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ADVERTISING & TRADING – AUTHORISATION PROCESS

June 2022

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1. Background

The Birmingham Commonwealth Games Act 2020 (the “**Games Act**”)¹ puts in place a small number of temporary measures to support the successful delivery of the Birmingham 2022 Commonwealth Games (the “**Games**”).

In particular, the Games Act creates a criminal offence for unauthorised advertising (section 13) or unauthorised trading (section 16) in, and in the vicinity of, a specified Games location. Further details about the advertising and trading offences, including when a person is to be treated as in, or in the vicinity, of a Games location, and the specified periods that the offences will apply (together with further exceptions) are set out in the Birmingham Commonwealth Games (Advertising and Trading) Regulations 2021 (the “**Regulations**”)².

Advertising and trading activity in, and in the vicinity of, a Games location during the specified periods, which is not subject to an exception must be authorised by the Birmingham Organising Committee for the 2022 Commonwealth Games Ltd (the “**OC**”).

Similar measures were brought forward for the London 2012 Olympic and Paralympic Games and the Glasgow 2014 Commonwealth Games and aim to:

- protect and enhance the Games brand;
- protect the exclusive rights of Games sponsors, whose financial contributions help to offset the public costs of the Games;
- ensure there is a consistent and celebratory look and feel across all Games locations; and
- ensure spectators can move to and from Games locations easily and safely.

The timing of the measures has been informed by when and how Games locations will be used, and the measures are intended to be in place for the shortest amount of time possible, whilst maintaining the necessary protection for Games related activity. At a maximum, the offences will apply in and around specified Games locations between 21 July 2022 to 10 August 2022, but the specific dates for each location vary according to how it is being used. At some venues, the measures are only in place for a couple of days.

Where advertising and trading is affected by the measures, the OC has put in place an authorisation process with the intention of granting permission to advertise and trade in, or in the vicinity of, a Games location where that activity is consistent with the aims set out above.

2. Advertising – Authorisation Process

2.1. How do advertisers apply?

Games sponsors, licensees and other partners

The OC will work with its sponsors, licensees and other partners with whom it has existing relationships to authorise their advertising as appropriate through its established processes and will advise those groups directly of the process for obtaining authorisation.

¹ Please see <https://www.legislation.gov.uk/ukpga/2020/10/contents>.

² Please see https://www.legislation.gov.uk/ukxi/2021/1198/pdfs/ukxi_20211198_en.pdf

Other applicants

For all other applicants, the OC will operate a public application process. This will open 10 January 2022 and shall run until 8 July 2022 for print advertising and until 21 July for digital advertising. Submissions must be made on the OC application form which can be accessed at <https://www.birmingham2022.com/getset/advertising-trading/apply/>.

Alternative formats of this document are available on request. Please contact marketing@birmingham2022.com or call 0121 303 5422.

Applicants should have all other necessary consents and permissions to carry out the advertising activity as proposed in order to apply. It is the applicant's responsibility to identify these and to provide evidence to the OC if requested. The OC will require details of where, when, and how the proposed advertisement will be displayed, as well as the content of the advertising activity.

Unauthorised association

Where authorisation to advertise in, or in the vicinity of, a specified Games location is granted, this does not authorise parties to associate themselves with the OC or the Games. Only those individuals, businesses or organisations that have been specifically permitted by the OC can associate themselves and their brand with the Games in the course of business. This provision is not connected to the advertising and trading offences under the Games Act.

Please refer to the [Guidance on unauthorised association](#) for more information on the prohibitions on creating an unauthorised association with the Games.

2.2. Who should apply?

An application for authorisation can be submitted by either:

- an individual or business that wishes to advertise a business, product or service; or
- the media owner of the site(s) where the advertiser wishes to display its advertising campaign.

Where the applicant is the individual or business that wishes to advertise, the OC may grant authorisation to advertise, but this does not amount to confirmation that the site proposed is available. If the advertiser later discovers that the site covered by the authorisation is no longer available, and the advertiser wishes to display its campaign at a different site, a new application for authorisation must be submitted.

The OC strongly recommends that applications are submitted by media owners on behalf of advertisers, as the media owners are able to provide applicants with confirmation that the proposed site(s) for displaying the campaign are available subject to authorisation. In the event that media owners submit the authorisation application on behalf of the advertiser, compliance with any conditions attached to the authorisation shall be the responsibility of the advertiser.

Where multiple requests are filed for the same non-digital advertising site, and provided that all proposed adverts comply with the considerations listed at 2.4 below, authorisation shall be granted to the party that submitted its application first.

Only one application should be submitted for each advertising campaign. The OC encourages applicants to submit a single application identifying all media sites in, or in the

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vicinity of, a specified Games location where the campaign would be displayed. Further, the OC recommends that the applicant liaises with any relevant media owners to identify all sites where it wishes to display its advert.

There are a number of exceptions to the advertising offence and certain advertising within Games locations and their vicinities may not require authorisation. We recommend that you refer to the Games Act, the Regulations and OC's guidance for further information on exceptions. Some further details have been provided at **Schedule 1**.

2.3. How much does it cost?

An application for advertising authorisation is free of charge.

2.4. How is the application outcome decided?

The OC retains absolute discretion as to whether or not to grant an authorisation. To achieve the aims of the measures, the following criteria will be applied in considering whether to authorise advertising in, or in the vicinity of, a specified Games location during a specified period:

- A. Any requested advertising should fall into one of the following categories:
- (i) advertising of a Games sponsor or licensee which promotes products or services in accordance with their sponsorship/ licensee agreement with the OC, including displaying advertisements on out of home advertising spaces in, or in the vicinity of, a Games location;
 - (ii) the display of official "Look" of the Games (i.e. decorative Games-related street dressing) by an entity approved by the OC;
 - (iii) advertising displayed on out of home media sites by classes of advertising identified by the OC (including those described at (i) to (ii) above, and those set out at **Schedule 2** to this process);

The OC is highly unlikely to authorise applications which do not fall into the above categories. The OC recommends that you do not apply for authorisation unless your advertising falls into one of these categories. Nevertheless, in exceptional circumstances the OC retains the discretion to grant authorisation in cases which are consistent with the aims of the offences. The OC reserves the right to review and update the permissible classes of advertising as identified at (iii) above and the corresponding schedule from time to time.

- B. During the specified periods, it is unlikely that advertising activity in Games locations and their vicinities that involves giveaway items will be authorised.
- C. Requested advertising should not compete with existing sponsor brands. Details of our sponsors can be found here: <https://www.birmingham2022.com/about-us/partnerships/>

2.5. Will conditions be attached to advertising authorisation?

Authorisation granted by the OC may be subject to a number of conditions, which may be different from, or possibly be more onerous than, the terms and conditions of any other permissions granted to advertise. Conditions may include the following:

- that the advert should not adversely affect the image and presentation of the Games or the spectators' experience of the Games or contravene accepted standards on public morals and decency;
- that the applicant must provide a copy of the content of the advertisement by a certain date. Where the content of the advertisement may vary from site to site, the OC asks that the applicant submits one application for the campaign and highlights with square brackets the part of the campaign that may change, along with details of what the wording or images inside the square brackets will change to;
- that the advertising shall not create an unauthorised association with the Games;
- that the applicant holds all other necessary consents and permissions to carry out the advertising activity as proposed, in addition to the authorisation from the OC;
- that the advertising appears in certain places and during certain times only;
- that the applicant takes steps to:
 - protect the safety of the public (e.g. that the applicant ensures that the advertising does not cause dangerous obstructions to public highways, does not obscure traffic sites and does not impair visual amenities); and
 - prevent or reduce congestion, litter or noise caused by or linked to their advertising.

The OC may also require the advertiser to produce evidence of the authorisation on request.

2.6. When will applicants know the decision?

The OC will not provide any responses to applications before 7 March 2022. From 7 March 2022, the OC will seek to notify applicants by email or post regarding outcomes within 5 working days, unless further information is required. Where further information is required, the OC will seek to notify applicants of the outcome of their application within 5 working days of submission or provision of the requested additional information.

Authorisations may be granted in principle subject to other information (such as the content of the proposed advertisement) being submitted for approval to the OC at a later date provided.

2.7. Can authorisation be withdrawn?

The OC has absolute discretion to revoke any authorisation at any time with immediate effect. For example, authorisation may be revoked if:

- any of the conditions attached to the authorisation are not adhered to, including in relation to the content of the advertisement; or
- there is any change of circumstances in relation to the applicant or the authorised advertising activity which, had those circumstances existed at the date of the original application, would have resulted in the OC not granting the original authorisation.

3. Trading – Authorisation Process

3.1. How do traders apply?

The application process for trading authorisations will open on 10 January 2022 and run until 8 July 2022. Submissions must be made on the OC application form which can be accessed at <https://www.birmingham2022.com/getset/advertising-trading/apply/>.

Alternative formats of this document are available on request. Please contact marketing@birmingham2022.com or call 0121 303 5422.

Applicants should have all other necessary consents and permissions to carry out the trading activity as proposed to apply. The OC will require details of where, when and how the proposed trading activity will operate.

3.2. Who should apply and what criteria must be met in order to apply?

The OC will consider applications for authorisation from a range of businesses and traders, where activity falls within the scope of the trading offence in the Games Act (there are a number of exceptions that apply, please see the OC's guidance for further information), subject to certain criteria.

CRITERIA FOR MAKING AN APPLICATION FOR TRADING AUTHORISATION		
Trading activity	What application criteria will apply?	Further information
Street traders	<p>An applicant should provide evidence of a <u>valid</u> street trading licence (i.e. the street trading licence is in place on the date of application from the relevant authority).</p> <p>Applications are only likely to be accepted from traders with an existing licence to operate from a fixed pitch/trading location during specified times.</p>	<p>A separate application form is required for:</p> <p>(i) each specified Games location and vicinity – e.g. if someone wishes to carry out trading activity in, or in the vicinity of, Birmingham City Centre as well as in, or in the vicinity of, Edgbaston Stadium, they must submit two application forms, one for each specified Games location and its vicinity.</p> <p>(ii) each person who will carry out, arrange or permit the activity, unless under the control of one party (in which case one application can be submitted).</p> <p>Where an applicant intends to sell alcohol as part of any trading activity, authorisation will be conditional upon the</p>

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		applicant holding all relevant licences for the serving of alcohol from the specified location. The OC will not apply for any such licences on behalf of the applicant.
Pedlars, mobile traders, street entertainers	An applicant should hold the relevant licence, consent, certificate, permission or authority for their intended activity. The permission should already be in place as at the date of the application or have been applied for by the date of the application.	
Pavement licences	<p>Businesses/traders should provide evidence of a valid licence to place furniture on public land adjacent to their premises.</p> <p>Evidence of the relevant permission (e.g. a pavement licence under the Business and Planning Act 2020 or a licence under the Highways Act 1980) should be submitted with the application for authorisation.</p>	The Regulations provide an exception for trading on private land adjacent to exempt retail premises (including shops, bars, cafes, restaurants), subject to certain conditions including where the necessary permissions are in place and this takes place during the usual period of business.

3.3. How much does it cost?

An application for trading authorisation is free of charge.

3.4. How is the application outcome decided?

Managing physical space in, or in the vicinity of, Games locations is vital to ensuring the free flow of people and protecting their safety and security. Many of the routes used to access a venue at Games time will vary from the routes normally used due to the design of the Games venues and security structures. This means that some of the locations/ pitches normally used for street trading activity may not be accessible or could impede the free flow of spectators.

Consequently, the OC will assess applications on a case-by-case basis.

Amongst other considerations, the OC will take the following points into account when considering whether to grant authorisation:

A. Public safety and security

The OC will obtain any relevant information from the host local authorities and West Midlands Police (and other relevant police forces and public agencies) on the risk of

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congestion around the identified trading location and anticipated flow of people at Games time (and any risk to public safety and security).

The OC has absolute discretion when determining applications and considering applications on their individual merits.

Specifically, the OC will:

- (i) consider the proposed location of the trader relative to a Games location, the transport hubs and the routes between the two and whether the location is likely to interfere with main spectator flows or pose a security risk;
- (i) consider entrances, exits, or queuing areas and likely number of people on the pavements and consider the potential for obstruction or congestion in pedestrian areas; and
- (ii) take into account all issues relating to public safety and security;
- (iii) wherever possible and provided all criteria have been met, look to authorise an application by a street trader who already holds a licence for a pitch which is unaffected by Games time venue and security structures;
- (iv) where space to trade is limited due to Games time venue and security structures, work with local authorities to identify available spaces for traders in, or in the vicinity of, a Games location and the number of traders that may safely trade in that area. In the event of competing applications for such space, authorisation will be granted to the trader that submitted its application first (provided that the trader complies with any conditions such as those set out at 3.5 below). It will be the applicant's responsibility to ensure that their existing licence with the local authority is adjusted, where necessary, to reflect the area designated by the OC.

B. Other relevant matters

- (i) The OC will consider applications on their individual merits.
- (ii) The OC may consider any other relevant matters, including the applicant's history of compliance with licence conditions and consumer protection legislation.

3.5. Will conditions be attached to trading authorisation?

Any trading authorisation granted by the OC will be subject to terms and conditions which may be different from, or possibly be more onerous than, the terms and conditions of any other licence/certificate held by the person in respect of trading (for example, a local authority street trading licence). Conditions may include the following:

- that the goods offered for sale are not counterfeit;
- that the goods or services offered do not create an unauthorised association with the Games and features any Games intellectual property rights (including the BIRMINGHAM 2022 name, the B logo or the PERRY mascot);
- that the goods or services offered do not contravene accepted standards of public morals and decency;
- that the applicant holds all other necessary consents and permissions to carry out the trading activity as proposed, in addition to the authorisation from the OC;

- that the trading can only take place in certain locations or during certain times;
- that the applicant takes steps to:
 - protect the safety of the public (e.g. that the applicant ensures that the trading does not cause dangerous obstructions to public highways, obscure traffic sites or impair visual amenities); and
 - prevent or reduce congestion, litter or noise caused by or linked to the trading activity.
- that the applicant can produce evidence of the authorisation on request.

3.6. When will applicants know the decision?

Unlike advertising authorisations, the OC shall grant authorisations on a first come first served basis and will aim to notify applicants regarding outcomes of any application within 30 days of receipt of the application. Where an application is submitted on the last day of the authorisation process (8 July 2022) the OC shall aim to notify the applicant of the outcome within 10 working days of this date.

If applicants are in the process of applying for any other licences, consents, permits or other authorisations required for the trading activity, authorisation from the OC will not be granted until these have been approved and the relevant documentation has been provided to the OC. The OC will then aim to provide a response within 30 days of the relevant documentation having been provided.

Applicants will be notified in writing if their request for authorisation has been granted. If an applicant is unsuccessful, the OC will outline its reasons for this.

3.7. Can authorisation be withdrawn?

The OC has absolute discretion to revoke any authorisation at any time with immediate effect. For example, authorisation may be revoked if:

- any of the conditions attached to the authorisation are not adhered to; or
- there is any change of circumstances in relation to the applicant or the authorised trading activity which, had those circumstances existed at the date of the original application, would have resulted in the OC not granting authorisation as a result of the original application.

SCHEDULE 1

Exceptions for charities

The measures provide a number of exceptions to the advertising and trading offences, including some exceptions for charities. Please refer to the Regulations for full details of the scope of all the exceptions.

The restrictions on advertising do not apply to advertising in a Games location or its vicinity where the advertising is carried out by a charity wholly or partly for the purpose of:

- promoting the charity;
- promoting services for:
 - the prevention or relief of poverty;
 - advancement of health or saving lives;
 - advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony, or equality and diversity;
 - the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantages; or
 - promotion of the efficiency of the police, fire and rescue services or ambulance services.

The exception does not apply to anything done by a charity partly for the purpose of promoting a product or a business (other than a charity). Please refer to the Games Act, the Regulations and the OC's guidance for further information on exceptions to the advertising and trading offences.

This exception will cover a number of bodies. Some examples illustrating the scope of the exception are set out below:

Activity/ proposed advertising	Explanatory notes
An advert by a charity identifying the charity name.	The advert can simply identify the charity but should not suggest that donations are made to the charity.
Advertising by a charity funded art gallery or museum, where the art gallery or museum is also a charity.	The advert may identify the art gallery or museum but should not promote any specific exhibitions or seek donations.
Advertising a further education institution which is a registered charity.	The advert may identify a further education provider which is listed in the register of English higher education providers (e.g. a college of further and higher education).
Advertising promoting charitable landmarks or leisure activities.	The advert may identify the landmark if charity-funded but cannot promote a product or a service or seek donations.
Advertising for promotion of any of the services permitted under the exception for charities.	The advert may promote the charity and the services provided but must not appeal for donations.

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SCHEDULE 2

Permissible Classes

In order to maximise the amount of advertising that can take place in Games locations and their vicinities whilst achieving the aims of the legislation, the OC has identified a number of permissible classes of advertising that may be authorised by the OC under the Authorisation Process. These classes have been specifically selected to avoid any conflict with sponsor or partner rights and interests.

The table below sets out the permissible classes of advertisers and corresponding advertisements along with explanatory notes setting out further detail on what will and will not be permitted as part of those advertisements. Any of the exclusions listed may form part of the conditions of any authorisation granted by the OC.

The advertisements permitted under this Schedule 2 must not make an unauthorised association with the Games and should not feature athletes competing at the Games.

In addition, advertisements authorised under these classes must not make up high density or concentrated advertising campaigns around Games locations. If any campaign is overly prominent and could be considered to be an ambush marketing campaign, the OC reserves the right to revoke authorisation.

Authorisation is not required where any activity falling under the classes below is covered by an exception; please refer to the Regulations and the OC's guidance for further information on exceptions to the advertising offence.

Class of advertisement	Explanatory Notes and Exclusions
Education	Excluding universities
Local landmarks and attractions	Local landmarks and attractions located in the counties of the West Midlands, Herefordshire, Shropshire, Staffordshire, Warwickshire and Worcestershire. Advertising must be for the attraction only and must not refer to or identify any related or third-party brands. For example, an advert can refer to the attraction but not the parent company that owns that attraction or any brands of goods or services offered at the attraction.
Film Releases	Provided no third-party sponsor branding is visible i.e. film sponsor. Identification of the platform where the film is available will be permitted if it is not a prominent feature of the advertising campaign.
TV Programmes	Provided no third-party sponsor branding is visible i.e. programme sponsor. Identification of the platform where the

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	programme is available will be permitted if it is not a prominent feature of the advertising campaign.
Public bodies where the advert promotes a product, business or service	Including adverts relating to tourism, health, inward investment and local authority (if they are not covered by an exception).
Food	Adverts must not be for products that have high fat, sugar or salt content and must not be for confectionary products.
Retail	Adverts must not be for sportswear or sports brands and must not feature athletes competing at the Games.
Cosmetics	
Upcoming events	Adverts for events such as festivals, sport events, concerts and shows. Adverts in this category must not feature third party sponsor branding.
Local travel	For example, buses, trams and trains. This does not extend to airlines or international travel.
Home appliances	