

GLASGOW COMMONWEALTH GAMES ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Enforcement

Section 21: Enforcement officers

43. This section provides a definition of “enforcement officers” who are individuals designated as such by the Organising Committee.
44. Subsection (2) restricts the power of designation so that only inspectors of weights and measures (commonly known as trading standards officers) or other individuals who meet criteria specified in regulations may be designated. Designation of an inspector of weights and measures may only be made with the consent of the council which appointed the person to be an inspector of weights and measures.

Section 22: General enforcement power

45. This section sets out the general range of powers that this Act confers on enforcement officers. Subsection (1) allows enforcement officers to take such steps as they consider appropriate for the purpose of preventing or ending the commission of a Games offence or in connection with proceedings, or anticipated proceedings, in respect of a Games offence.
46. Subsection (2) specifies steps that are included within this general power which include seizing, concealing or destroying anything which the officer believes to be an infringing article. This power is subject to restrictions set out in section 23.
47. Subsection (3) defines an “infringing article”. This could be an article used in connection with the commission of a Games offence or receptacle used as a container for such an article, for example a box containing goods being sold by an unauthorised street trader.
48. Subsection (4) enables an enforcement officer to be assisted by another person as may be reasonably required for the purpose of taking action in this section.

Section 23: Restrictions on general enforcement power

49. Subsection (1) sets restrictions on the power of enforcement officers to seize infringing articles. They can only do so for the purpose of ending the commission of a Games offence, preventing the future commission of such an offence, enabling the article to be used in proceedings for such an offence (as evidence) or to enable the article to be forfeited in accordance with Part 2 of the [Proceeds of Crime \(Scotland\) Act 1995 \(c 43\)](#) (which makes provision for property which has been used in crime to be forfeited).

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50. Subsection (2) requires a seized article to be returned when retention of it is no longer justified for the purposes mentioned in subsection (1); however, this requirement does not apply to perishable articles which no longer have any commercial value.
51. By virtue of subsection (3) an advertisement may be concealed for the purpose of ending the commission of an advertising offence or for preventing the further commission of such an offence. Concealment must cease when no longer required for either of these purposes (subsection (4)).
52. Under subsection (5) an infringing article may be destroyed only if it is appropriate to do so to end or prevent the further commission of an advertising offence and seizure or concealment would not be a reasonable course of action in the circumstances. Destruction is, therefore, only available as a measure of last resort.

Section 24: Power to enter and search

53. Subsection (1) enables an enforcement officer to, without warrant, enter and search a place (and any vehicle, vessel, container or other thing at that place) where the officer reasonably believes that a Games offence has been or is being committed or which the officer reasonably believes has been or is being used in connection with the commission of a Games offence.
54. Subsection (2) allows an enforcement officer, when entering a place under subsection (1), to take with them any other person or equipment reasonably required for the purposes of assisting the officer. This could, for example, be a locksmith in order to gain access.
55. Subsection (3) requires an enforcement officer who enters a place using powers conferred by this section to take reasonable steps to leave the place at least as effectively secured against unauthorised entry as the officer found it.

Section 25: Use of reasonable force

56. Unless the owner or occupier of a place that an enforcement officer requires to enter consents to such entry some measure of force will generally be required in order to effect entry. Subsection (1) allows an enforcement officer to use, or authorise the use of, reasonable force when taking enforcement action under section 22 (general enforcement powers) or 24 (entry and search). Force may be used, however, only where the enforcement officer is accompanied by a police constable and if the use of force has been authorised by warrant issued by a sheriff or the police constable reasonably believes that there is a real risk that the delay caused by seeking such a warrant would defeat or prejudice the purpose of taking action. This power could for example be used to authorise a locksmith to use reasonable force to gain entry to a place. The enforcement officer cannot, however, use or authorise the use of reasonable force against an individual.
57. Subsection (3) provides that the sheriff may grant a warrant only if satisfied that the use of reasonable force is necessary for the purpose of taking enforcement action.
58. By virtue of subsection (4) a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the date specified by the sheriff.

Section 26: Further restrictions on entering houses

59. This section places further restrictions on the powers of enforcement officers when the place they wish to enter is a house or can only be entered through a house. Under subsection (1) they can only enter such a place if permitted to do so by someone residing there or if granted a warrant by a sheriff.

60. Subsection (2) provides that an enforcement officer may only enter a house at a reasonable time and if accompanied by a police constable. This applies even if the occupier gives permission for entry.
61. Subsections (3) and (4) set out the conditions of which a sheriff must be satisfied before issuing a warrant to enter a house. It requires the enforcement officer to demonstrate to the sheriff that the officer has reasonable grounds for taking action under section 22 or 24 and that the officer has been refused entry, that such a refusal is reasonably expected (and, in certain circumstances, that the occupants have been notified), that the house is unoccupied, that the occupier is temporarily absent, that the case is one of urgency or that notifying the resident of the officer's intentions would defeat the object of the proposed action.
62. Subsection (5) provides that a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the day specified by the sheriff.

Section 27: Power to obtain information

63. This section allows an enforcement officer to require any person to provide such information as the officer considers appropriate in connection with a Games offence or conduct which the officer reasonably suspects constitutes a Games offence. This could be used to gain access to records or receipts. The exception to this requirement is that persons may refuse to provide information if they would be able to refuse to provide that information in or for the purpose of court proceedings. An individual would, for example, not be required to self-incriminate.

Section 28: Requirement to produce authority

64. This section provides that while an enforcement officer is taking enforcement action or exercising the power to obtain information under section 27 that officer must produce evidence of that officer's authority to act if requested to do so.

Section 29: Test purchases

65. This section allows an enforcement officer to make or authorise another person to make a test purchase to discover whether the Act is being complied with without committing a Games offence.

Section 30: Compensation and recovery costs

66. This section allows a person whose property is damaged as a result of any action taken by enforcement officers exercising their powers under section 22 or 24 to obtain compensation from the Organising Committee, although this does not apply if that person has committed a Games offence. It also allows such a person to obtain compensation from the Organising Committee if a constable accompanying an enforcement officer damages their property as a result of anything done under section 22 or 24. However, if the damage is caused by a constable who is not accompanying an enforcement officer, it is the chief constable of the constable's police force who is liable to pay compensation.
67. Subsection (2) allows Ministers to make regulations making provision about: claiming compensation, determining the compensation due and for determining which court, tribunal or other body would determine any disputed compensation.
68. Subsection (3) allows the Organising Committee to recover the cost of enforcement from the person who committed the Games offence.

Section 31: Obstructing an enforcement officer

69. This section makes it an offence intentionally to prevent or obstruct an enforcement officer from doing anything which the officer may be authorised or entitled to do by

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virtue of the Act, or without reasonable cause to fail to provide an enforcement officer or a constable with information requested under section 27.

Section 32: Police powers

70. This section allows a constable to do anything an enforcement officer may do under sections 22 to 29. For example, this would allow a constable to seize, conceal or destroy unauthorised advertising within the vicinity of Games locations.
71. Subsection (2) extends the restrictions imposed on enforcement officers by sections 23, 25, 26 and 28 to constables. The restrictions only apply to the extent that they do not conflict with a constable's powers under any other enactment or rule of law. It also makes it clear that a constable does not require to be accompanied by another constable when using reasonable force or when entering a house.
72. Subsection (3) allows a constable to arrest without warrant a person who the constable reasonably believes is committing or has committed a Games offence. Subsection (4) clarifies that this power of arrest does not affect a constable's existing powers of arrest.

Section 33: Action under sections 22 to 29: procedure

73. This section allows Ministers to make regulations specifying further procedures which an enforcement officer or constable must follow when doing anything under sections 22 to 29.