

Report on the Legislative Consent Memorandum for the Birmingham Commonwealth Games Bill

July 2019

Introduction

1. The Assembly's Economy, Infrastructure and Skills Committee (the Committee) considered the Legislative Consent Memorandum for the Birmingham Commonwealth Games Bill on 17 July 2019.

Background

2. On 19 June 2019 the Deputy Minister for Culture Sport and Tourism laid a Legislative Consent Memorandum (LCM) for the Bill. On 25 June 2019 the Business Committee referred the LCM to this Committee for consideration, setting a reporting deadline of 3 October 2019.

3. A Legislative Consent Motion, seeking the Assembly's consent to the relevant provisions in the Bill, is scheduled for debate in Plenary on 8 October 2019.

4. The Bill was introduced in the House of Lords on 5 June 2019, with second reading on 25 June, House of Lords committee scrutiny on 9 July, and a date for report stage yet to be announced. Welsh Government deems Clause 9 and Schedule 1 of the Bill, which create a temporary offence to tout a Games ticket under special circumstances, to fall within the Assembly's legislative competence and that consent be sought for these provisions to apply to Wales.

Overview of the Bill

5. The Bill is sponsored by the Department for Digital, Culture, Media and Sport and makes provision about the Commonwealth Games that are to be held



principally in Birmingham in 2022. The UK Government's stated policy objectives are to address a small number of areas which require a legislative response for preparations for the games. The Bill will deliver a small number of temporary operational measures required to support successful delivery of the Games, relating to funding powers, commercial protections, transport and ticket sales.

Legislative Competence

6. The LCM states that consent is required for Part 3 (Section 9) and Schedule 1 of the Bill because they fall within the Assembly's legislative competence in so far as they relate to the promotion of tourism and the economy of Wales. Although "consumer protection" is a reserved matter under Schedule 7A of the Government of Wales Act 2006, the LCM states that the purpose of these provisions is to protect the brand and reputation of sporting venues in Wales, which in turn helps to promote tourism and the economy of Wales, and which are devolved matters.

7. Additionally the LCM states that the provisions also fall within legislative competence as far as they relate to local authority functions of making byelaws. Preventing obstruction or nuisance by ticket touting could be something which falls within the good rule and government power in section 235 of the Local Government Act 1972. As the Assembly could legislate on these matters then it could potentially legislate about the powers of local authorities to make byelaws where touting is causing a nuisance within its areas.

8. In considering legislative competence and whether these provisions relate to a reserved matter or not, the Committee also notes that Paragraph 72 of Schedule 7A to GOWA reserves the regulation of the sale and supply of goods and services to consumers. However, having considered legal advice as to the Supreme Court's most recent judgement on the Scottish settlement, *The Christian Institute and Others v The Lord Advocate (Scotland)*¹, where it looked at the "overall purpose" of the Bill as a whole, the Supreme Court held that if the purpose of the provision in question was not "truly distinct" from the overall purpose of the Bill, the provision would be within competence.

9. In analysing what the "overall purpose" of the Bill is, the Explanatory Memorandum to the Bill provides that the purpose of the legislation is to "host a successful sports event" and to "provide a good Games experience for spectators". This would clearly be considered a purpose related to the regulation of a sporting event, which is not reserved.

¹ [2016] UKSC 51

10. However, one of the principles that the Supreme Court has consistently applied in interpreting the section 108A test² is that, if a provision has more than one purpose, and one of those purposes has more than a “loose or consequential connection” with a reserved matter, that is enough to take the provision outside competence. Consideration must therefore be given to whether clause 9 can be argued to have a second “purpose”, namely the regulation of the sale and supply of goods and services to consumers.

11. The Committee considers that the effect of clause 9 “ultimately serves” the Bill’s “overall purpose” of “hosting a successful sports event” and “providing a good Games experience for spectators”. Although clause 9 does regulate the way in which tickets to the games can be sold, the Committee considers that it does so only in order to achieve that ultimate purpose, and so it does not have a distinct purpose of its own, and does not relate to a reserved matter. Further to this, in the explanatory notes to the Bill the UK Government identify clause 9 and Schedule 1 as needing consent from the devolved legislatures of Wales and Scotland.

Provisions in the Bill for which consent is sought

12. The relevant provisions for which consent is being sought are as follows, which were included at introduction:

Clause 9

13. Clauses 9(1) to (3) establish that it is a criminal offence for a person to sell, offer to sell, or expose for sale a Games ticket without authorisation from the Organising Committee.

14. The offence is committed where it is carried out in a public place, in the course of a business (including at face value or below), or where the intention is for any person to make a profit from the sale of the ticket.

15. It does not cover a person giving away their ticket informally for free or for payment of up to the face value of the ticket, *unless* this activity takes place in a public place.

16. Clause 9(3)(d) also makes it an offence to advertise that a ticket is available for purchase. However, by virtue of subsection (4), this does not apply where a

² Under the reserved powers model set out in the Government of Wales Act 2006 (GOWA), a provision will only be within competence if the competence tests set out in section 108A are satisfied. One of the tests is that a provision must not relate to a reserved matter. Reserved matters are listed in Schedule 7A of GOWA.

person advertises that a Games ticket is available to purchase from someone else and the person advertising the ticket did not know, or could not be expected to know, that the ticket was being touted.

Schedule 1

17. Schedule 1(2) provides exceptions from the commission of the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information without knowledge that its provision constitutes an offence under section 9.

18. Once they become aware that their services are being used for touting tickets, however, the service provider must withdraw those services in the shortest reasonable time.

Reasons for making these provisions for Wales in a UK Bill

19. The LCM sets out the Welsh Government's view that the Bill is the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales and is also practical for reasons of timing and coherence. Taking the ticket touting offence forward in this UK Bill will enable it to be enacted across Wales at the same time as in England.

Financial Implications

20. The Committee notes that there are no direct additional financial implications. In relation to a person being found guilty of a ticket touting offence under the legislation, the Justice Impact Assessment undertaken by DCMS, based on previous prosecutions relating to London 2012 and the 2014 Glasgow Commonwealth Games, envisages a low number of prosecution cases in Wales, and DCMS has undertaken to cover any downstream costs to the justice system arising from those cases.

Our View

21. The Committee notes that the Bill will put Wales on the same footing as England in relation to ticket touting offences without significant financial implications arising from the legislation.

22. Having taken full account of legislative competence considerations set out in the LCM, and in separate legal advice, the Committee is satisfied that the Bill makes provision for a purpose within the legislative competence of the Assembly and that an LCM is necessary under Standing Order 29. The Committee sees no

reason to object to the Assembly agreeing the Legislative Consent Motion associated with the Memorandum.