

ADDENDUM TO ENFORCEMENT POLICY

BIRMINGHAM COMMONWEALTH GAMES 2022

VENUE AUTHORITIES ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 The Commonwealth Games 2022 (the Games) is being held in Birmingham and other local authority areas across the West Midlands and the London Borough of Newham and competition will begin on 29 July 2022 and end on 8 August 2022 with the opening ceremony and test events prior to these dates. This document proposes to ensure a consistent and proportionate approach to enforcement of the restrictions imposed by the Birmingham Commonwealth Games Act 2020 (the Games Act) and other regulatory legislation already established.
- 1.2 The Games Act puts in place new protections which prohibit unauthorised associations with the Games and which prevent ambush marketing by third parties who are not officially associated with and/or who are not sponsors/partners of the Games. It also prevents any unauthorised advertising and trading in and around Games locations, the details of which are set out in regulations by Government, as well as ticket touting. These measures are essential to help ensure:
 - 1.2.1 the exclusive rights of Games sponsors are protected;
 - 1.2.2 there is a consistent look and feel across all Games locations; and
 - 1.2.3 spectators can move easily and safely in and around Games locations.
- 1.3 As Venue Authority regulatory services will be the primary enforcers in respect of the measures imposed concerning unauthorised advertising and trading and ticket touting, it is necessary for the sake of transparency for the Venue Authorities to produce a clear policy in relation to the approach for the Games. This document provides a framework of available sanctions that can be applied by the local authorities should contraventions of the restrictions be identified. Venue authorities will work with the Organising Committee (OC), enforcement agencies and other key stakeholders in order to implement this enforcement policy.
- 1.4 The Venue Authorities involved in the management and regulation of the Games will seek to apply a common sense and proportionate approach to enforcement and utilise the sanctions available as described in this document. This document will be an addendum to the individual local authority's own policies and not a standalone document. This document needs to be read in conjunction with that principle policy document.
- 1.5 It is considered this enforcement policy is clear, concise, transparent and fit for purpose. Included in the enforcement policy is the way issues will be dealt with and what those regulated can expect.
- 1.6 The Regulator's Code indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself, however the Games

has created the needs for a consistent approach to enforcement by all local authorities involved in securing a legal and fair and equitable trading environment where all venues are located.

- 1.7 This policy commits the Venue Authorities that will be joining resources and combining practices undertaking an active enforcement role during the lead up to and during the Games, to deliver good enforcement practice with effective procedures and clear policies.
- 1.8 This policy will include the Licensing Services, Environmental Health Services and Trading Standards Services of those Councils supporting the Games.

2. WHAT THIS POLICY IS FOR

- 2.1 The primary function of the combined resources of Venue Authorities involved with the Games is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, the right is reserved to take enforcement action in some cases after compliance has been achieved or if it is considered appropriate under the circumstances and is in the public interest to do so.
- 2.2 The main aims of the advertising and trading restrictions are to prevent risks to public safety, to ensure there is a consistent celebratory look and feel across the Games locations and to combat 'ambush marketing' activity.
- 2.3 It is recognised that prevention is better than cure and in line with national policy in existence after the Covid 19 pandemic legitimate business (who are looking to maximise the impact of the Games without seeking to undermine the ethos and policy of the Games) will be assisted and supported. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, Venue Authorities will do so. There are a wide range of tools available to an enforcement agency. The actions that may be taken include:
 - (a) No action.
 - (b) Informal Action and Advice.
 - (c) Formal Notice.
 - (d) Forfeiture Proceedings.
 - (e) Seizure of goods/equipment.
 - (f) Termination of an authorisation granted by the OC
 - (g) Injunctive Actions and other Civil Sanctions.
 - (h) Refusal/Suspension/Revocation of a licence.
 - (i) Simple Caution.
 - (j) Prosecution.
 - (k) Proceeds of Crime Applications.
- 2.4 In relation to the Games Act the following specific action is open to Venue Authorities, namely to seize and detain goods or documents where necessary to:
 - end the commission of the offence;
 - prevent the commission of the offence;
 - enable the goods or documents to be used as evidence in proceedings for the offence

- 2.5 When considering enforcement action, the Venue Authorities will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. However, it must also be noted that legal processes dictated by statute will be applied in many instances where contraventions of legislation have been detected. Further, this paragraph does not apply where immediate action is required to prevent or respond to a potential breach/contravention or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 2.6 If a business is operating in more than one Local Authority area and has chosen to have a registered Primary Authority Partnership the Venue Authorities will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of the enforcement action that is proposed to take. The Venue Authority may under that Act also refer the matter to OPSS if appropriate.
- 2.7 This policy is intended to provide guidance for enforcement officers, businesses, consumers and the public.

3. SCOPE OF THE POLICY

- 3.1 This Policy, where appropriate, applies to the legislation delegated to the Venue Authorities and primarily will be about protecting the brand of the Games and enforced by authorised officers with delegated enforcement powers.
- 3.2 'Enforcement' includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of the Regulatory Enforcement Sanctions Act 2008 the term 'enforcement action' has been given a general statutory definition, which is:
- (a) Action to source compliance with a restriction, requirement or condition in relation to a breach or supposed breach
 - (b) Action taken in connection with imposing a sanction for an act or omission; and,
 - (c) Action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in Section 2 of this Policy. This means that if a business or organisation is registered with a Primary Authority and action is being proposed and that action is one of those listed then, (unless one of the permitted exceptions applies), the Venue Authority will be required to contact the Primary Authority and give notice of the enforcement action being proposed.
- 3.5 By this document the Venue Authorities involved in the Games have agreed to abide by the spirit of this enforcement policy and will assist enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations.
- 3.6 In certain circumstances the Venue Authorities will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity through social media and other forms of awareness raising portals.

4. VENUE AUTHORITIES' APPROACH

- 4.1 The principles followed are informed by a number of codes of practice and statute as well as the Regulators' Code (the Code), Enforcement Concordat and the Guidance of OPSS as to how to apply these documents.
- 4.2 Venue Authorities' officers are trained and competent in the regulatory area engaged and are aware of their responsibilities and obligations to those subject to enforcement.
- 4.3 Where it is considered formal enforcement action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.
- 4.4 The approach of the Venue Authorities involved in the Games will aim to:
- (a) Change the behaviour of the offender, ensuring compliance with relevant legislation;
 - (b) Change attitudes in society to offences which may not be considered to be serious in themselves, but which are widespread;
 - (c) Eliminate any financial gain or benefit from non-compliance;
 - (d) Be responsive and consider what is appropriate for the offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) Be proportionate to the nature of the offence and the harm caused;
 - (f) Restore the harm caused by regulatory non-compliance, where appropriate; and
 - (g) Deter future non-compliance;
 - (h) Achieve compliance with Statutory requirements.
- 4.5 All enforcement decisions will seek to be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.6 Where possible, Venue Authorities will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm or loss or the impact on the well-being of individuals or potential or actual harm to communities or the environment.
- 4.7 Where possible, Venue Authorities will endeavour to ensure that those regulated can seek advice from the service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on its own merits and will determine the action.
- 4.8 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities.

- 4.9 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Code. In certain instances, it may be concluded that a provision in the Code is either not relevant or is outweighed by another provision. Venue Authorities will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

5. ENFORCEMENT ACTION

5.1 An Overview of the enforcement actions available

- 5.1.1 As stated in section 2, there are a large number of potential enforcement options.
- 5.1.2 The order in which the enforcement actions are listed in Section 2 is not necessarily in absolute order of escalating seriousness relative to each other. The Venue Authorities reserve the right to escalate the level of enforcement action, having regard to the criteria in paragraph 2.2 of this policy.

5.2 Deciding what level of action is appropriate

- 5.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:
- (a) Whether the activity has been authorised by the OC
 - (b) The seriousness of the compliance failure.
 - (c) The past and current performance of any business and/or individual concerned.
 - (d) Any obstruction on the part of the offender.
 - (e) The risks being controlled.
 - (f) Statutory guidance.
 - (g) Codes of Practice.
 - (h) Any legal advice.
 - (i) Policies and priorities of Government, the Venue Authorities and the OC.
 - (j) A person's age in relation to young people (termed 'juveniles') aged under 18.
 - (k) The existence of a Primary Authority agreement.
 - (l) Any duty of a local authority or Statutory provisions.
- 5.2.2 Certain enforcement action, such as the decision to seek a Simple Caution and/or the decision to prosecute, is further and specifically informed by those matters set out in the accompanying policy.
- 5.2.3 Action is more likely to be taken if the following are of relevance
- (a) Situations where it is evident that a vulnerable individual or vulnerable group has been exploited
 - (b) Obstruction of authorised officers of the service in the lawful execution of their duties.
 - (c) Offences involving actual or intended deceptions, fraud or negligence.

- (d) Wilful disregard for the law.
- (e) Risk to public health /safety
- (f) Public nuisance
- (g) Actions in direct contradiction to the provisions and guidance provided for alongside the Games such as advertising and/or trading in restricted zones, or copyright infringement, or ticket touting.

6 DECISIONS ON ENFORCEMENT ACTION

- 6.1 Decisions about the most appropriate enforcement action as listed in paragraph 2.2 above are based upon those matters set out in Section 5.2 above.
- 6.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:
 - (a) Investigating Officer(s).
 - (b) Senior managers
 - (c) Relevant Venue Authority Solicitors
 - (d) The lead officers for the Joint Authorities Regulatory Service (JARS)
 - (e) The OC /Brand protection representatives
 - (f) The relevant Police Force.
- 6.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Venue Authority's Scheme of Delegations.
- 6.4 **Enforcement Policy – Appeals, Complaints and Compensation.**

- 6.4.1 **Appeals through the Venue Authority's Corporate Complaints Procedure.** Each Venue Authority has a corporate comments, compliments and complaints Procedure.

The Venue Authorities encourage any person who has a problem with a service they receive, due to a failure in the service, to report it. However, where a report is received from a person who is the subject of a law enforcement investigation or current/pending statutory action then the Corporate Procedure is not normally used and the investigation into the complaint will be suspended. The reasons for this and examples of relevant circumstances include:

- Ongoing law enforcement investigation or legal process has commenced. In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the local authority can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Procedure cannot be used to attempt to override or circumvent PACE, for example to challenge elements of an investigation; the necessity for enforcement action; or an enforcement decision. The suspension would apply until law enforcement/ legal proceedings stages are completed. The outcome of an investigation, including legal proceedings may render the basis of a complaint/report nullified, but a person's rights are

not affected as the criminal justice system has processes to ensure fairness and equity, including appeals procedures.

- A complaint that has already been settled in another way.... This includes a determination by a Court or Tribunal service or other statutory regulator/ arbitration/ ombudsman service.

6.4.2 The Games Act provides for a person to claim from the relevant local authority compensation in the event of unlawful enforcement or if unreasonable force has been used in enforcement. In the event that such a compensation claim is found to be justified the relevant Venue Authority will share the details of the case with other Venue Authorities to minimise the risk of further similar issues recurring. Where formal enforcement action has been undertaken, those affected should be provided with information as appropriate about how to submit a claim for compensation.

7. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

7.1 When a Venue Authority has come to the decision to take enforcement action against an organisation and:

1. The organisation is a business operating in more than one local authority area and has chosen to have a registered Primary Authority Partnership under the RES Act; and
2. The enforcement action being proposed is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act.

The Venue Authority will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify the Primary Authority of the action being proposed.

7.2 The Primary Authority has the right to object to the proposed action in which circumstances either they or the Venue Authority may refer the matter to BRDO.

8. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

8.1 In addition to the duties imposed upon Venue Authorities by the RES Act in respect of co-operating and working with Primary Authorities and RD, they will, where appropriate, co-operate and co-ordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

8.2 Where an enforcement matter affects a wide geographical area beyond the Venue Authority's boundaries or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

8.3 Venue Authorities will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- (a) Government Departments and Agencies.
- (b) The OC
- (c) Police Forces.
- (d) Fire Authorities.
- (e) Statutory Undertakers.
- (f) Other Local Authorities.

(g) Other internal local authority Departments

9. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 9.1 Venue Authorities undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

10. PROTECTION OF HUMAN RIGHTS

- 10.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

END OF DOCUMENT

RISK MATRIX FOR REGULATION AND ENFORCEMENT'S ENFORCEMENT POLICY

<u>REGULATION AND ENFORCEMENT ACTIVITY</u>	<u>ACTIVITY</u>	<u>SCORE</u>
Does the activity involve breaches of criminal legislation?	YES – continue to matrix.	
	NO – then this matrix is not an appropriate method for decision making in relation to the matter.	
People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
	A high probability that illness or injury will occur or has occurred. Any injuries or illness should be restricted in nature (i.e. not require hospital treatment).	2
	Death, illness, injury (requiring hospital treatment for more than three days sickness absence from work) or has occurred or is likely to occur.	3
Direct or indirect economic implications to legitimate businesses	No implications for legitimate businesses.	0
	Limited consequences to a very small number of legitimate businesses.	1
	A large part of the legitimate business sector will be affected, for example all of those in a particular geographic area or businesses supplying a particular market.	2
	All of the legitimate business sector will be affected.	3
Direct or indirect economic implications to consumers or the wider public	No economic loss to consumers or the wider public.	0
	The economic loss was very small (or was likely to be very small) or to a small group of individuals and the amount of economic loss was very small (or was likely to be very small).	1
	The economic loss was restricted (or was likely to be restricted) to a group of individuals and the amount of economic loss was limited (or was likely to be limited).	2
	Higher level of economic loss to an individual or the economic loss or the probability of such or the amount of economic loss could have potentially affected a higher	3

	number of consumers or the wider public.	
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Reputation (risk to the local authorities reputation) in taking no action	No reputational risk.	0
	Low reputational risk.	1
	Medium reputational risk.	2
	High reputational risk.	3
Likelihood that the infringing activity could have been easily ascertained (for example: the size of the business may be a factor when making this assessment or using a reasonable test; the persons should have known it was wrong or information could be readily discovered online.	Very difficult to ascertain.	0
	Difficult to ascertain.	1
	Could be ascertained with a limited amount of activity on behalf of the business.	2
	Easy to ascertain even with limited knowledge of the subject area.	3
Has the defendant taken reasonable precautions and due diligence in the circumstances to prevent the activity from occurring?	Not applicable.	0
	High level of precautions, training and systems in place and followed the systems.	1
	Some precautions and systems in place and followed but not comprehensive.	2
	No training and systems in place or followed.	3
What is the history of the defendant in relation to regulatory compliance? (The local or national position of a defendant can be taken if appropriate. Considerations of ‘culpability’ and ‘harm’ may be necessary where there has been or would not likely be any local authority history of compliance assessment)	Not applicable.	0
	The defendant has a good history of proactive work with the Local Authority to achieve compliance in its sector. Previous engagement has found no issues. (Considerations where culpability and/or harm are ‘low’).	1

	Previous engagement has found issues, however, these have been rectified within a reasonable time frame. (Considerations where culpability and/or harm are 'medium').	2
	The defendant has a poor history of Local Authority engagement and/or previous instructions have been disregarded and/or a high level of non-compliance has been found on previous engagement. (Considerations where culpability and/or harm are 'high').	3
Aggravating features (i.e. length of time activity has been happening for; was the activity purposely covert etc.; was the victim vulnerable; was an attempt made to obstruct an investigation)	Not applicable.	0
	Low level of aggravating features.	1
	Some level of aggravating features, however, limited by time or amount of aggravation.	2
	Higher level of aggravation.	3

<u>KEY</u>	<u>ASSESSMENT</u>	<u>SCORE RATING</u>
3 – high risk	If an activity results in three or more level HIGH RISK scores then formal action should be considered.	Score 12 and above.
2 – medium risk	Consider informal / lower tier action.	Score 2 to 11.
1 – low risk	No action.	Score 1.

The Risk Matrix will be used as a framework to support transparency and consistency of approach and decision making. (For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent).

Where the score falls between 2 and 11 and the investigating officer believes the matter should be referred for formal proceedings the case must be reviewed by the appropriate Service Manager and a record of the decision will be retained.

Where the score is 12 and above and the enforcement officer believes the matter should not be referred for formal proceedings the case must be reviewed by the Service manager and/or Heads of Service and a record of the decision will be retained.

Institution of criminal proceedings will only be formally recommended to the relevant Venue Authority decision-maker where the Venue Authority's Legal Services and/or relevant Head of Service have authorised progression.