:

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You can also respond to the consultation online at www.culture.gov.uk/consultations. This consultation is intended to be an entirely written exercise. Please contact Trevor Dawes on 020 7211 6924 if you require any other format e.g. Braille, Large Font or Audio.

Devolved Administrations

Different regulations will be made for Games events in England, Wales (at the Millennium Stadium) and Scotland (at Hampden Park). Draft regulations will be subject to approval by Parliament, the National Assembly of Wales or the Scottish Parliament and will be made by the relevant ministers in each nation.

The main issues this consultation seeks views on are: the scope of advertising activity and trading which we propose to regulate, the areas within which the regulations will apply (which we have called the 'event zones') and the time periods during which the regulations will be in force (which we have called the 'event periods').

Issued: 7 March 2011

Respond by: 30 May 2011

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Section 1: Introduction

What?

The UK, Scottish and Welsh Governments are developing secondary legislation to regulate advertising activity and trading in open public places around Olympic and Paralympic events during the 2012 Games. The London Olympic Games and Paralympic Games Act 2006 ('2006 Act') sets out the broad framework for the regulations. The draft regulations clarify the types of advertising and trading which will be restricted by the regulations, including by specifying a number of exceptions. These are explained in Sections 3 and 4.

In the areas where the regulations will apply (the 'event zones') during the periods when they apply (the 'relevant event periods') the regulations will override any existing advertising and trading authorisations and licences. This means that advertisers and traders who operate in open public places will need to be authorised under the regulations (in addition to holding current authorisations and licences under the general law).

We are fully committed to regulating advertising and trading in open public places but the extent to which we do this is subject to consultation. This document provides drafts of the regulations for England, Wales and Scotland, together with maps showing the event zones where they will apply, and requests your views.

Why?

The UK has not hosted an Olympic or Paralympic Games since 1948. The 2012 Games will draw international attention to the country and the way we stage the Games will have a lasting impact on the UK's international reputation. The UK, Scottish and Welsh Governments promised to respect commitments made to the International Olympic Committee (IOC) in the Host City Contract (which included obligations as to the regulation of advertising and trading) and to take all necessary measures to ensure that London fulfils its obligations. But more than that, it is important that we showcase London and the other cities and areas that are hosting events, protect sponsors' investment in the Games (without which they could not happen) and make it easy for spectators to move around. We are regulating advertising and trading in open public places for three reasons:

- To ensure all Olympic and Paralympic events have a consistent celebratory look and feel to them
- To prevent ambush marketing within the vicinity of venues¹
- To ensure people can easily access the venues

¹ Ambush marketing describes activities undertaken by businesses not sponsoring an event which nevertheless suggest they or their products are associated with the event or which seek to exploit the interest in the event by exposing their brands to spectators at the event and/or watching the event on TV around the world.

In our bid for the Olympic and Paralympic Games we stated “London will become a Host City with an unmistakable air of celebration and excitement” and that this feeling will be taken to all venues. We want to create “a backdrop fit for celebration on a truly global scale”. We are doing this through a number of mechanisms including the ‘Look and Feel’ programme, which will involve a whole range of Games design elements, including building wraps, lighting, flags, banners, fencing scrim and “spectacular” installations being displayed at venues and in public places across the UK. While the organising committee is paying for the venues to be dressed, the Government is contributing £32m towards the cost of dressing London and the venue cities across the UK during, and in the lead up to, the Games.

Games sponsors provide a vital source of funding for the Olympic and Paralympic Games, without which the UK would not be able to host the Games. In return for this funding, sponsors have exclusive rights to associate their brands with the Games. Unauthorised advertising and trading in open public places in the immediate vicinity of venues is a form of ambush marketing commonly employed by non-sponsor corporations attempting to create an association with the Games. Such activity not only undermines the value of Games sponsorship, it also threatens the aesthetic values of London and the UK at a time when we will be subject to unprecedented international scrutiny.

To ensure the free flow of spectators to venues we need to limit the number of additional people taking up space on the pavements. This may mean that traders who currently operate in open public places near a venue will not be authorised to trade at Games time. In addition some forms of advertising activity, such as the distribution of pamphlets or product samples, will contribute to litter and street congestion in the very areas which are expected to be more congested than normal.

There is already legislation in the UK which regulates advertising and trading in open public places. However a tailored approach is needed for the Olympic and Paralympic Games both because existing legislation was not crafted with the Games in mind (and therefore does not meet the three main objectives outlined above) and because enforcement procedures under current legislation are not suited to time-critical events like the Olympic and Paralympic Games. For example, under current legislation some types of illegal advertising can be removed only after 28 days’ notice – this is a longer time frame than the Olympic or Paralympic Games. Similarly, local authority powers to control street trading only apply to private land in limited circumstances – for example trading in gardens or on driveways a certain distance from the road does not necessarily need to be licensed by the local authority.

These regulations are part of a wider range of work to protect the Olympic, Paralympic and London 2012 brands. The London Organising Committee of the Olympic Games and Paralympic Games Limited (LOCOG) has a budget of around £2bn for the hosting and staging of the Games. This money is raised privately by selling sponsorship, tickets, broadcast rights and official merchandise. The values of the London 2012 brand, the Olympic and Paralympic symbols and the right to associate with the Games are crucial to this funding. These regulations contribute to the protection of the Olympic and Paralympic brands and therefore are vital to our ability to host a successful Games.

Where?

In 1996, in Atlanta, a non-sponsor sportswear company plastered the Games city in billboards, handed out banners to wave at the competitions and erected an enormous promotional centre overlooking the stadium. Following this, the International Olympic Committee (IOC) required all bidding countries to commit to take steps to prevent

ambush marketing in the proximity of Games venues. Sydney 2000 was the test case for this, and law makers there restricted advertising within a 1km perimeter² of the main Games venues. Since Sydney 2000, other summer and winter Games host cities have taken similar steps. In 2004 the Athens Olympic and Paralympic organising committee cut the number of billboards around the city, clearing 10,000 from buildings and city rooftops. During the Games the remaining billboards were controlled and offered to the Games sponsors. In 2008 the Beijing organisers ensured that all advertising was strictly controlled not just on billboards but on all public transport, at airports and in city streets.

South Africa introduced both civil and criminal penalties to deal with unauthorised advertising for the 2010 FIFA World Cup. This included special courts to deal with infringements. Under local by-laws all promotional and marketing activity was prohibited in a roughly 1km radius around South Africa's stadiums.³

It is important that we learn from previous Games and enact laws that are reasonable and proportionate. Our proposed advertising and trading regulations are intended to allow the majority of businesses to continue operating as normal, while ensuring that the look of the Games is not spoilt by over-commercialisation. As stated in Parliament we are looking to extend our regulations no further than a few hundred metres around each venue's perimeter. This amounts to around 0.01 per cent of the overall land space across England, Scotland and Wales. These event zones have been influenced by people flow, camera sight lines and areas of potential marketing ambush and with each venue we have considered the impact on local business.

We have also proposed that, for the majority of event zones, the regulations will only apply for a few days – from the day before the event and remaining in effect for the period of the event. The only exception is the Olympic Park zone where the regulations will come into force four days before the Opening Ceremony of the Olympic Games because, at that stage, the Park will be in operation, receiving athletes, broadcasters, officials and others.

What next?

This is a joint consultation covering regulations which will apply to venues across England, Scotland and Wales. There will be variations in the legislation for the different nations. However for efficiency we have combined the issues into a joint consultation and we hope to gain views from all parts of Great Britain.

The draft regulations can be found in Section 8 and the main issues this consultation seeks views on are:

- Definitions of trading and advertising activity to ensure they are consistent with our three aims
- Whether we have been clear in explaining what we intend to cover by the restrictions and how we intend to deal with any breaches
- Whether the proposals we have made for event zones and event periods are reasonable

² Section 66 of the Olympic Arrangement Act 2000 when read with clause 11C of State Environmental Planning Policy No 38-Olympic Games and Related Projects.

³ The relevant South African legislation is the 2010 FIFA World Cup South Africa Special Measures Act 2006 and the 2010 FIFA World Cup South Africa Special Measures Safety and Security Regulations 2009 (made under the 2006 Act). Regulation 3 prohibited "commercial activities" in "exclusion zones". "Commercial activities" included advertising and trading activity. Under section 5 of the Act, "exclusion zone" was any zone surrounding a venue etc. identified by the Organising Committee.

Section 2: Executive Summary

This section provides a brief overview of the regulations commenting on the geographical scope, the timings, the exceptions, the authorisation process and the enforcement role.

The UK, Scottish and Welsh Governments promised to respect commitments made to the International Olympic Committee (IOC) in the Host City Contract (which included obligations as to the regulation of advertising and street trading) and to take all necessary measures to ensure that we fulfil our obligations. However beyond that we want to showcase London and the other cities and areas that are hosting events to make the Games a great experience for everyone. We are regulating advertising and trading in open public places for three reasons:

- To ensure all Olympic and Paralympic events have a consistent celebratory look and feel to them
- To prevent ambush marketing within the vicinity of venues¹
- To ensure people can easily access the venues

The Olympic Games and Paralympic Games Act 2006 laid out the foundations of control at Games time, however, the detail was left to the regulations (a form of secondary legislation).

The Sydney 2000 Games was the test case for regulating advertising around events and law makers there enacted restrictions within a 1km perimeter² of the main Games venues. Other summer and winter Games host cities have adopted similar restrictions. South Africa introduced both civil and criminal penalties to deal with unauthorised advertising for the 2010 FIFA World Cup which extended roughly 1km radius around their stadiums³. We are proposing that our restrictions apply no further than a few hundred metres around an Olympic or Paralympic venue perimeter.

As well as being geographically specific we are proposing that the regulations are also time-specific and that they do not apply for longer than three weeks for the Olympic Games (coming into force four days prior to the Opening Ceremony) and two weeks for the Paralympic Games. This period is for the Olympic Park. For events held at other venues – such as mountain biking at Hadleigh Farm – the regulations will come into force one day before the event and will apply for the event itself. In the case of the mountain biking, this means that the regulations will only apply for three days in total.

¹ Ambush marketing describes activities undertaken by businesses not sponsoring an event which nevertheless suggest they or their products are associated with the event or which seek to exploit the interest in the event by exposing their brands to spectators at the event and/or watching the event on TV around the world.

² Section 66 of the Olympic Arrangement Act 2000 when read with clause 11C of State Environmental Planning Policy No 38-Olympic Games and Related Projects.

³ The relevant South African legislation is the 2010 FIFA World Cup South Africa Special Measures Act 2006 and the 2010 FIFA World Cup South Africa Special Measures Safety and Security Regulations 2009 (made under the 2006 Act). Regulation 3 prohibited “commercial activities” in “exclusion zones”. “Commercial activities” included advertising and trading activity. Under section 5 of the Act, “exclusion zone” was any zone surrounding a venue etc. identified by the Organising Committee.

We are proposing that the regulations include a number of exceptions. For the English regulations, this includes certain advertisements on businesses' premises (such as standard shop signs) which do not require express consent from local planning authorities under the existing law. Likewise, advertising on vehicles that are not used principally for the display of advertisements (such as taxis and buses) would be exempt. For trading in open public places, exceptions will include selling newspapers and trading on private land adjacent to shops and cafes where the trading forms part of the usual business of the shop or cafe.

In addition to exceptions on the face of the regulations there will be an authorisation process whereby advertisers and traders can apply to advertise or trade during the Olympic /Paralympic period. LOCOG, which is identified by the draft regulations as the designated body to authorise advertising, will permit advertising which does not conflict with the aims of the regulations, including advertising by London 2012 sponsors on existing outdoor advertising sites in the event zones. In the case of trading in open public places, the Olympic Delivery Authority (ODA) is responsible for issuing authorisations. It is looking to authorise traders where there is not a risk of compromising the three main aims. Where a trader cannot be authorised, the ODA will provide assistance to help the trader identify acceptable alternatives.

The regulations may be enforced by the police or by enforcement officers designated by the ODA. It is only right that the police focus on safety and security matters at Games time and therefore the ODA will take the lead on enforcement. It is looking to designate enforcement officers from local authorities, who are experienced in dealing with street trading and advertising offences (for example Trading Standards Officers, Street Trading Enforcement Officers). The ODA will take a light touch approach to minor infringements that can be rectified easily but persistent offenders could face having offending items seized, removed or destroyed. Serious and deliberate ambush marketing attempts will be dealt with using the full enforcement powers conferred on designated officers, and may result in prosecution through the criminal courts.

Section 3: Advertising Activity

The display of advertisements is currently controlled in England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, in Wales by the Town and Country Planning (Control of Advertisements) Regulations 1992 and in Scotland by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Local planning authorities are responsible for the day to day operation of the advertisement control system. Existing advertisement regulations enable local planning authorities to control advertisements, when it is justified, in the interests of 'amenity' and 'public safety'. Some types of advertisement are exempt from detailed control; and other specified categories of advertisement qualify for what is called 'deemed consent', giving them automatic permission provided they conform to stated conditions and limitations for each category.

By focussing on 'amenity' and 'public safety', existing legislation does not entirely achieve the three objectives that drive our need to control advertising activity around 2012 Games events – ensuring Games events have a consistent celebratory look and feel, preventing people from engaging in ambush marketing, and ensuring people can easily access Games venues. Further, although current legislation gives local authorities the ability to require removal of illegal advertisements on private property, the removal process is too slow to deal effectively with advertisements installed during or immediately prior to the Games.

Our proposed approach is to prescribe a broad definition of 'advertising activity' and then to specify a number of exceptions. Any activity not excepted on the face of the regulations will be permitted only if specifically authorised by LOCOG.

Definition of 'advertising activity' – broad and all-encompassing

Ambush marketers seek to find new and innovative ways to associate brands with the Olympic and Paralympic Games. According to Sponsorship Research International, a private company specialising in media and market research for the sports industry, the Olympic rings are the most recognised symbol in the world. In a survey spanning three continents, 81 per cent of respondents said they associated the rings with success and high standards¹. It is no wonder then, that companies will find unusual ways to associate their products with these qualities.

To protect London 2012 as far as is reasonable, we have proposed a broad definition of advertising activity so that the regulations cover all types of activity.

The 2006 Act sets out the broad framework for the regulations. It provides that the regulations may apply to advertising activity of any kind including non-commercial announcements and notices, the distribution of documents and articles, and the display or projection of words, images, lights and sounds. The regulations may cover advertising activity on both public and private land.

¹ Ambush Marketing and the *Sydney 2000 Games (Indicia and Images)* Protection Act: A Retrospective. Volume 8, Number 2 (June 2001) <http://www.austlii.edu.au/au/journals/MurUEJL/2001/10.html>

Accordingly, our proposal is that the regulations apply not only to all types of advertising activity, including billboards, posters and other 'traditional' forms of advertising, but also to the distribution of flyers and giveaways, projected advertising (e.g. lasers and light shows), moving and aerial advertising and advertising in the form of costumes or which is displayed on clothing worn as part of an ambush marketing campaign. The regulations will apply to advertising activity on public or private land within an event zone regardless of whether it is the subject of existing permissions or consent (e.g. from the landowner or the local planning authority).

We propose that, for the purposes of the regulations, 'advertising activity' be given a broad meaning to include:

- Displaying, projecting or exhibiting any kind of advertisement, whether it is of a commercial or non-commercial nature
- Carrying or holding an advertisement or something on which an advertisement is displayed
- Displaying an advertisement on an animal
- Wearing a costume that is an advertisement or clothing on which an advertisement is displayed as part of an ambush marketing campaign
- Distributing or providing a document or article for the purposes of promotion, advertisement, announcement or direction

For these purposes, we propose that 'advertisement' should have a meaning based on, but broader than, that in the Town and Country Planning Act 1990² (under which the existing legislation for Wales and England was made) or under the Town and Country Planning Act (Scotland) 1997 which covers Scotland. That meaning would include any word, image (including logos and other forms of branding), sound, costume or representation, whether illuminated or not, which is in the nature of, and employed for the purposes of, promotion, advertisement, announcement or direction.

We propose that the regulations apply to all those who are directly or indirectly responsible for advertising activity (subject to a general defence set out in the Act – see below). This will include people who actually undertake advertising activity or arrange for it to take place and people who maintain advertisements. It will also include people who are responsible for goods, services or businesses advertised (such as directors or managers of companies whose products are advertised) and people who own, occupy or manage land (whether directly or indirectly) on which advertising activity takes place.

A general defence set out in the Act

Section 21(2) of the 2006 Act includes a defence for any person charged with an offence of contravening the advertising regulations. Such a person will avoid liability if he or she proves that the contravention occurred:

- Without his or her knowledge; or
- Despite his or her taking all reasonable steps to prevent it from occurring or (where he or she became aware of it after its commencements) from continuing

For example, a landowner on whose land advertising activity takes place will be able to avoid liability if he or she proves that the activity occurred without his or her knowledge. Likewise, the manager of a company to whose products advertising activity

² The definition of 'advertisement' in section 336 of the Town and Country Planning Act 1990 does not, for example, include sounds or costumes, both of which are included in the proposed definition of "advertisement" in our regulations.

relates will avoid liability if he or she proves that he or she took all reasonable steps to prevent the activity from occurring.

Specific exceptions set out in the regulations

In crafting specific exceptions to the proposals described above, we have sought to exempt both activity that does not conflict with the underlying aims of the regulations and people who are only unknowingly involved in advertising activity.

For example, we propose that activity intended to demonstrate support for, or opposition to a person's or body's views should be exempt from the regulations as long as that activity does not promote or advertise a good, a service or a commercial supplier of goods and services. Likewise, activity intended to publicise a belief, cause or campaign or to mark or commemorate an event should also be exempt (again, if it does not promote a product or supplier).

We also propose that people who wear costumes and clothing on which advertisements are displayed will be exempt from the regulations unless they are knowingly taking part in an ambush marketing campaign. However, others involved in an ambush marketing campaign – for example those who distribute clothing bearing an advertisement specifically to advertise in an event zone – will remain liable.

We have proposed a range of exceptions that are based on the existing legislation regulating advertising. As with that legislation, these exceptions are subject to detailed requirements as to the size and placement of advertisements and other conditions.

For example, we have proposed an exception for certain advertisements on business premises (such as standard shop signs) which do not require express consent from local planning authorities under the existing law. To qualify for this exception, an advertisement must meet the detailed size and other conditions referred to in the regulations. Similarly we propose that advertisements on vehicles not principally being used to display advertisements (such as taxis and buses operating in the normal way) also be exempt.

Other exceptions based on existing advertising legislation include:

- Advertisements displayed inside buildings, except railway and bus stations and sports stadiums and other buildings in which Games events take place
- Advertisements incorporated into the fabric of buildings as at the date the regulations come into force
- Small, non-illuminated advertisements displayed on articles for sale or containers in which or from which, articles are sold. (This exception applies only to advertisements that refer to the article for sale.)
- Functional advertisements of government departments and their agencies, local authorities, local planning authorities, public transport undertakers, statutory undertakers and Transport for London
- Small, non-illuminated identification, direction or warning advertisements displayed on the premises to which they relate
- Small advertisements relating to people or companies carrying on a business at premises on which the advertisement is displayed
- Advertisements relating to hotels, hostels, Bed & Breakfasts etc. displayed on the premises to which they relate

- Advertisements announcing local events of a religious, educational, cultural, political, social or recreational character, not being an event or activity promoted or carried on for a commercial purpose
- Advertisements displayed on business premises or the forecourt of business premises wholly with reference to the business carried on, the goods sold or services provided, or details about the person providing the goods or service
- Small advertisements directing potential buyers and others to residential developments

There are also a number of miscellaneous exceptions which include the distribution or provision of newspapers or periodicals, advertising as part of a condition of an authorisation to trade at Games time, and the displaying of advertisements relating to the manufacturer or operator on an item of street furniture.

Each of these exceptions and the others modelled on existing legislation regulating advertising are subject to detailed conditions as to, for example, size, location, height above ground etc. A full list of the exceptions set out in the regulations, including descriptions of the conditions to which they are subject, is included in section 9. The combined effect of these exceptions is that permanent signage typically employed by businesses and other 'business as usual' advertising on commercial premises will not be restricted by the regulations.

Competition

Because we are limiting the full range of buyers of advertising space in a particular area during particular periods, there will inevitably be an impact on competition. However, the regulations will apply to relatively small areas for short periods of time and, accordingly, the impact on competition will not be substantial, widespread or long-lasting.

Authorisation

Advertising activity to which the regulations apply and which is not covered by a specific exception may be undertaken only with the authorisation of LOCOG, which is identified by the draft regulations as the designated body to authorise advertising. LOCOG has indicated that it intends to permit advertising which does not conflict with the aims of the regulations. Details of LOCOG's authorisation considerations can be found in section 6.

Question 1: Have we got the definition of advertising right?

Yes/no/partially – please give your views

Question 2: Have we made the right exceptions? Yes/no/partially – please give your views

Question 3: Have we got the balance right between protecting sponsors and allowing businesses to operate as usual? Yes/no/partially – please give your views

Section 4: Trading in open public places

The Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) provides local authorities in England and Wales with the option of adopting powers to regulate street trading. Those councils which adopt the powers can designate streets in their area as prohibited, consent or licence streets for street trading purposes. Councils can then require street traders to apply for licences in order to trade in designated streets and apply the consequent penalties for not being licensed for trading in those streets. A person guilty of an offence under the Act is liable to prosecution in the magistrates' court and to a fine. Street trading for the purposes of the LG(MP)A is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street. Thus, street trading under the LG(MP)A regulates the sale of goods only. The London Local Authorities Act 1990 (as amended) has been adopted by all 32 London boroughs. This gives bespoke powers in respect of licensing, enforcement, seizure, retention and forfeiture of goods.

In Scotland, street trading is regulated under the Civic Government (Scotland) Act 1982. Local authorities may resolve to apply a licensing scheme in their area and can choose to restrict it to particular forms of street trading or particular geographical areas. The 1982 Act provides for a street trader's licence to be required for trading by a person whether on his or her own account or as an employee. There are certain exceptions set out in the Act, for example for the sale of goods such as newspapers, milk and coal and for any activity in respect of which a pedlar's certificate has been granted.

Some local authorities have obtained private Acts of Parliament and others are promoting private Bills. These contain provisions to extend their regulation of street trading to the provisions of services as well as trade in goods. They have also sought additional powers in relation to enforcement against illegal street trading (fixed penalties and seizure of goods).

As with the existing legislation controlling advertising, general street trading rules were not framed with the 2012 Games in mind and, consequently, they do not entirely achieve the aims underlying our policy for trading in open public places around Games events. It is for that reason that the London Olympic Games and Paralympic Games Act 2006 requires the Secretary of State and Ministers in the devolved administrations to make regulations about trading in open public places in the vicinity of Olympic and Paralympic events.

Those regulations will apply despite any licences or consents currently in existence under which a person is otherwise authorised to trade. This means that a person will need to be authorised under the 2012 Games regulations (as well as under the existing law) in order to trade in the areas where the regulations apply, during the periods when they apply.

In crafting our proposed trading regulations we have adopted a similar approach to that proposed for the advertising regulations: a broad definition of 'street trading' subject to specific exceptions on the face of the regulations. Any forms of trading in open public

places not excepted on the face of the regulations will be permitted only if authorised by, or on behalf of, the ODA.

Definition

Under the 2006 Act, the regulations may apply only to trading which takes place:

- On a highway; or
- In another place to which the public has access and which is not in a building (except a car park building)

In the draft regulations we have called these places 'open public places'. An open public place may be public or private land – private land will amount to an open public place where the public has access to the land, whether generally or for the purpose of the trading. So, for example, trading in private front gardens or on other private land onto which the public is invited for the purposes of trading, will be covered. Trading in temporary structures like tents or portable sheds will also be covered. Trading in places other than open public places (such as inside shops, malls, covered markets, railway stations and other buildings) will not be affected by the regulations.

We propose that the definition of street trading in the regulations includes the following activities where they take place in an open public place:

- Selling an article or supplying a service
- Trading as a pedlar under a pedlar's certificate issued under the relevant legislation
- Conducting a regulated street collection or public charitable collection pursuant to other legislation
- Trading as an ice cream vendor
- Providing public entertainment for gain or reward (e.g. busking)

For these purposes 'selling' an article or 'supplying' a service includes offering to sell or supply or exposing an article for sale. Consequently a person will be treated as trading if they are offering goods for sale, even if they do not actually sell any goods.

We propose that activity will amount to street trading whether or not gain or reward accrues to the person actually carrying out the trading activity. This will ensure, for example, that trading undertaken by unpaid volunteers is covered by the regulations even though the volunteers do not obtain any economic benefit from it.

In addition, we propose that the following matters should be disregarded when determining whether particular activity amounts to street trading for the purposes of the regulations:

- The fact that either party was not in an open public place when a transaction or part of a transaction (such as an offer) took place
- The fact that a transaction was completed elsewhere than in a public open place (where the offer or exposure of the article for sale took place in an open public place)
- The fact that an article sold or service provided is different from those offered or exposed for sale

As with the advertising regulations, we propose that the street trading regulations apply to all those who are directly or indirectly responsible for trading. This includes people who undertake trading or arrange for it to take place. It also includes people who are responsible for businesses that trade (such as owners, directors or managers of trading

companies) and people who own, occupy or manage land (whether directly or indirectly) on which trading takes place.

Specific exceptions on the face of the regulations

As with the advertising regulations, we propose that a number of specific street trading exceptions appear on the face of the regulations. These will permit forms of trading that do not undermine our three aims for the regulations – ensuring Games events have a consistent celebratory look and feel, preventing people from engaging in ambush marketing, and ensuring people can easily access Games venues. In addition, some exceptions will ensure that people who should not be held responsible for unlawful trading (for example, land owners who take steps to prevent trading taking place on their land) escape liability. Where a trader does not benefit from a specific exception they must apply for authorisation from the ODA to trade in an event zone during the event period.

We propose that exceptions for the following forms of trading appear on the face of the regulations:

- Trading as a newsvendor (provided that the only articles sold are current newspapers or periodicals and that the trader should comply with rules about any receptacles used for the papers or periodicals)
- Trading from milk floats and other vehicles used for the delivery of perishable goods
- Providing various motor vehicle-related services on private land generally used for those purposes – such as selling cars from a car sale yard, operating an established car wash business, and providing parking services in a car park building
- Trading on private land adjacent to shops, cafés and related premises, and petrol stations, provided that the trading forms part of the usual business of the shop, café, etc.
- Supplying public transport service
- Providing a public sanitary convenience, such as a public toilet

In addition, we propose that the regulations include a defence for people who have an interest in, or are responsible for, a trading business or who own, occupy or manage land on which trading takes place. We propose that such people should avoid liability under the regulations where they prove that the trading took place without their knowledge or that they took all reasonable steps to prevent the trading taking place, continuing or recurring.

Competition

Because we are limiting both the number and range of traders who are able to conduct their business in a particular area during particular periods, there will inevitably be an impact on competition. However, the regulations will apply to relatively small areas for short periods of time and, accordingly, the impact on competition will not be substantial, widespread or long-lasting.

Authorisation

Traders who wish to trade in an open public place within an event zone during the event period will be able to rely on a specific exception only if their trade fits within the description of that exception. If it does not, they will need to apply to be authorised by the ODA, even if they hold an existing trading licence or other authorisation under the general law.

The Government is committed to minimising the burdens on small businesses caused by these regulations and maximising the wider benefits of the Games. Accordingly, in developing these regulations we have considered all viable alternatives to preventing traders from conducting their business.

These regulations do not expressly deal with counterfeiting. However, it is likely that authorisations granted by, or on behalf of, the ODA will be subject to a condition that the trader does not deal in counterfeit goods. This means that, in addition to facing punishment under existing anti-counterfeiting legislation, a trader may forfeit their right to trade in an event zone under our regulations if they sell in counterfeit goods. Details of ODA's authorisation considerations can be found in section 6.

Question 4a: Have we got the definition of trading in open public places right?

Yes/no/partially – please give your views

Question 4b: Have we made the right exceptions?

Yes/no/partially – please give your views

Question 5a: Are we impacting on specific groups through these regulations?

Yes/no/partially – please give your views

Question 5b: How can we limit that impact? please give your views

Section 5: Event Zones & Event Periods

Definition of event zones

Officials have worked extensively with LOCOG, the Greater London Authority and the ODA, and have discussed ministers' proposals with the International Olympic Committee and International Paralympic Committee, London 2012 sponsors and experts in local authorities to develop the policy which has shaped the draft regulations.

The 2006 Act allows ministers to make advertising and trading regulations in respect of a wide range of events that form part of the 2012 Games – it refers to any such event, whether or not a sporting event and whether or not held in London. Accordingly, ministers had to make a number of choices about the types of events to which the regulations should apply and, in particular, whether they should apply to the Torch Relay and other Cultural Olympiad events, events at 'livesites', and test events held in the run up to the Games.

For a number of reasons including the nature of the events, the timescales to which the different projects are working to and the lower risk of ambush marketing ministers decided to focus only on the sporting events to be held during the Games themselves as it is crucial that those events are protected to ensure a fantastic spectator experience and protect sponsors' investments. Other Games events will continue to be protected under existing laws.

As well as in London, Olympic and Paralympic events will take place from Glasgow in the north to Weymouth in the south, from Cardiff in the west to Essex in the east. Accordingly, there will be event zones in England, Scotland and Wales.

All sporting events (moving and static) have been identified in the draft regulations. Maps showing how far we propose the regulations to extend are attached. There are two exceptions: Paralympic road cycling and the Olympic cycling time trial, both of which will be announced later in the year. DCMS, LOCOG and the ODA will look to consult with affected stakeholders once these events are announced and before the regulations are laid before Parliament.

Once ministers decided which events would be covered by the regulations, they considered what areas around those events would be covered. Again, the 2006 Act provides ministers with flexibility on this point, providing only that the regulations be about advertising and trading in the 'vicinity' of events and that the regulations themselves must specify or provide criteria for determining what is or is not to be treated as being in the vicinity of a place.

During the passage of the 2006 Act through Parliament, ministers committed that, in making the regulations, they would take a reasonable and proportionate approach. Accordingly, they have proposed relatively small event zones and limited event periods during which the regulations will apply.

In most cases, the proposed event zone is limited to the venue and the area a few hundred metres around the perimeter of the venue (for road events, such as the marathon and road cycling, the event zone extends only a few metres either side of the road). In a few cases the proposed event zone goes slightly further so that we can meet our primary policy objectives, for example to protect places through which spectators will walk from a major transport hub and other places where there is a particularly strong opportunity to ambush market the Games.

Each event zone is tailored to take account of the diversity of venues. For example, some venues are in rural settings, while others are in the centre of major cities. We have adapted the proposed zones to take account of the particular space surrounding each venue and we have tried to ensure that the edge of the event zone aligns with natural boundaries.

Details of sports venues, including the road events, are based on the best available information at the time of publication, but are subject to change.

Private Land/Parking

As we have noted above, we have proposed that the regulations apply to trading which takes place in an open public place. Land, whether public or private, will be regarded as an open public place where the public have access to it, whether generally or for the purpose of the trading.

We are aware, for example, that some trading takes place on open residential land during sporting events such as the Wimbledon Championships. These regulations will prevent that happening unless the trading is specifically excepted on the face of the regulations or is authorised by the ODA. The regulations will not affect the use of that land for its primary residential purpose but will regulate trading on that land in order to achieve our primary objectives.

Water

London is built around a major river of which there are numerous tributaries. Outside London numerous waterways come within close proximity of Games venues. Where an event zone encompasses a river, the regulations will apply to activity on that river. In the case of the London 2012 sailing events at Weymouth and Portland, the event zone will extend onto the territorial sea.

Airspace

The regulations will apply to the airspace above the land within each event zone. This is primarily intended to regulate aerial advertising activity.

Event periods

During the passage of the 2006 Act through Parliament, ministers said that the regulations would only be in place for a maximum period of two weeks before the start of the Olympic opening ceremony and would apply only for as long as necessary to meet the Host City Contract and other commitments to the International Olympic Committee. This ministerial commitment is reflected in provisions on the face of the 2006 Act.

The 2006 Act powers allow the regulations to apply during different periods for different places. Accordingly, we have tailored our proposals so that there is a specific event period (or periods) for each venue. For a few venues the regulations will be in effect for just a couple of days to cover the event itself and the day before¹. The longest period that the regulations will apply to any one place is 35 days (for the Olympic Park zone). This period is made up of two phases (one of 22 days for the Olympic Games, and another of 13 days for the Paralympic Games) separated by a period of two weeks during which the regulations will not apply. The regulations will cease to have any effect on the day after the closing ceremony of the Paralympic Games.

The event period for each event zone can be found on each of the maps at section 8. The dates listed are based on the best available information at time of publication, but are subject to change.

Question 6: Do our event timings allow us to adequately deal with rogue trading or advertising? *Yes/no/partially – please give your views*

Question 7: The event zone will extend to the water and up into the air. Have we got this right? *Yes/no/partially – please give your views*

¹ With the exception of the Olympic Park at Olympic Games time where the regulations will be in force four days beforehand to take account of the range of activity around the Park prior to the opening ceremony.

Section 6: Implementation

The 2006 Act imposes a number of obligations in relation to the regulations on the Olympic Delivery Authority (ODA), a statutory corporation created by the Act. It is required to:

- Make arrangement to have the effect of the regulations brought to the attention of persons likely to be affected or interested, including by giving notice of the nature and content of the regulations before they come into force
- Act as the authorisation body for trading (unless it delegates that responsibility to another person)
- Provide advice (and it may provide assistance) to those affected by the regulations
- Enforce the regulations

Notification of the effect of the regulations

In complying with its duty to bring the effect of the regulations to the attention of affected and interested persons, the ODA was obliged to give two years' notice of the general nature of the regulations. The ODA achieved this by publishing information about the likely contents of the regulations in June 2009. That information is available here: <http://www.london2012.com/publications/advertising-and-street-trading-regulations-strategy.php>

The ODA is further required to give six months' notice of the detailed provisions of the regulations. The ODA will do this by alerting stakeholders including traders and advertisers with details of the respective authorisation processes including application procedures, decision timeframes, the internal review process and any other relevant information on how the ODA can assist.

Authorisation

Advertising

Advertising activity to which the regulations apply and which is not covered by a specific exception may only be undertaken with LOCOG's authorisation. LOCOG will retain absolute discretion as to whether or not to grant an authorisation. However LOCOG has indicated that it proposes to authorise advertising activity which is consistent with the aims of the regulations and has identified the following types of activity which it therefore anticipates authorising:

- (i) advertising activity undertaken by London 2012 sponsors for products within their sponsor product category, including displaying advertisements on outdoor advertising spaces in the event zones
- (ii) the display of London 2012 'Look' (i.e. decorative Games-related street dressing) displayed by local authorities and other organisations, with LOCOG's agreement

- (iii) Advertising activity undertaken by non-commercial partners (including the Greater London Authority, local authorities and government departments) which is non-commercial in nature
- (iv) Permanent or customary advertising which is not specifically excepted by the regulations but which does not suggest that the brand advertised is associated with the Games and does not seek to gain advantage for the brand advertised by reason of its proximity to a Games venue (examples may include some large permanent illuminated signage on the forecourt of petrol stations or illuminated signage for films advertised outside a cinema). LOCOG does not anticipate there being many authorisations granted of this nature

When considering an application for authorisation, the image and presentation of the Games will also be considered. During the Olympic Games, IOC rules against advertising being visible from the field of play will also be taken into consideration. This means advertising, whether by sponsors or third parties, will generally not be authorised if visible from the field of play (note that this does not apply to road races).

Wherever possible, LOCOG will utilise existing approval processes and mechanisms to grant authorisation under the regulations. These include processes that are or will be in place to approve sponsor advertising and the display of 'Look and Feel' materials by local authorities. In relation to advertising of the type described at (iv) above, a public application process will apply. There will be a right of internal review for advertisers who are not granted an authorisation.

We propose that any authorisation granted by LOCOG be subject to a number of conditions imposed by the regulations. These include:

- That the person engaging in the activity hold any other licence or authorisation (in addition to authorisation from LOCOG) that is required before the person may advertise
- That any advertisement be sited and displayed in a safe manner (e.g. so as not to obscure traffic signs)
- That any advertisement be maintained so as not to impair visual amenity or endanger the public

Trading in open public places

The 2006 Act provides for the ODA (or a person appointed by the ODA) to authorise people to trade in the areas affected by the regulations.

The ODA will look to the three main aims of the regulations when considering authorisation. The focus will be ensuring that existing business can continue to operate, or operate with conditions attached, without compromising the main aims.

Traders will need to apply for authorisation to the ODA. No fees will be attached to this application. Not all traders will be eligible for authorisation. ODA will give consideration to a range of issues when deciding whether to grant authorisation. These may include but are not limited to:

- Whether a trader's pitch is particularly close to a venue and is likely to interfere with main spectator flows or pose a security risk because of its location
- The overall number of traders within an event zone and the consideration of flow of people
- Whether a trader has a history of failing to comply with existing regulations or trading conditions

Each application will be considered against these and other criteria and the trader will be notified of the decision. There will be a right of internal review for traders who are not granted an authorisation. The authorisation criteria are currently being developed and will be available once the regulations are made.

The 2006 Act permits trading authorisations to be subject to terms and conditions which may be inconsistent with, or more onerous than, the terms and conditions of any other licence/certificate held by the person in respect of trading (e.g. a local authority street trading licence). At Games times it may be necessary for additional restrictions to be placed on trading times or the sale of certain types of goods. However, the ODA will be reasonable and proportionate when determining whether to impose any conditions. Conditions will be imposed where they are deemed necessary for reasons of safety and security, where they are necessary to meet obligations to the International Olympic Committee under the Host City Contract or otherwise, or where there is a risk of ambush marketing.

Traders with an existing licence, authorisation or consent to trade in an event zone who are not authorised by the ODA to carry out their habitual trading activities may be entitled to assistance from the ODA to help them identify acceptable alternatives. The form of this assistance is currently being considered and in some limited cases may be financial.

Advice and Assistance

The ODA must provide advice and may provide assistance (including financial assistance) to those affected by the regulations. To that end information will be provided on the London 2012 website about the regulations and their implications with a dedicated email address for specific queries as well as a section of frequently asked questions. The ODA is working with local authorities, trade associations, etc. to ensure that its advice reaches those people directly affected by the regulations, as well as a wider audience.

Enforcement

The regulations may be enforced by the police or enforcement officers designated by the ODA. It is only right that the police focus on safety and security matters at Games time and therefore the ODA is looking to designate enforcement officers from local authorities, who are familiar with street trading and advertising offences, to enforce the regulations on its behalf. (i.e. trading standards officers, street trading enforcement officers). These officers will largely be drawn from local authority staff employed by the local authorities local to where the venue or event is taking place. Officers from these authorities will be familiar with the local traders, will know the local area and will be able to use their existing powers if necessary to deal with other offences. Where appropriate it may also be necessary to bring in officers supplied by neighbouring authorities. Discussions are underway with local authorities to secure this resource. Designated ODA officers are not constrained by borough boundaries – they can operate in any of the event zones making ODA's enforcement capability more flexible and efficient. Local authority officers who have the relevant experience and skills to do this work will be fully trained before enforcing the regulations on behalf of the ODA. Our aim is to test, informally, the regulations at an event towards the end of 2011.

The ODA will adopt a risk-based approach to enforcement in line with existing better regulation strategies. A light touch approach will be adopted for minor infringements

that can easily be rectified. Persistent offenders could face having offending items seized, removed or destroyed. More serious deliberate marketing ambush offences will be dealt with using the full enforcement powers conferred on designated officers to secure compliance. These serious offences could also potentially be reported for prosecution.

Whilst the 2006 Act confers significant powers on ODA designated officers to deal with offences, including the power to apply to the Magistrates' Courts for a warrant to access dwellings, these powers will be used as a last resort and only when it is deemed necessary to deal with a serious and deliberate attempt to ambush market the Games.

Question 8: Is the ODA approach to street trading authorisation reasonable and transparent? *Yes/no/partially – please give your views*

Question 9: Is the LOCOG approach to advertising authorisation reasonable and transparent? *Yes/no/partially – please give your views*

Question 10: Is the ODA approach to enforcement reasonable and proportionate? *Yes/no/partially – please give your views*

Section 7: How to respond

How to respond

This consultation opened on 7 March 2011. The last date for responses is 30 May 2011.

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

We would prefer responses by email, but hard copy is also acceptable:

Email: adtradeconsultation@culture.gsi.gov.uk

Please send your hard copy to:

Helen Anderson
Operations Team, Government Olympic Executive
Department for Culture, Media and Sport
2-4 Cockspur Street, London, SW1Y 5DH

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), Freedom of Information (Scotland) Act 2002 (FOISA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004) or the Environmental Information (Scotland) Regulations 2004, as relevant. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA or FOISA as relevant, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

Responses will be shared with the Scottish Government and the Welsh Government.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Copies of responses will be published after the consultation closing date on the Department's website: www.culture.gov.uk

Help with queries

For enquiries about the handling of this consultation please contact the DCMS Public Engagement and Recognition Unit (PERU) at the above address or email using the form at www.culture.gov.uk/contact_us, heading your communication 'Consultation on the Advertising and Trading Regulations'.

Complaints

If you have any comments or complaints about the way this consultation has been conducted, please use the form on the weblink below:

http://www.culture.gov.uk/contact_us/default.aspx

We can also provide documents
to meet the specific requirements
of people with disabilities.
Please call 020 7211 6200 or
email enquiries@culture.gov.uk

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