

LONDON OLYMPIC GAMES AND PARALYMPIC GAMES (AMENDMENT) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Removal of infringing articles

23. *Section 1* amends section 21 of the 2006 Act (offence of contravening advertising regulations). It removes the power of the court by or before which a person is convicted of an offence of contravening the advertising regulations to order that person to pay to a police authority or the ODA sums in respect of expenses reasonably incurred in taking enforcement action under section 21(1) in relation to the matters to which the offence relates: see *subsection (1)*. Sections 22(8) and 28(7) of the 2006 Act provide for a police authority or the ODA to recover from a person responsible for the contravention of advertising or trading regulations, as if it were a debt, the reasonable costs of taking action under sections 22 or 28 (enforcement of advertising and trading regulations).
24. *Section 1* also amends sections 22 and 28 of the 2006 Act. It removes one of the purposes for which an article may be seized in enforcing advertising and trading regulations – the purpose of enabling the article to be forfeited in exercise of the courts’ general forfeiture powers in criminal cases: see *subsections (2) and (5)*. The remaining purposes for which an article may be seized are to end a contravention of the regulations, to prevent a future contravention, or to enable the article to be used as evidence in criminal proceedings for the contravention.
25. *Subsections (3), (4), (7) and (8)* amend sections 22 and 28 to provide for articles (including animals) seized by the police in enforcing advertising and trading regulations (“infringing articles”) to be delivered to an ODA enforcement officer. This reverses the position in the 2006 Act as enacted. In future, all seized infringing articles (whether seized by a constable or an ODA officer) are to be dealt with by the ODA in accordance with new sections inserted into the 2006 Act by *subsection (9)*.
26. *Subsection (9)* inserts five new sections 31A-31E into the 2006 Act which prescribe the way the ODA must deal with seized infringing articles.

New section 31A – Cases involving criminal proceedings

27. New section 31A deals with seized infringing articles whose retention is justified for the purpose of enabling them to be used as evidence in criminal proceedings for contravention of the advertising and trading regulations. It provides that the ODA must store any perishable article (so far as is reasonably practicable) and take care of any animal, pending its return or disposal in accordance with the new sections of the 2006 Act: see new section 31A(2) and (3).
28. Under new section 31A, the ODA must return an infringing article to the owner:
 - a) at the conclusion, or on discontinuance, of the criminal proceedings; or

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- b) if proceedings are not issued within the relevant period prescribed in the section (28 days for trading offences and 56 days for advertising offences), at the end of that period.
29. However, the ODA is not required to return an infringing article in any of the following circumstances:
- a) Where the ODA, having undertaken such enquiries as it considers appropriate, fails to establish who or where the owner of the article is. In these circumstances, the ODA may apply to a magistrates' court (or, in Scotland, a sheriff) for a disposal order under new section 31D (about which, see below).
 - b) Where the owner disclaims the article or refuses to accept it. In these circumstances, the ODA must sell or otherwise dispose of the article in accordance with new section 31E (about which, see below).
 - c) Where the article is a perishable article that has ceased to be useable for trade. In these circumstances, the ODA may dispose of the article as it thinks appropriate.
 - d) Where the court, in criminal proceedings for contravention of the regulations, has ordered the infringing article to be forfeited in exercise of its general powers in criminal cases under section 143 of the Powers of Criminal Courts (Sentencing Act) 2000 (or, in Scotland, section 21 of the Proceeds of Crime (Scotland) Act 1995).
 - e) Where (without ordering the infringing article to be forfeited) the court, in criminal proceedings for contravention of the regulations, awards costs to the ODA against the owner which are not paid within 28 days. In these circumstances, the ODA must sell or otherwise dispose of the article in accordance with new section 31E (about which, see below).

New section 31B – Cases not involving criminal proceedings: articles other than vehicles

30. New section 31B deals with seized infringing articles (other than vehicles) whose retention is not justified for the purpose of enabling them to be used as evidence in criminal proceedings for contravention of the regulations. It makes similar provision to new section 31A.
31. Like new section 31A, new section 31B provides that the ODA must store any perishable article (so far as is reasonably practicable) and take care of any animal, pending its return or disposal: see new section 31B(2) and (3).
32. Under new section 31B, the ODA must return an infringing article to the owner when its retention is no longer justified for the purpose of ending a contravention of the regulations or preventing a future contravention: see new section 31B(4). However, as with new section 31A, the ODA is not required to return an infringing article in the following circumstances:
- a) Where the ODA, having undertaken such enquiries as it considers appropriate, fails to establish who or where the owner of the article is. In these circumstances, the ODA may apply to a magistrates' court (or, in Scotland, the sheriff) for a disposal order under new section 31D (about which, see below).
 - b) Where the owner disclaims the article or refuses to accept it. In these circumstances, the ODA must sell or otherwise dispose of the article in accordance with new section 31E (about which, see below).
 - c) Where the article is a perishable article that has ceased to be useable for trade. In these circumstances, the ODA may dispose of the article as it thinks appropriate.

New section 31C – Cases not involving criminal proceedings: vehicles

33. New section 31C deals with seized vehicles whose retention is not justified for the purpose of enabling them to be used as evidence in criminal proceedings for contravention of the regulations. “Vehicle” here and in new section 31B has the same meaning as in the Vehicle Excise and Registration Act 1994 (i.e. a mechanically propelled vehicle, or any thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle).
34. If the ODA receives a written application for a vehicle’s return and is satisfied that the applicant is the owner, it must (except where the vehicle has been seized on a previous occasion) return the vehicle when retention is no longer justified for the purpose of ending a contravention of the regulations or preventing a future contravention (unless the owner disclaims the vehicle or refuses to accept it).
35. If the ODA does not receive such an application, it must request ownership particulars for the vehicle from the Secretary of State (in practice the Driver and Vehicle Licensing Agency (DVLA)). Once those particulars have been received, it must (except where the vehicle has been seized on a previous occasion) return the vehicle to the owner when retention is no longer justified for the purpose of ending a contravention of the regulations or preventing a future contravention (unless the owner disclaims the vehicle or refuses to accept it).
36. Where a vehicle has been seized on a previous occasion, the ODA must return it to the owner as soon as is reasonably practicable after the expiry of the London Olympics Period (unless the owner disclaims the vehicle or refuses to accept it). The London Olympics Period, under section 1(3)(c) of the 2006 Act, ends with the fifth day after the end of the closing ceremony of the London 2012 Paralympic Games.
37. If the owner disclaims a vehicle or refuses to accept it, the ODA must sell or otherwise dispose of it in accordance with new section 31E (about which, see below).

New section 31D – Disposal orders

38. New section 31D provides for the making of disposal orders. Such orders are made by a magistrates’ court (or, in Scotland, a sheriff) on application by the ODA.
39. The ODA will apply for a disposal order where, having undertaken such enquiries as it considers appropriate, it fails to establish who or where the owner of an infringing article is for the purpose of returning the article in accordance with new section 31A or 31B. A disposal order will authorise to the ODA:
 - a) to dispose of the infringing article as it sees fit; and
 - b) to apply any proceeds of the disposal towards its costs of exercising functions under the 2006 Act in relation to the regulation of advertising and trading.
40. The court may only make a disposal order if it is satisfied that the ODA has made reasonable efforts to establish who and where the owner of the infringing article is: see new section 31D(2).
41. New section 31D(3) provides that if a person who claims to be the owner of the infringing article, or otherwise to have an interest in it, applies to be heard, the court:
 - a) must give the applicant the opportunity to make representations as to why a disposal order should not be made;
 - b) may not make a disposal order pending the making of the representations; and
 - c) having heard the representations, may (instead of making a disposal order) make an order requiring the infringing article to be returned to the owner.

42. In considering whether to make a disposal order, the court must have regard in particular to the value of the infringing article and the likely financial or other effects of the making the order: see new section 31D(4). The court may make a disposal order even if the value of the infringing article exceeds the maximum fine which could be imposed on conviction of an offence of contravening the regulations: see new section 31D(5).

New section 31E – Sale or other disposal

43. New section 31E provides for the sale or other disposal of infringing articles by the ODA. It will apply in the following circumstances:
- a) Where the ODA has attempted to return an infringing article under new section 31A, 31B or 31C, but the owner has disclaimed it or refused to accept it.
 - b) Where (without ordering the infringing article to be forfeited) the court, in criminal proceedings for contravention of the regulations, has awarded costs to the ODA against the owner and the costs have not been paid within 28 days.
44. If the ODA thinks that there is a realistic prospect of selling the infringing article it must take reasonable steps to sell it at the best price that can reasonably be obtained. But, if (having taken such steps) the ODA fails to sell the article, it may dispose of it as it thinks appropriate. Likewise, if the ODA does not think that there is a realistic prospect of selling the article, it may dispose of it as it thinks appropriate. See new section 31E(2) and (3).
45. In a case where the ODA has attempted to return an infringing article, but the owner has disclaimed it or refused to accept it, the proceeds of sale under new section 31E must be applied towards the ODA's costs of exercising functions under the 2006 Act in relation to the regulation of advertising and trading: see new section 31E(4).
46. In a case where the court has awarded costs to the ODA against the owner and the costs have not been paid within 28 days, the proceeds of sale under new section 31E must be applied in paying the amount of the costs that are unpaid (with any excess being given to the owner of the infringing article): see new section 31E(5). If, in such a case, the ODA fails to take reasonable steps to sell the infringing article for the best price that can reasonably be obtained, that failure is actionable against the ODA by any person suffering loss (but the validity of any sale is not affected): see new section 31E(6).
47. If, having undertaken such enquiries as it thinks appropriate, the ODA fails to establish where the owner of an infringing article is for the purpose of giving him or her any proceeds of sale that exceed the amount of an unpaid costs award, it may apply to a magistrates' court (or, in Scotland, a sheriff): see new section 31E(7). Where the court (or sheriff) is satisfied that the ODA has made reasonable efforts to establish where the owner is, it may make an order authorising the ODA to apply the excess of the proceeds of sale towards its costs of exercising functions under the 2006 Act in relation to the regulation of advertising and trading: see new section 31E(8) and (9). In considering whether to make such an order, the court must have regard in particular to the value of the excess proceeds and the likely financial or other effects of making the order: see new section 31E(10).
48. Finally, *subsections (10) to (12) of section 1* amend sections 37 and 38 of the 2006 Act (which make provision for Scotland and Northern Ireland respectively). *Subsection (11)* provides that, in Scotland, seized infringing articles may be held by constables or ODA enforcement officers. Where they are held by a constable, they must be returned when retention is no longer justified by a purpose for which infringing articles may be seized (see sections 22(5) and 28(2) of the 2006 Act), unless:
- a) they are perishable articles that have ceased to be useable for trade, or
 - b) the court orders the articles to be forfeited under Part 2 of the Proceeds of Crime (Scotland) Act 1995.

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49. Where, in Scotland, seized infringing articles are held by the ODA, they must be dealt with in accordance with new sections 31A to 31E of the 2006 Act (which are modified, in their application to Scotland, by *subsection (11)*).