

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)*).

Section 2 – Regulations: Parliamentary procedure and public notice

50. *Section 2* amends sections 20, 23, 26,29 and 37 of the 2006 Act.
51. The amendments provide for advertising and trading regulations (other than the first such regulations) to be subject to the negative resolution procedure if the Secretary of State (or Welsh Ministers or Scottish Ministers in the case of regulations for Wales or Scotland respectively) considers that by reason of urgency it is necessary that they be made without being approved in draft. Under the negative resolution procedure, statutory instruments are subject to annulment by resolution of each House of Parliament (or the National Assembly for Wales or Scottish Parliament in the case of regulations for Wales or Scotland respectively). The first advertising and trading regulations remain subject to the affirmative resolution procedure.
52. The amendments relieve the ODA of the duty under the 2006 Act to aim to give two years' and then six months' notice of the advertising and street trading regulations (except for the first such regulations). The ODA will remain obliged to aim to give two years' and then six months' notice in respect of the first regulations. Also, the general duty on the ODA to arrange for the effect of regulations made or expected to be made to be brought to the attention of people likely to be affected or interested is maintained for all regulations.

Section 3 – Sale of tickets – increase of maximum fine

53. This section increases the maximum penalty for the illegal sale of 2012 Games tickets from £5,000 to £20,000. The new higher penalty applies only to offences committed after the commencement of the provision: see *subsection (2)*.
54. Offences under section 31 of the 2006 Act will remain summary only, despite the higher level of fine available.

Section 4 – Orders and notices relation to temporary prohibitions etc. on roads

55. This section amends the provisions of section 14 of the 2006 Act on how the ODA and traffic authorities may establish temporary traffic restrictions or prohibitions to implement the Olympic Transport Plan or to facilitate transport services in connection with the 2012 Games. At present, restrictions or prohibitions may only be applied by order if one of the following justifications also applies: road works; other danger to road users and litter clearance. There may be circumstances where traffic congestion alone threatens implementation of the Plan or transport services and temporary remedial action is necessary; and such circumstances might be urgent in character and justify action without advance publicity – i.e. through the issue of a notice rather than making an order. (The 1984 Act already provides for this in relation to road works, other danger to road users and litter clearance.) *Subsection (3)* therefore removes the constraint that road works, other danger to road users or litter clearance must be a prerequisite for either the ODA or traffic authorities to make a temporary order under section 14 of the 2006 Act. *Subsection (4)* provides that a traffic authority may, when necessary or expedient for the purposes of the 2012 Games, effect a control needed urgently by notice.

Section 5 – Enforcement of traffic regulation orders and notices

56. Section 15 of the 2006 Act envisaged that traffic restrictions imposed under section 14 of that Act would be enforced under civil procedures in accordance with provisions in the 2004 Act, which included the methods by which the penalty charge level for contraventions must be set. Only the provisions of the 2004 Act that relate to parking

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contraventions are in force. Also, there was an unrelated drafting error in the 2006 Act which means the method for determining the penalty charge levels is not clear.

57. *Subsections (4) and (6)* make the necessary provision in relation to parking contraventions in connection with the 2012 Games under the 2004 Act: the ODA will set the levels of penalty charges (following consultation with the London local authorities and Transport for London) which will be subject to the Secretary of State's approval. Reserve powers are given to enable the Secretary of State to set the level in the event that the ODA fails to do so or he disagrees with the level they propose. Finally the Secretary of State is empowered to determine by which method the ODA will publicise the penalty charge levels.
58. *Subsections (2), (3) and (5)* make amendments to section 15 of the 2006 Act which are consequential on the amendment made to section 14 of that Act by *section 4(4)*.

Section 6 – Road closures or restrictions

59. Section 16A of the 1984 Act empowers traffic authorities to make temporary special events orders to restrict or prohibit traffic to facilitate the holding of sporting, social or entertainment events on a road. Section 16B of that Act applies various limitations to such orders. Section 16 of the 2006 Act empowers traffic authorities to make such temporary "special events" orders for any London Olympic event whether on or off a road. That section also disapplies the limitations in section 16B of the 1984 Act but only in respect of complete road closures.
60. *Subsection (3)* extends the disapplication of the section 16B limitations to any restriction (as well as a closure) made in connection with a London Olympic event.
61. *Subsection (4)* amends section 16 of the 2006 Act to ensure that temporary "special events" restrictions, like the orders and notices made by virtue of section 14, may be enforced under civil procedures in relation to parking contraventions.

Section 7 – Enforcement of moving traffic contraventions in Greater London

62. Section 15 of the 2006 Act envisaged that traffic restrictions imposed under section 14 would be enforced under civil procedures in accordance with provisions in the 2004 Act, which included the methods by which the penalty charge level for contraventions must be set. Only the provisions relating to parking contraventions are in force.
63. *Section 7* achieves the civil enforcement objectives of the 2006 Act for moving contraventions in Greater London – including enforcement of "Games Lanes" reserved for official traffic – by enabling London traffic authorities to use their existing local civil enforcement powers to enforce contraventions of orders and notices made in accordance with sections 14 and 16 of that Act.
64. The relevant provisions of the London Local Authorities and Transport for London Act 2003 ("the 2003 Act") are applied with appropriate modifications by the new sections 16A and 16B inserted into the 2006 Act by *subsection (1)*. The modifications include the arrangements by which the penalty charges will be set, namely that the ODA will set the levels following consultation with the London local authorities and Transport for London, which will be subject to the Secretary of State's approval. Reserve powers are given to enable the Secretary of State to set the level in the event that the ODA fails to do so or he disagrees with the level they propose. The modifications also confer power on the ODA (instead of on the borough councils and Transport for London as in the existing section 4(10) of the 2003 Act) to determine the "specified proportion" by which the amount of a penalty charge will be reduced if paid within 14 days (see section 4(8) (iv) of the 2003 Act). Finally the Secretary of State is empowered to determine by which method the ODA will publicise the penalty charge levels.

Section 8 – Enforcement of bus lane contraventions outside Greater London

65. *Section 8* addresses the problem described in the commentary on *section 7* above but in relation to authorities outside London. The only available powers for civil enforcement of moving contraventions outside London are in the Transport Act 2000 and concern bus lanes, the definition of which will embrace Olympic “Games Lanes” reserved for official traffic.
66. *Section 8* inserts new sections 16C and 16D into the 2006 Act to enable traffic authorities outside London to use their existing Transport Act 2000 civil bus lane enforcement powers to enforce contraventions of Olympic orders and notices made by virtue of sections 14 and 16 of the 2006 Act. The modifications to the enforcement powers include the arrangements by which the penalty charges will be set and follow the principles envisaged in the 2006 Act: the ODA will set the levels, which will be subject to the Secretary of State’s approval. Reserve powers are given to enable the Secretary of State to set the level in the event that the ODA fails to do so or he disagrees with the level they propose. The modifications also specify the proportions of discount for early payment of a penalty charge (half of the usual level of charge) and increase for late payment (one and half times the usual level of charge). Finally the Secretary of State is empowered to determine by which method the ODA will publicise the penalty charge levels.

Section 9 – Goods vehicle operator licences: waiver of procedural requirements

67. This section amends the 2006 Act to provide an expedited process for applications from goods vehicle operators who wish to seek, at short notice, a temporary variation to the environmental conditions, in particular hours of operation, attached to their operator licence. This enables a traffic commissioner to give a direction modifying the normal procedures in the Goods Vehicles (Licensing of Operators) Act 1995.
68. *Section 9* inserts new section 16E into the 2006 Act. That section allows traffic commissioners to shorten the application process for variations which have a connection with the 2012 Games but which have not been made with sufficient time to be disposed of before the London Olympics period begins and which could not have been made earlier. Under section 1(3)(c) of the 2006 Act, the London Olympics Period begins four weeks before the opening ceremony of the London 2012 Olympic Games. The process may be expedited by disapplying provision for publication of notices by the operator and by the traffic commissioner, and for allowing the traffic commissioner to abridge notice periods for a public inquiry (if one is to be held) without obtaining the consent of interested parties. One consequence is removing the formal right for objections and appeals from statutory objectors such as local authorities. In addition, removing the requirement to advertise the application in local newspapers will make it more difficult for local residents to make advance representations. However, traffic commissioners’ powers to determine individual applications are retained, including their ability to inspect the operating centre and powers to refuse an application or to impose additional conditions to counter any additional environmental nuisance that may result if the variation is granted. Operators will have to pay the standard fee for an application to vary an operator’s licence, notwithstanding the waiver of the normal requirements for publication of notices, as this will be necessary to cover the expenses of the traffic commissioner in dealing with the application.
69. Any variation granted to an operator is temporary and will last only for the duration of the London Olympics period, which ends with the fifth day after the closing ceremony of the London 2012 Paralympic Games. Additionally an operator would be required to prove to the traffic commissioner’s satisfaction that there was insufficient time to submit an application under normal procedures.