

**MEMORANDUM FOR THE HOUSE OF LORDS DELEGATED POWERS AND
REGULATORY REFORM COMMITTEE**

***THE LONDON OLYMPIC GAMES AND PARALYMPIC GAMES (AMENDMENT)
BILL***

- 1 This memorandum has been prepared by the Department for Culture, Media and Sport and the Department for Transport for the purposes of the House of Lords Delegated Powers and Regulatory Reform Committee. It identifies the provisions in the Bill that confer or expand delegated powers and other provisions that have implications for delegated powers in other legislation. It explains the purpose of the provisions; describes why matters are left to delegated legislation; and explains the procedure selected for each power and why it has been chosen.

Background

- 2 The Bill amends the London Olympic Games and Paralympic Games Act 2006 (“the 2006 Act”), which makes provision in a number of areas for the purposes of the London 2012 Olympic and Paralympic Games (“2012 Games”). In particular, the 2006 Act provides for Ministers to make regulations about advertising and trading in the vicinity of 2012 Games events (“advertising and trading regulations”) and makes provision in relation to transport, including for the management of traffic.
- 3 The main purpose of the advertising, trading and transport provisions of the 2006 Act is to meet commitments given by the Government to the International Olympic Committee in London’s bid to host the 2012 Games. However, the provisions also reflect other aims.
- 4 For example, the objectives of the advertising and trading provisions are:

- a) to ensure that the 2012 Games are not over commercialised (so that the focus remains on sport) and that all Olympic and Paralympic events have a celebratory “look and feel” consistent with the sporting and competitive ideals of the Olympic and Paralympic movements;
 - b) to prevent “ambush marketing” in the areas around 2012 Games events, during the Games; and
 - c) to ensure people can easily access 2012 Games venues and are not impeded in this regard by advertising or trading activities.
- 5 The 2006 Act provides for separate advertising and trading regulations to be made by statutory instrument for England, Northern Ireland, Scotland, and Wales, by the Secretary of State (regulations for England and Northern Ireland), Scottish Ministers, and Welsh Ministers. It is not intended that any regulations will be made for Northern Ireland, as no 2012 Games events are scheduled to take place there.
- 6 The transport provisions of the 2006 Act reflect commitments to the International Olympic Committee on journey times between 2012 Games competition and non-competition venues for members of the Games Family (athletes, officials, accredited media and marketing partners), as well as the wider need to manage the road network effectively during the Games to support spectators’ travel by public transport, walking and cycling, and maintain normal business. The provisions of the 2006 Act as enacted include the designation, by way of order, of an “Olympic Route Network” of roads connecting 2012 Games venues on which traffic regulations are to be imposed to ensure the reliable and safe movement of vehicles carrying members of the Games Family.

Summary

- 7 Under the 2006 Act, advertising and trading regulations are subject to the “affirmative resolution procedure” – they may not be made unless a draft has been laid before and approved by Parliament (or the Scottish Parliament or the National Assembly for Wales in the case of regulations for Scotland or Wales respectively). The 2006 Act also requires Ministers to consult, amongst others, persons who represent interests likely to be affected by the regulations before making advertising and trading regulations.
- 8 The Olympic Delivery Authority (“ODA”) – a statutory corporation established by the 2006 Act – is required by the 2006 Act to make arrangements to have the effect of advertising and trading regulations made or expected to be made brought to the attention persons likely to be affected or interested. To that end, it must aim to give two years’ notice of the general nature of the regulations and then six months’ notice of their detailed provisions.
- 9 The Bill changes the types of Parliamentary procedure and public notice required under the 2006 Act for advertising and trading regulations (other than the first set of those regulations, which remain subject to the existing provisions). However, the Bill does not affect the requirement that Ministers consult before making regulations or the ODA’s general duty to publicise the regulations.
- 10 The Bill extends the circumstances in the 2006 Act under which traffic restrictions can be imposed by order under the Road Traffic Regulation Act 1984 (“RTRA”). It expands the power to impose traffic restrictions by way of notice under section 14 of RTRA to facilitate a fast response to sudden and unforeseen traffic management requirements during the 2012 Games. In addition, clause 9 of the Bill enables Traffic Commissioners to use a shortened procedure to vary the conditions on a goods vehicle operator’s licence issued under the Goods Vehicles (Licensing of Operators) Act 1995 (“GVLA”), where

such a variation is required in urgent circumstances, so as to ensure efficient freight movements during the Olympic period.

- 11 The Bill clarifies the process for the setting of penalty charge levels in relation to a contravention of a traffic management provision imposed under the 2006 Act.

Clause 2: Parliamentary procedure and public notice for advertising and trading regulations made under the 2006 Act

Power conferred on: Secretary of State for regulations for England and Northern Ireland; Scottish Ministers for regulations for Scotland; and Welsh Ministers for regulations for Wales. (This provision is made in the 2006 Act and is not affected by the Bill.)

Power exercisable by: Order made by statutory instrument. (This provision is made in the 2006 Act and is not affected by the Bill.)

Parliamentary procedure: First regulations: affirmative resolution; subsequent regulations: negative resolution. (This provision is effected by the Bill.)

- 12 This clause amends the 2006 Act to provide for advertising and trading regulations, other than the first such regulations, to be subject to the “negative resolution procedure” – that is, subject to annulment by resolution of each House of Parliament (or the Scottish Parliament or National Assembly for Wales for regulations for Scotland or Wales). The first advertising and trading regulations remain subject to the affirmative resolution procedure, as under the 2006 Act.

- 13 The clause also removes from the ODA the specific duty to aim to give two years' and then six months' notice of the advertising and street trading regulations (other than first such regulations). The ODA will remain obliged, as under the 2006 Act, 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 in respect of all advertising and trading regulations. Ministers will also remain subject to the duty to consult, amongst others, persons who represent interests likely to be affected by the regulations.

- 14 Draft regulations for England, Wales, and Scotland were the subject of a public consultation exercise earlier this year; the relevant documentation is still available here: <http://www.culture.gov.uk/consultations/7759.aspx>. The draft regulations have been the subject of extensive pre-consultation discussions with affected stakeholders and, in June 2009, the ODA published a notice outlining the general nature of the proposed regulations. The draft regulations apply only to small, individually drawn areas around each 2012 Games venue, during short periods tailored for each venue by reference to the times when Games events are to take place.

- 15 Under the 2006 Act, the advertising and trading regulations are required to specify (or provide criteria for determining) the places in respect of which, and the periods of time during which, they apply. The draft regulations specify the places to which they apply by referring to maps that illustrate regulated “event zones”. The regulations include detailed schedules of dates specifying when they apply to each event zone. In the Government’s view this approach provides the greatest certainty and accessibility: it leaves no room for doubt as to when and where the regulations apply and provides an easy way for the public quickly to ascertain the scope of the regulations.

- 16 However, one downside of this approach is that, if a Games venue or the scheduled time for an event changes, the regulations have to be amended if they are to apply in respect of the new venue or time (and not in respect of the old venue or time).
- 17 While it is not planned or envisaged that the Games programme will change after the principal regulations are made, it is possible that unforeseen circumstances may arise that necessitate a change. For example, a new venue might have to be found if an existing venue becomes unusable due to an emergency situation, such as a burst water main. An alteration to the schedule might be necessary if competitors' or officials' arrivals at a venue are delayed by circumstances beyond their control, such as because of a problem with air traffic. Any such change would be as a last resort and would only be made if there were no other option.
- 18 If these circumstances arise late in the day, it is unlikely to be practicable to amend the regulations so that they apply in respect of the new venue or timetable, if it is necessary first to comply with the affirmative resolution procedure. Likewise, in respect of any late, amending regulations that are made, the ODA would not be able to comply with its duty to aim to give notice of the regulations two years and then six months before they come into effect.
- 19 For example, if a Games venue had to be changed a few days before the event was scheduled to take place (or after the venue had begun to be used for the event) it may not be possible to secure Parliamentary resolutions approving draft amending regulations in time to enable the principal regulations to be applied in respect of the new venue. The possibility of this occurring is exacerbated by the timing of the 2012 Games, which will take place during the summer of 2012¹ when Parliament is likely to be in recess. Even if amending

¹ The opening ceremony of the Olympic Games is on 27 July 2012 and the closing ceremony of the Paralympic Games is on 9 September 2012.

regulations could be made in these circumstances, the ODA could not comply with its duty to give two years' and then six months' notice of the regulations.

- 20 In the Government's view, this is far from ideal – it would be preferable to be able to amend the regulations so that they apply in respect of the new venue or schedule (and not in respect of a venue that was no longer to be used for the Games). Clause 2 seeks to effect this by amending the Parliamentary procedure and ODA notice provisions of the 2006 Act as described above.
- 21 It is intended that the first set of regulations (those which were consulted on earlier this year) will be comprehensive and that amending regulations would only be made if the kind of unforeseen circumstances described above arose. As the Bill is unlikely to receive Royal Assent before the end of this year (and as clause 2 does not come into force until two months after Royal Assent) the window for making any amending regulations under the new provisions would be relatively small (the opening ceremony of the Olympic Games being on 27 July 2012).
- 22 Under clause 2, any amending regulations would be subject to Parliamentary scrutiny – they could be annulled by a resolution of either House (or the Scottish Parliament or National Assembly for Wales for Scottish or Welsh regulations respectively). Further, as we have noted above, before making any regulations Ministers will still be required to consult, amongst others, representatives of affected persons and the ODA will still be required to ensure that the effect of any regulations is brought to the notice of affected or interested persons. In these circumstances, the Government considers that the amendments contained in clause 2 are reasonable and justified.
- 23 For completeness we should note that clause 2 would make the approach for advertising and trading regulations for the 2012 Games consistent with the approach that has been adopted by the Scottish Parliament for advertising and

trading regulations to be made for the 2014 Glasgow Commonwealth Games (except that, in respect of the Glasgow regulations, a statutory requirement that Scottish Ministers consult specified persons is also disapplied for the second and subsequent sets of regulations – that is not the case under clause 2 of the Bill): see sections 43 and 44 of the Glasgow Commonwealth Games Act 2008 (ASP 4).

Clause 4: Amendments to section 14 2006 Act – orders and notices under section 14 of the Road Traffic Regulation Act 1984 for Olympics purposes

24 Clause 4 expands existing powers, as follows.

Clause 4(3) – expansion of order-making power in section 14(1) 1984 Act

<i>Power (already) conferred on:</i>	<i>Traffic authorities (as defined by s.121A of the Road Traffic Regulation Act 1984) and the ODA</i>
<i>Power exercisable by:</i>	<i>Order</i>
<i>Parliamentary procedure:</i>	<i>None</i>

Purpose

25 Section 14(1) of the 2006 Act as enacted confers power on the ODA to make an order under section 14 of the Road Traffic Regulation Act 1984 (“the 1984 Act”) for a purpose mentioned in section 14(2) of the 2006 Act (an “Olympics purpose”). (The purposes in section 14(2) are to implement the Olympic Transport Plan and to facilitate transport services in connection with the 2012 Games.) Section 14(4) of the 2006 Act as enacted confers identical power on a traffic authority to make such an order for such a purpose.

- 26 The Government considers that the Olympics purposes mentioned in section 14(2) of the 2006 Act as enacted were additional to the conditions mentioned in section 14(1) of the 1984 Act.
- 27 Clause 4(3) removes the conditions mentioned in section 14(1) of the 1984 Act. The clause therefore expands the powers conferred by section 14(1) and (4) of the 2006 Act as enacted. This expansion removes the restriction that the ODA or traffic authority must (in addition to being satisfied as to the purposes in section 14(2) of the 2006 Act) be satisfied that traffic on the road should be restricted or prohibited—
- (a) because works are being or are proposed to be executed on or near the road; or
 - (b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or
 - (c) for the purpose of enabling the duty imposed by section 89(1)(a) or (2) of the Environmental Protection Act 1990 (litter clearing and cleaning) to be discharged.

Reasons for delegation and for chosen level of scrutiny

- 28 The reasons it is considered appropriate for this power to remain delegated, and for it to be made without the scrutiny of the negative laying procedure, are addressed below in relation to clause 4 as a whole.

Clause 4(4) – expansion of the notice-issuing power in section 14(2) 1984 Act

Power (already) conferred on: Traffic authorities (as defined by s.121A of the Road Traffic Regulation Act 1984)

Power exercisable by: Notice

Parliamentary procedure: None

Purpose

- 29 Power for a traffic authority to issue a notice under section 14(2) of the 1984 Act already exists. But the new section 14(5B) and (5C) of the 2006 Act which are inserted by clause 4(4) change the conditions which must be satisfied before the notice-issuing power in section 14(2) of the 1984 Act can be exercised. Unlike clause 4(3), this does not expand the power in the sense of merely removing a restriction on the power. Rather, it replaces one restriction with another (although this may be considered to expand the power, see paragraph 32 below).
- 30 The restriction being replaced is that it must appear to the traffic authority that (a) it is necessary or expedient for the restriction or prohibition to come into force without delay because works are being or are proposed to be executed on or near the road or for the purpose of enabling the duty imposed by section 89(1)(a) or (2) of the Environmental Protection Act 1990 (litter clearing and cleaning) to be discharged, or (b) it is necessary for the restriction or prohibition to come into force without delay because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works).
- 31 The replacement restriction is that it must appear to the traffic authority to be necessary or expedient for either of the purposes mentioned in section 14(2) of the 2006 Act (these are the Olympics purposes mentioned above) that the restriction or prohibition should come into force without delay.
- 32 Although this is replacing one restriction with another, rather than removing a restriction, it could still be considered an expansion of the power. This is because the replacement restrictions (the Olympics purposes) may be considered less restrictive than the restrictions in section 14(1) of the 1984 Act.

Reasons for delegation and for chosen level of scrutiny

- 33 The reasons it is considered appropriate for this power to remain delegated, and for it to be made without the scrutiny of the negative laying procedure, are addressed below in relation to clause 4 as a whole.

Clause 4(6) – expansion of power to suspend a statutory provision

Power (already) conferred on: Traffic authorities (as defined by s.121A of the Road Traffic Regulation Act 1984) and the ODA – section 14(1) orders

Traffic authorities – section 14(2) notices

Power exercisable by: Order / notice

Parliamentary procedure: None

Purpose

- 34 Section 14(7)(b) of the 1984 Act, together with section 14 of the 2006 Act as enacted, already provided that an order made by the ODA or traffic authority, or a notice issued by the traffic authority, may suspend a statutory provision without replacing it with a restriction or prohibition. But the purposes for which that could be done were those mentioned in section 14(1) of the 1984 Act (see paragraph 27 above).
- 35 Clause 4(6) changes this power to suspend so that it may be done for an Olympics purpose instead (those in section 14(2) of the 2006 Act). Again, although this is not a clear expansion of the power in the sense of removal of a restriction, it could still be considered an expansion of the power; the Olympics purposes may be considered less restrictive than the restrictions in section 14(1) of the 1984 Act.

Reason for delegating powers to which clause 4 relates

- 36 The powers to which clause 4 relates already existed in the 2006 Act. The purpose of those powers to impose traffic restrictions was to facilitate a fast response to sudden and unforeseen traffic management requirements during the 2012 Games. It was considered, when making the 2006 Act, that it was impractical to impose unforeseen traffic requirements on the face of the Bill. The powers to make such restrictions needed therefore to be delegated by the 2006 Act.
- 37 The expansion of those powers by clause 4 needs to follow the delegation already achieved by the 2006 Act. The reductions by clause 4 of the restrictions on the powers are not considered to change the need for the powers to be conferred. The purpose of the powers is still that they are to cater for unforeseen traffic requirements.

Scrutiny of exercise of powers to which clause 4 relates

- 38 The Government also considers that there is no reason to depart from what the 2006 Act envisaged in terms of parliamentary scrutiny.

Clause 5(4) and (6): Amendments to section 15 2006 Act, and new section 15A 2006 Act

Power conferred on: ODA and the Secretary of State

Power exercisable by: Executive decision

Parliamentary procedure: None

Purpose

- 39 Section 15 of the 2006 Act as enacted modified Schedule 9 to the Traffic Management Act 2004 (“the 2004 Act”). The modified Schedule 9 set out the

procedure for setting penalty charge levels for contraventions of orders and notices made under section 14 of the 1984 Act, as modified by the 2006 Act.

- 40 Under those original modifications, the ODA had to submit to the Secretary of State for approval the levels of charges the ODA proposed to set. If the Secretary of State approved those levels, the ODA had to publish them in such manner as the Mayor of London may determine. Before setting the levels of charges, the ODA had to consult Transport for London and the London local authorities. If the ODA failed to set the levels of charges, or the levels the ODA proposed did not meet with the approval of the Secretary of State, the Secretary of State was required to set the levels instead.

- 41 The power conferred on the ODA by the modifications to section 15 as enacted was to set the levels of charges by decision. The Bill does not change that.

- 42 Subsections (4) and (6) of clause 5 amend section 15 of the 2006 Act and insert a new section 15A into that Act. They amend the modifications to Schedule 9 of the 2004 Act to clarify the procedure for setting levels of penalty charges. The amended modifications also reaffirm the duty on the ODA to set penalty charge levels following consultation with Transport for London and the London local authorities.

- 43 Although clause 5 is mainly a tidying-up exercise, subsections (4) and (6) do make two changes to the delegated powers conferred by the modified Schedule 9.

- 44 The first change relates to the power to determine the manner of publication of the levels of charges. This power is conferred by clause 5 on the Secretary of State instead of on the Mayor of London (this power was vested in the mayor by paragraph 5 of Schedule 9 as originally modified by section 15 of the 2006 Act).

45 The second change to delegated powers made by clause 5 is to change the method by which the Secretary of State must set the levels of penalty charges, if he does not approve the levels proposed by the ODA. Paragraph 3(2) of Schedule 9 to the 2004 Act, as modified by the original section 15(3) of the 2006 Act, empowered the Secretary of State to set the levels of charges by order. The replacement modification to that paragraph 3 by clause 5 empowers the Secretary of State merely “to set” the levels of charges; he will not have to do so by order.

Reason for delegating powers to which clause 5 relates

46 The procedural principles established in the 2006 Act have been followed by not including the penalty charge levels on the face of the Bill. Following consultation, no decision has yet been taken on the levels of charges; and a decision will probably not have been taken in time to include them in the Bill. So there is no reason to depart from the delegation of those powers envisaged by the 2006 Act.

Scrutiny of exercise of powers to which clause 5 relates

Scrutiny of setting of penalty charge levels by ODA under clause 5

47 The existing Schedule 9 to the 2004 Act provides for the levels of penalty charges to be set by decision. The Government considers that there is no reason to depart from the scheme of that Schedule 9 in applying it for Olympics traffic management purposes. As in that Schedule 9, the penalty charge levels will be required by this clause to be set only after consultation, and only with approval (in these clauses, approval by the Secretary of State instead of approval by the Mayor of London).

Scrutiny of setting of penalty charge levels by Secretary of State under clause 5

- 48 As discussed at paragraph 45 above, the replacement modification to paragraph 3 of Schedule 9 by clause 5 removes the requirement for the Secretary of State, in setting the levels of charges, to do so by order.
- 49 Given that such an order would not have been subject to the parliamentary scrutiny of a negative or affirmative laying procedure, this amendment does not change the level of parliamentary scrutiny to which the setting of the levels by the Secretary of State will be subject. In addition, given that the ODA could, under the 2006 Act, set the levels of charges by decision rather than order, it is considered appropriate that the Secretary of State's power should be exercised in the same manner. He will receive recommendations from the ODA as a result of consultation with Transport for London and the London local authorities. The Secretary of State will himself have access to the consultation responses. It is expected that the charge levels, even if set by the Secretary of State, will be arrived at in light of the consultation responses and after discussion between the ODA and the Secretary of State.

Clause 6(3): Amendment to section 16(2) 2006 Act

Power (already) conferred on: Traffic authorities (as defined by s.121A of the Road Traffic Regulation Act 1984) and the ODA

Power exercisable by: Order

Parliamentary procedure: None

Purpose

- 50 Clause 6(3) expands the power in section 16 of the 2006 Act. Section 16 of the 2006 Act as enacted lifted the conditions imposed by section 16B of the 1984 Act on the making of an order under section 16A of the 1984 Act. But only in relation to road closures under section 16A of the 1984 Act, not in relation to

road restrictions under section 16A. Clause 6 takes it further by lifting the section 16B conditions in relation to road restrictions too. This expands the order-making power in section 16A of the 1984 Act by allowing it to be exercised in relation to a London Olympic event, without the section 16B conditions, to restrict the use of a road.

Reason for delegating powers to which clause 6(3) relates

51 The expansion of the power in section 16 of the 2006 Act by clause 6 needs to follow the delegation already achieved by the 2006 Act. The lifting by clause 6 of the conditions for the exercise of the power to restrict the use of a road is not considered to change the need for the power to be delegated. The purpose of the power is still to cater for unforeseen traffic requirements.

Scrutiny of exercise of powers to which clause 6(3) relates

52 This clause expands a power already conferred by the 1984 Act and already modified by the 2006 Act as enacted. It is considered that there is no reason to depart from the level of scrutiny envisaged by those two Acts for that power.

Clause 6(4): New section 16(4) 2006 Act – setting of penalty charge levels

Power conferred on: ODA and the Secretary of State

Power exercisable by: Executive decision

Parliamentary procedure: None

Purpose

53 Clause 6(4) makes modifications to Schedule 9 to the 2004 Act identical to those made by clause 5(4) and (5). But this time the modifications relate to contravention of an order made under section 16A of the 1984 Act, as applied

by the 2006 Act (the modifications by clause 5 were for contraventions of orders and notices under section 14 of the 1984 Act).

- 54 The effect of this is to extend the ODA's power to set the levels of penalty charges. The ODA may, by virtue of this amendment, set levels of charges for contraventions of orders under section 16A of the 1984 Act, as well as for contraventions of orders and notices under section 14 of that Act.
- 55 An additional effect is that the Secretary of State's power is similarly extended. His power to approve the levels of charges is extended to include levels of charges for contraventions of orders under section 16A of the 1984 Act.
- 56 And a new power is conferred on the Secretary of State, identical to that conferred by the modifications by clause 5(4) and (5) – to determine the manner of publication of the levels of charges.

Reason for delegating powers to which clause 6(4) relates

- 57 It is considered appropriate to delegate the setting of the levels of penalty charges rather than including them on the face of the Bill because the levels will probably not be decided in time to include them in the Bill. Time needs to be allowed for adequate consultation.

Scrutiny of exercise of powers to which clause 6(4) relates

- 58 The existing Schedule 9 to the 2004 Act provides for the levels of penalty charges to be set by decision. The Government considers that there is no reason to depart from the scheme of that Schedule 9 in applying it for Olympics traffic management purposes. As in that Schedule 9, the penalty charge levels will be required by this clause to be set only after consultation.

Clause 7(1): New sections 16A and 16B 2006 Act – enforcement of moving traffic contraventions in Greater London

59 Clause 7 inserts a new section 16A and 16B into the 2006 Act. These enable moving traffic contraventions in Greater London to be enforced. (This is needed because the moving traffic contraventions provisions of the 2004 Act are not yet commenced.) They do this by applying sections 4, 6 and 7 of, and Schedules 1 and 2 to, the 2003 Act.

60 There are two types of power to note in clause 7. First, the new section 16A(1) and (2) apply provisions which themselves confer regulation-making powers, those are section 4(9) of the 2003 Act, and paragraph 7(4) of Schedule 1 to that Act. Second, new sections 16A(5) and 16B(1) confer powers (and duties) as to setting of penalty charge levels (and setting discounts for early payment); these powers and duties are similar to those discussed above.

61 Taking in turn each type of power conferred by clause 7:

New section 16A(1) and (2) – application of provisions which themselves confer regulation-making powers

Section 4(9) 2003 Act

62 Section 4(9) of the 2003 Act confers power on the Secretary of State to make regulations prescribing additional matters which must be dealt with in a penalty charge notice. The application of section 4 of the 2003 Act by clause 7 does not of itself expand the Secretary of State's regulation-making power in section 4(9). But the committee may wish to note that regulations made by the Secretary of State in exercise of the power in section 4(9) of the 2003 Act will apply for the purposes of enforcing contraventions under new section 16A of the 2006 Act.

Paragraph 7(4) of Schedule 1 to 2003 Act

63 Schedule 1 to the 2003 Act relates to representations and appeals against, and enforcement of, penalty charge notices. Paragraph 6 of Schedule 1 allows recovery of the penalty charge, if a county court so orders, as if it were payable under a county court order. But the person against whom the county court recovery order is made may serve a statutory declaration in accordance with paragraph 7(2) of the schedule. Service of a statutory declaration can result in deemed revocation (by paragraph 7(8)) of the court order for recovery of the penalty charge. Paragraph 7(3) specifies grounds on which a statutory declaration will be invalid. Paragraph 7(4) of Schedule 1 to the 2003 Act confers power on the Secretary of State to make regulations amending paragraph 7(3) by adding further grounds for a statutory declaration to be invalid.

64 The same point is made here as was made above in relation to section 4(9) of the 2003 Act: the application of Schedule 1 to the 2003 Act by clause 7 does not of itself expand the Secretary of State's regulation-making power in paragraph 7(4) of that schedule. But the committee may wish to note that regulations made by the Secretary of State in exercise of the power in that paragraph 7(4) will apply for the purposes of enforcing contraventions under new section 16A of the 2006 Act.

New sections 16A(5) and 16B(1) – powers and duties as to setting penalty charge levels and power to specify discount for early payment

Power conferred on: ODA and the Secretary of State

Power exercisable by: Executive decision

Parliamentary procedure: None

Purpose – setting of penalty charge levels

65 New sections 16A(5)(b) and 16B(1) modify section 4(13) of the 2003 Act. The modified section 4(13) requires the ODA to set the levels of penalty charges for Olympic traffic contraventions (as defined in new section 16A(3)), after consultation with Transport for London and the London local authorities.

66 The modified section 4(13) of the 2003 Act confers—

- (1) a duty on the ODA to set the levels of penalty charges for contravention of the provisions of the 2003 Act which are applied by new section 16A of the 2006 Act,
- (2) a power on the Secretary of State to approve the levels of penalty charges proposed by the ODA,
- (3) a duty on the Secretary of State to set the penalty charge levels if the ODA fails to or if the Secretary of State does not approve the levels proposed by the ODA, and
- (4) a power for the Secretary of State to determine the manner of publication of levels of charges.

67 The same points are relevant to these new powers (and duties) as are made above in relation to the modifications to Schedule 9 to the Traffic Management Act 2004 above.

Purpose – setting of discounts for early payment – new section 16A(5)(a) 2006 Act

68 New section 16A(5)(a) of the 2006 Act, inserted by clause 7(1), modifies section 4(10) of the 2003 Act. The modification confers power on the ODA (instead of on the borough councils and Transport for London) 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).

69 Section 4 of the 2003 Act, without the modifications by this clause, conferred on the borough councils and Transport for London both the function of setting the

levels of penalty charges and the function of determining the specified proportion by which the charge would be reduced for early payment (section 4(10), (12) and (13)). In other words, section 4 envisaged that the same body would set both the level of charge and the level of discount.

70 The modifications to section 4 mirror this; the modification to section 4(13) vests in the ODA the function of setting the penalty charge levels; and the modification to section 4(10) vests in the ODA the function of specifying the discount for early payment. This means that both the function of setting the levels of charges, and the function of specifying the discount, will by this Bill be vested in the ODA.

71 There is, incidentally, no corresponding modification to confer on the ODA power to specify the amount by which a penalty charge will be increased (as mentioned in section 4(8)(v) and (vi) of the 2003 Act). This is because, unlike for discounts, the increase is not done by a decision under the Act; instead it is specified on the face of the Act – see paragraph 5 of Schedule 1 to the 2003 Act. This Bill does not change that.

Reason for delegating powers to which sections 16A(5) and 16B(1) relate

72 It is considered appropriate to delegate the setting of the levels of penalty charges, and the setting of discounts, rather than including them on the face of the Bill because they will probably not be decided in time to include them in the Bill. Time needs to be allowed for adequate consultation.

Scrutiny of exercise of powers to which sections 16A(5) and 16B(1) relate

73 The existing section 4(12) and (13) of the 2003 Act (as transitionally amended by S.I. 2007/2053²) provide for the levels of penalty charges to be set by the borough councils and Transport for London. This is to be done by decision.

² There is a drafting error in the transitional amendment made to section 4(12) by S.I. 2007/2053. This will be corrected in time for Royal Assent.

Equally, the existing section 4(10) of the 2003 Act provides for the “specified proportion” (the discount) to be determined by decision. The Government considers that there is no reason to depart from the scheme of the 2003 Act in applying that Act for Olympics traffic management. As in that Act, the penalty charge levels will be required by this clause to be set only after consultation.

Clause 8: New sections 16C and 16D 2006 Act – enforcement of bus lane contraventions outside Greater London

74 Clause 8 inserts new sections 16C and 16D into the 2006 Act. These enable bus lane contraventions outside Greater London to be enforced.

75 A bus lane is defined by section 144(5) of the Transport Act 2000—

“(5) And an area of road is or forms part of a bus lane if the order provides that it may be used—

(a) only by buses (or a particular description of bus), or

(b) only by buses (or a particular description of bus) and some other class or classes of vehicular traffic.”.

76 The intention is that traffic lanes can be created that may be used only by buses and by certain other classes of vehicle – this will allow the creation of lanes for use only by buses and by Olympics traffic.

77 There are two types of power to note in relation to clause 8:

78 First, the new section 16C(1) of the 2006 Act applies provisions which themselves confer powers to make secondary legislation. Those are section 144(1), (3) and (11) of the Transport Act 2000. The committee may wish to note that the secondary legislation made in exercise of those powers will apply (with the modifications made by clause 8) for the purposes of clause 8.

- 79 The second type of power to note in relation to clause 8 arises under new sections 16C(6) and 16D. These modify regulation 4 of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 (S.I. 2005/2757, “the Bus Lane Regulations”). The modified regulation 4 confers powers (and duties) as to setting of penalty charge levels; these powers and duties are similar to those discussed above.
- 80 Incidentally, the modified regulation 4 reproduces what is in the existing regulation 4 about discounts for early payment and increases for late payment – see paragraphs (6) and (7) of regulation 4 as modified by this clause. The committee may wish to note that, unlike the modification to section 4(10) of the 2003 Act, discussed above, regulation 4(6) and (7) as modified do not confer power on the ODA (or anyone else) to set the levels of discounts or increases. This is because, as with increases for late payment under the 2003 Act (paragraph 71 above), regulation 4 of the Bus Lane Regulations specified on its face the proportion of discount and increase. There is no reason to depart from that.

Reasons for delegating the powers to which sections 16C(6) and 16D relate and reasons for level of scrutiny chosen

- 81 Points are made above about the setting of penalty charge levels by the ODA, approval of those levels by the Secretary of State, and the setting of levels by the Secretary of State. Those points apply equally in relation to the powers and duties conferred by the modified regulation 4 of the Bus Lane Regulations.

Secretary of State’s powers to direct

- 82 Finally, the clauses confer three further powers; powers for the Secretary of State to direct an authority to act. They are not clearly within the scope of this memorandum, but are mentioned for completeness.
- 83 First, is clause 5(5), which amends section 15(4) of the 2006 Act. This amendment inserts into section 15(4) a consequential reference to contravention of a notice issued by virtue of the new section 14(5B) (inserted by clause 4(4) of this Bill). Section 15(4) of the 2006 Act, as enacted, empowered the Secretary of State to direct the enforcement authority for a road to exercise its powers under Part 6 of the 2004 Act in respect of contravention of an order made by virtue of section 14(1) or (4) of the 2006 Act. Clause 5(5) expands this power so that the Secretary of State may also direct an authority to exercise its powers in respect of contravention of a section 14(5B) notice.
- 84 Second, is new section 16A(7), inserted by clause 7(1). This confers on the Secretary of State power to direct the enforcement authority to exercise its power to issue penalty charge notices under section 4(2) or 6(6) of the 2003 Act.
- 85 The third power to direct is conferred by new section 16C(7), inserted by clause 8. This confers on the Secretary of State power to direct the approved local authority to exercise its powers under the Bus Lane Regulations.

Clause 9: New section 16E 2006 Act – powers for Traffic Commissioners to direct that a shortened procedure should apply to variation applications in respect of goods vehicles operator licences

86. Whilst Clause 9 does not create any new delegated powers for ministers, it is drawn to the Committee's attention because it modifies existing administrative powers of Traffic Commissioners.

87. Traffic Commissioners are independent office holders appointed by the Secretary of State. They already have wide powers in the GVLA in respect of the licensing of operators of goods vehicles. These include the powers to issue an operator's licence, impose conditions on it and vary those conditions. Although Traffic Commissioners possess a wide discretion relating to operator licence conditions, they have very little discretion to short circuit what can be time consuming statutory procedures which must be followed when considering whether to grant an application. For this reason, clause 9 seeks to confer on Traffic Commissioners additional procedural flexibility for urgent and temporary variations of operator licence conditions during the Olympic Games period.

Reasons for delegating powers to which sections 16E relates to Traffic Commissioners

88. Traffic Commissioners generally operate within specific Traffic Areas and have detailed local knowledge. Existing legislation recognises that they are in the best position to assess the merits of an application and balance the interests of the operator's business with the environmental concerns of the local community. Similarly, they will be in the best position to judge whether an application for a variation to be considered under the shortened procedure is justified.

Department for Culture, Media and Sport

Department for Transport

9th September 2011