

*Draft Regulations laid before the Scottish Parliament under sections 20(2) and 26(2) of the London Olympic Games and Paralympic Games Act 2006, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**SPORTS GROUNDS AND SPORTING EVENTS**

**The London Olympic Games and Paralympic Games  
(Advertising and Trading) (Scotland) Regulations 2011**

*Made - - - - 2011*

*Coming into force in accordance with regulation 1(b)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 19, 20(1), 22(8), 25, 26(1), 28(6) and 37 of the London Olympic Games and Paralympic Games Act 2006(1) and all other powers enabling them to do so.

The Scottish Ministers have consulted in accordance with sections 20(3) and 26(3) of that Act.

The Scottish Ministers have complied with sections 19(2) and 25(2) of that Act.

In accordance with sections 20(2) and 26(2) of that Act as modified by section 37(8)(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(2).

**PART 1**

**Introductory**

**Citation, commencement and duration**

**1. These Regulations—**

- (a) may be cited as the London Olympic Games and Paralympic Games (Advertising and Trading) (Scotland) Regulations 2011;
- (b) come into force on the day after the day on which they are made; and
- (c) cease to have effect on 4th August 2012.

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(1) [2006 c.12](#). Sections 19, 20, 25, 26 and 37 were amended by paragraph 6(1) of the Schedule to the Transfer of Functions (Olympics and Paralympics) Order 2007 ([S.I. 2007/2129](#)).

(2) Sections 20 and 26 have been modified by schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

## **Application**

- 2.—(1) These Regulations apply only to—
- (a) places in Scotland; and
  - (b) things done in or in respect of Scotland.
- (2) The following provisions apply to the Crown—
- (a) regulations 5 to 11; and
  - (b) the other provisions to the extent that they relate to advertising activity.

## **General interpretation**

3. In these Regulations—
- “the Act” means the London Olympic Games and Paralympic Games Act 2006;
- “article” includes a living thing;
- “building” means a permanent building but excludes a telephone kiosk;
- “event period” means 24th July to 28th July 2012 and 31st July to 3rd August 2012;
- “newspaper or periodical” excludes a newspaper or periodical intended specifically to advertise one or more of the following in the event zone during an event period—
- (a) a good or service;
  - (b) a person who provides a good or service;
- “event zone” has the meaning given in the Schedule; and
- “receptacle” means—
- (a) any vehicle, trailer or barrow; or
  - (b) any basket, bag, box, vessel, stall, stand, easel, board or tray,
- which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article.

## **Effect on other legislation &c.**

- 4.—(1) Nothing in these Regulations—
- (a) authorises a person to do anything that is prohibited by or under any enactment or rule of law; or
  - (b) affects a requirement of any enactment or rule of law that the person hold a licence before engaging in a particular activity.
- (2) In this regulation, “licence” includes any kind of consent, certificate, permission or authority by whatever name granted by a landowner, local authority or other person in accordance with any enactment, Charter or other document.

## **PART 2**

### **Advertising Activity**

#### **Interpretation of Part 2**

- 5.—(1) In this Part—

“advertisement” means any word, letter, image, mark, sound, light, model, sign, placard, board, notice, screen, awning, blind, flag, device, costume or representation—

- (a) whether illuminated or not; and
- (b) in the nature of, and employed wholly or partly for the purpose of, advertisement, promotion, announcement or direction;

“advertiser” means a person who engages in advertising activity;

“advertising activity” means—

- (a) displaying an advertisement; or
- (b) distributing or providing promotional material;

“advertising attire” means—

- (a) a costume that is an advertisement; or
- (b) clothing on which an advertisement is displayed;

“ambush marketing campaign” means a campaign (whether consisting of one act or a series of acts) intended specifically to advertise within the event zone during an event period one or more of the following—

- (a) a good or service;
- (b) a person who provides a good or service;

“not for profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital which it expends, for charitable or public good purposes; and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

“promotional material” means a document or article distributed or provided wholly or partly for the purposes of promotion, advertisement, announcement or direction;

“railway station” includes a subway station; and

“the Town and Country Planning Regulations” means the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984(3).

(2) “Displaying an advertisement” includes—

- (a) projecting, emitting, screening or exhibiting an advertisement;
- (b) carrying or holding an advertisement or an apparatus by which an advertisement is displayed;
- (c) providing for an advertisement to be displayed—
  - (i) on an animal; or
  - (ii) on apparatus which is carried or held by an animal; and
- (d) if part of an ambush marketing campaign—
  - (i) carrying or holding personal property on which an advertisement is displayed;
  - (ii) wearing advertising attire; or
  - (iii) displaying advertising on an individual’s body.

(3) Advertising activity that consists of the display of an advertisement on a hand-held device is not to be treated as advertising activity for the purposes of this Part unless the advertiser intends

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(3) [S.I. 1984/467](#) as amended by [S.I. 1992/1763](#), regulation 2.

the advertisement to be displayed, by means of the device, to the public at large (rather than only to the individual using the device).

(4) In paragraph (3), “hand-held device” means a hand-held mobile telephone or other personal interactive communication device.

### **Control of advertising activity**

6.—(1) A person must not engage in advertising activity in the event zone during an event period.

(2) A person will be treated as contravening paragraph (1) if—

(a) the person at any time or in any place arranges for advertising activity to take place in the event zone during an event period; or

(b) advertising activity in the event zone during an event period—

(i) relates to a good, service, business or other concern in which the person has an interest or for which the person is responsible; or

(ii) takes place on land, premises or other property that the person owns or occupies or of which the person has responsibility for management.

(3) A person will be treated as having an interest or responsibility for a business or other concern if the person is an officer of the business or concern.

(4) A person will be treated as having an interest in or responsibility for a good or service if the person is an officer of the business or other concern that has an interest in or is responsible for the good or service.

(5) A person will be treated as having responsibility for the management of the land, premises or other property if the person is an officer of a business or other concern that owns, occupies or has responsibility for the management of the land, premises or other property.

(6) In paragraphs (3) to (5), “officer” means a director, manager, secretary or other similar officer.

(7) This regulation applies in relation to advertising activity whether or not it consists of the result or continuation of activity carried out before these Regulations came into force.

### **Exception for demonstrations, &c.**

7.—(1) Regulation 6 does not apply to advertising activity intended to—

(a) demonstrate support for or opposition to the views or actions of any person;

(b) publicise a belief, cause or campaign; or

(c) mark or commemorate an event.

(2) But this exception does not apply to advertising activity that promotes or advertises—

(a) a good or service; or

(b) a person or body (excluding a not-for-profit body) that provides a good or service.

### **Exception for individuals wearing advertising attire, displaying advertisements on their bodies or carrying personal property**

8.—(1) Regulation 6 does not apply to an individual who engages in advertising activity by doing one or more of the following:—

(a) wearing advertising attire;

(b) displaying an advertisement on the individual’s body;

(c) carrying or holding personal property on which an advertisement is displayed;

unless the individual knows or had reasonable cause to believe that he or she is participating in an ambush marketing campaign.

(2) The application of this exception to an individual does not affect the application of regulation 6 to any other person (whether in respect of the same advertising activity or otherwise).

### **Exceptions modelled on the Town and Country Planning Regulations**

**9.**—(1) Regulation 6 does not apply to advertising activity that consists of the display of an advertisement—

- (a) to which the Town and Country Planning Regulations do not apply, by virtue of regulation 3(1) and (3) (application) of those Regulations;
- (b) for which consent is granted by regulation 10(1) (deemed consent for display of advertisement) of those Regulations, as long as the display or advertisement complies with the conditions set out in Schedule 1 and 4 to those Regulations.

(2) But the exception in paragraph (1) does not apply to the display of the following:—

- (a) an advertisement described in regulation 3(1)(c) (advertisements incorporated in the fabric of a building) of those Regulations if the advertisement was not in existence at the date these Regulations came into force;
- (b) an advertisement described in regulation 3(1)(d) (advertisements displayed on enclosed land) of those Regulations, if the enclosed land on which the advertisement is displayed is—
  - (i) a railway station (and its yards);
  - (ii) a bus station (together with its forecourt whether enclosed or not); or
  - (iii) enclosed land (including a sports stadium or other building) in which a London Olympic event<sup>(4)</sup> is taking place or will take place;
- (c) an advertisement mentioned in regulation 3(1)(e) or regulation 3(3) (display on or consisting of a balloon) of those Regulations;
- (d) an advertisement mentioned in regulation 13(1) and (3) (advertisements on sites used for the display of advertisements on 16th August 1948) of those Regulations;
- (e) an advertisement under regulation 19 (display of advertisements after expiry of express consent) of those Regulations;
- (f) an advertisement within Class I(2) if the advertisement—
  - (i) is not displayed wholly for the purpose of announcement or direction in relation to the functions of the planning authority by which it is displayed; and
  - (ii) is not reasonably required to be displayed for the safe or efficient performance of those functions;
- (g) an advertisement within Class III(4) (certain advertisements of a temporary nature-) if the advertisement promotes or advertises—
  - (i) a good or service;
  - (ii) a person or body (excluding a not-for-profit body) that provides a good or service;
- (h) an advertisement within Class III(6) (certain advertisements of a temporary nature- hoardings);
- (i) an advertisement within Class V (advertisements within buildings) other than an exempt business advertisement, if the building where the advertisement is displayed—

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(4) “London Olympic event” is defined in section 1(3) of the Act.

- (i) is or forms part of a railway station or bus station; or
  - (ii) is a sports stadium or other building in which a London Olympic event is taking place or is to take place.
- (3) In this regulation—
- (a) “exempt business advertisement” means an advertisement (whether illuminated or not) displayed on business premises within a building (or a forecourt associated with such premises) that refers wholly to any or all of the following: the business carried on, the goods or services provided, or the name or qualifications of the person carrying out the business or supplying the goods or services on those premises;
  - (b) a reference to a “Class” of advertisement is a reference to the corresponding Class of advertisement in Schedule 4 to the Town and Country Planning Regulations;
  - (c) a reference to a building in Schedule 4 to the Town and Country Planning Regulations is to be construed in accordance with the definition of building in regulation 3(1) of these Regulations; and
  - (d) “forecourt” includes any fence, wall or similar screen or structure enclosing a forecourt and not forming part of the fabric of a building constituting business premises.

### **Other exceptions**

- 10.**—(1) Regulation 6 does not apply to advertising activity described in paragraphs (2) to (8).
- (2) Displaying an advertisement employed wholly as—
    - (a) a memorial; or
    - (b) as a railway signal.
  - (3) Displaying an advertisement on a hand-held mobile telephone or other hand-held interactive communication device.
  - (4) Distributing or providing current newspapers or periodicals.
  - (5) Advertising activity undertaken in accordance with a condition attached to an authorisation granted under regulation 15 (trading activity authorised by the Olympic Delivery Authority).
  - (6) Displaying an advertisement on an aircraft for one or more of the following purposes—
    - (a) complying with the law of the United Kingdom or any other country, being law in force in relation to the aircraft;
    - (b) securing the safety of the aircraft or any person or property;
    - (c) the furtherance, by or on behalf of a Government department, by a person acting under any public duty or by a person providing ambulance or rescue services by air, of measures in connection with circumstances existing or imminent at the time the aircraft is used which may cause danger to persons or property;
    - (d) civil defence, military or police purposes.
  - (7) Displaying a mark or inscription (other than an illuminated sign) on the body of an aeroplane or helicopter.
  - (8) Displaying an advertisement on street furniture provided that the advertisement—
    - (a) is not illuminated;
    - (b) bears only the name, contact details and device (or any one or more of those things) of the manufacturer, owner or operator of the street furniture; and
    - (c) is not displayed as part of an ambush marketing campaign.

(9) Paragraph (4) does not apply to distribution or provision of current newspapers or periodicals in a street if the distribution or provision is done from a receptacle that causes undue interference or inconvenience to persons using the street.

### **Advertising undertaken or authorised by the London Organising Committee**

**11.**—(1) Regulation 6 does not apply to advertising undertaken or controlled by—

- (a) the London Organising Committee<sup>(5)</sup>; or
- (b) any person authorised by the Committee (whether or not subject to terms and conditions imposed by the Committee and whether or not in accordance with a sponsorship or other commercial agreement with the Committee).

(2) Subject to these Regulations, the Committee has an absolute discretion in respect of each application for authorisation.

(3) The Committee must have regard to the provisions of the Host City Contract<sup>(6)</sup> before engaging in advertising activity or granting an authorisation under this regulation.

(4) The Committee’s right to engage in advertising activity and any authorisation granted by it under this regulation are subject to all the following conditions—

- (a) that the advertiser hold any licence which, in addition to authorisation by or under this regulation, is required before a person may engage in advertising activity (whether in a particular place or generally);
- (b) that no advertisement be sited or displayed so as to—
  - (i) endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
  - (ii) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
  - (iii) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle;
- (c) that the advertiser maintain any advertisement in a condition that does not—
  - (i) impair the visual amenity of the site; or
  - (ii) endanger the public.

(5) In this regulation, “licence” includes any kind of consent, certificate, permission or authority (by whatever name) granted by a landowner, local authority or other person in accordance with any enactment, Charter or other document.

## **PART 3**

### **Trading Activity**

#### **Interpretation of Part 3**

**12.**—(1) In this Part—

- (a) any reference (however phrased) to selling an article includes a reference to offering or exposing an article for sale;

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(5) “the London Organising Committee” is defined in section 1(3)(d) Act. Since the passing of the Act, the London Organising Committee has changed its registered name to the London Organising Committee of the Olympic Games and Paralympic Games Limited.

(6) “Host City Contract” is defined in section 1(3) of the Act.

- (b) any reference (however phrased) to supplying a service includes a reference to offering to supply a service;
  - (c) “motor vehicle” has the same meaning as in section 185 of the Road Traffic Act 1988<sup>(7)</sup>;
  - (d) “open public place” means—
    - (i) a road; or
    - (ii) another place—
      - (aa) to which the public have access (whether generally or only for the purpose of the trading); and
      - (bb) which is not in a building except one designed or generally used for the parking of cars;
  - (e) “performance of a play” means performance of any dramatic piece, whether improvisational or not—
    - (i) given wholly or in part by one or more persons actually present and performing; and
    - (ii) in which the whole or a major proportion of what is done by the person performing, whether by way of speech, singing or action, involves the playing of a role;
  - (f) “public entertainment” means entertainment of one of the following descriptions provided for members of the public—
    - (i) a performance of live music;
    - (ii) any playing of recorded music;
    - (iii) a performance of dance;
    - (iv) a performance of a play;
    - (v) any entertainment of a similar description to that in heads (i) to (iv);
  - (g) “selling an article” includes trading by a person acting as a pedlar whether or not under the authority of a pedlar’s certificate granted under the Pedlars Act 1871<sup>(8)</sup>; and
  - (h) “trading activity” means carrying out one or more of the following activities in an open public place—
    - (i) selling an article;
    - (ii) supplying a service;
    - (iii) making an appeal to members of the public to give money or other property (or both) for charitable or other purposes (whether authorised or not under any enactment);
    - (iv) providing public entertainment for gain or reward.
- (2) In determining whether an activity is trading activity for the purposes of this Part, the following matters are to be disregarded—
- (a) that any gain or reward arising from the activity does not accrue to the person actually carrying out the activity;
  - (b) that either party to a transaction is not in an open public place when one of the following activities occurs—
    - (i) an offer or exposure of an article for sale;
    - (ii) an offer to supply a service;
    - (iii) the completion of a transaction;

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(7) 1988 c.52.

(8) 1871 c.96

- (c) that a transaction was not completed in an open public place, if one of the following activities occurs in such a place—
  - (i) an offer or exposure of an article for sale;
  - (ii) an offer to supply a service;
- (d) that an article actually sold or service actually supplied was different from that originally offered or exposed for sale.

### **Control of trading**

- 13.**—(1) A person must not engage in trading activity in the event zone during an event period.
- (2) A person is to be treated as contravening paragraph (1) if—
- (a) the person (at any time or any place) arranges for trading activity to take place in the event zone during an event period; or
  - (b) trading activity in the event zone during an event period—
    - (i) is undertaken by a business or other concern in which the person has an interest or for which the person is responsible; or
    - (ii) takes place on land that the person owns or occupies or of which the person has responsibility for management.
- (3) Paragraph (2)(b) does not apply to a person who proves that—
- (a) trading activity took place without the person’s knowledge; or
  - (b) the person took all reasonable steps to prevent the trading activity taking place or where it has taken place, to prevent it continuing or recurring.
- (4) A person will be treated as having an interest in or responsibility for a business or other concern if the person is an officer of the business or other concern.
- (5) A person will be treated as having responsibility for the management of the land if the person is an officer of a business or other concern that owns, occupies or has responsibility for the management of the land.
- (6) In paragraph (4) and (5), “officer” means a director, manager, secretary or other similar officer.
- (7) This regulation applies to trading activity whether or not it consists of the result or continuation of activity carried out before these Regulations came into force.

### **Exceptions**

- 14.**—(1) Regulation 13 does not apply to trading activity described in paragraphs (2) to (12).
- (2) Selling current newspapers or periodicals.
  - (3) Trading activity undertaken or controlled by the London Organising Committee on enclosed land on which a London Olympic event is taking place or is to take place.
  - (4) Selling or delivering an article to a person in premises adjoining a road.
  - (5) Selling a motor vehicle on private land generally used for the sale of motor vehicles.
  - (6) Supplying motor vehicle cleaning services on private land generally used for the supply of those services.
  - (7) Supplying motor vehicle parking services in a building designed or on other land designed or generally used for the parking of motor vehicles.
  - (8) Providing a public sanitary convenience.
  - (9) Providing a permanent telephone kiosk.

- (10) Trading as a walking tour operator.
- (11) Supplying public transport services including tourist services.
- (12) Trading activity on private land adjacent to exempt retail premises provided that the trading activity—
  - (a) forms part of the usual business of the owner of the premises or a person assessed for uniform business rate in respect of the premises; and
  - (b) takes place during the period during which the premises are open to the public for business.
- (13) Paragraph (2) does not apply to selling current newspapers or periodicals in a street if the selling is done from a receptacle that causes undue interference or inconvenience to persons using the street.
- (14) In this regulation—
  - “exempt retail premises” means a building normally used as—
    - (a) a shop;
    - (b) a restaurant or bar or otherwise used for the supply of meals, refreshments or alcohol to the public; or
    - (c) a petrol filling station;
  - “sanitary convenience” means closet or urinal;
  - “tourist services” means public transport services primarily for the benefit of tourists; and
  - “walking tour operator” means a person that supplies services to the public comprising tours of an area on foot.

#### **Trading activity authorised by the Olympic Delivery Authority**

- 15.—**(1) Regulation 13 does not apply to trading activity undertaken in accordance with an authorisation granted by the Authority<sup>(9)</sup>.
- (2) Subject to these Regulations, the Authority has an absolute discretion in respect of each application for authorisation.
- (3) The Authority must have regard to the provisions of the Host City Contract before granting an authorisation under this regulation
- (4) An authorisation granted under this regulation is subject to the condition that any person who engages in trading activity in reliance on the authorisation hold any licence which, in addition to authorisation under this regulation, is required before the person may engage in trading activity (whether in a particular place or generally).
- (5) In this regulation—
  - “Authority” means—
    - (a) the Olympic Delivery Authority; or
    - (b) a person to whom the function of granting authorisations for the purpose of this regulation is delegated by the Olympic Delivery Authority; and
  - “licence” includes any kind of consent, certificate, permission or authority (by whatever name) granted by a landowner, local authority or other person in accordance with any enactment, Charter or other document.

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(9) Under section 25(7) of the Act, an authorisation granted by the Authority under regulation 13 may be subject to terms and conditions.

## PART 4

### Rights of review

#### Interpretation of this Part

**16.** In this Part—

“applicant” has the meaning given in regulation 17(1) (right to seek review);

“authorisation” means an authorisation granted—

- (a) under regulation 11(1)(b) (advertising undertaken, controlled or authorised by the London Organising Committee); or
- (b) under regulation 15 in relation to trading activity; and

“authoriser” means—

- (a) in relation to an application for an authorisation under regulation 11(1)(b), the London Organising Committee, or
- (b) in relation to an application for an authorisation under regulation 15, the Authority within the meaning of that regulation.

#### Right to seek review

**17.—**(1) A person who has applied for an authorisation (“an applicant”) and is dissatisfied with the decision of the authoriser may request the Olympic Delivery Authority to review the decision of the authoriser.

(2) Such a request must—

- (a) be in writing;
- (b) include or be accompanied by such information or evidence as the applicant considers relevant; and
- (c) be made within 21 days of the date on which the authoriser’s decision was communicated to the applicant.

(3) The Authority must review the authoriser’s decision within 21 days of receiving a request for review.

(4) On reviewing the authoriser’s decision, the Authority may—

- (a) confirm the original decision; or
- (b) substitute a new decision for the original decision.

(5) As soon as practicable after making a decision on the review, the Authority must send to the applicant written notice informing that person of the decision and the reasons for the decision.

(6) The decision of the Authority on the review is final.

## PART 5

### Compensation

#### Interpretation of this Part

**18.** In this Part—

“claimant” has the meaning given in regulation 20(1) (notice of claim);

“decision notice” means a notice issued by a relevant authority under regulation 22(2)(b) or (3) (authority’s decision on a claim);

“enforcement officer” means a person designated for the purposes of section 22 (enforcement: power of entry) or 28 (enforcement: power of entry) of the Act by the Olympic Delivery Authority;

“notice of claim” has the meaning given in regulation 20(1); and

“relevant authority”, in relation to the exercise or purported exercise of a power under section 22 or 28 of the Act means—

- (a) if the exercise or purported exercise of the power was by an enforcement officer, the Olympic Delivery Authority; or
- (b) if the exercise or purported exercise of the power was by a constable, the police authority for the police force of which the constable is a member.

### **Entitlement to compensation for damage to property**

**19.**—(1) A person whose property is damaged in the course of the exercise or purported exercise of a power under section 22 or 28 of the Act is entitled to compensation from the relevant authority in accordance with this Part.

(2) A person who, in the responsible belief of the relevant authority, is responsible for a contravention of these Regulations is not entitled to compensation.

(3) The amount of the compensation payable is the total of—

- (a) the cost of repairing the damaged property to its previous condition (or in the case of property which is impossible to repair or if the cost of repairing would exceed the property’s market value, the cost of replacing the property at market value); and
- (b) any further loss which was a direct result of the damage to the property.

### **Notice of claim**

**20.**—(1) A person claiming entitlement to compensation under this Part (a “claimant”) must send a written notice (a “notice of claim”) to the relevant authority claiming that compensation.

(2) A notice of claim must be sent within—

- (a) 30 days of the date on which damage occurred; or
- (b) such longer period as agreed by the relevant authority in writing.

(3) A notice of claim must include or be accompanied by the following information and evidence—

- (a) the claimant’s full name;
- (b) the date on which the damage occurred;
- (c) the address or location at which the damage occurred;
- (d) the amount of compensation claimed (in accordance with regulation 19(3)) and the basis of the calculation of the amount claimed;
- (e) a description of—
  - (i) the property damaged;
  - (ii) the nature of the damage; and
  - (iii) the nature of any further loss which flowed from the damage for which compensation is claimed; and

- (f) photographs, receipts, quotations or other evidence as to the matters referred to in subparagraphs (a) to (e).

### **Initial consideration of claim**

**21.**—(1) Within 14 days of the date on which a relevant authority receives notice of a claim, the authority must determine whether it has received sufficient information and evidence to enable it to decide—

- (a) whether the claimant is entitled to compensation under this Part; and
- (b) if the claimant is entitled, the amount of compensation.

(2) If the authority determines that it has not received sufficient information or evidence, it must send the claimant a written notice stating the further information or evidence that the authority requires.

(3) The claimant must send the authority the information or evidence stated in the notice within—

- (a) 14 days of the date on which a claimant receives a notice under paragraph (2); or
- (b) such longer period as agreed by the relevant authority in writing.

(4) Within 7 days of the date on which the authority receives any such additional information or evidence, the authority must make the determination referred to in paragraph (1) again (and the other paragraphs of this regulation apply to that new determination).

### **Authority's decision on a claim**

**22.**—(1) If a relevant authority determines under regulation 21 that it has received sufficient information and evidence it must, within 14 days of the date of that determination, decide the matters referred to in regulation 21(1)(a) and (b).

(2) If the authority decides that the claimant is entitled to compensation it must—

- (a) pay to the claimant the amount of compensation stated in the notice of claim; or
- (b) if it decides that the claimant is entitled to a lesser amount of compensation than that stated in the notice of claim, send a notice to the claimant—
  - (i) offering that lesser amount to the claimant; and
  - (ii) stating the reasons for its decision.

(3) If the authority decides that the claimant is not entitled to compensation it must send a notice to the claimant—

- (a) declining the claim; and
- (b) stating the reasons for its decision.

(4) A claimant who receives a decision notice offering a lesser amount of compensation than stated in the notice of claim may agree, in writing, to accept that lesser amount (in which case the authority must pay that amount to the claimant).

(5) A decision notice must contain particulars of the claimant's rights to—

- (a) request a review of the decision under regulation 23; and
- (b) appeal a decision on a review under regulation 24.

### **Review of decision on a claim**

**23.**—(1) A claimant who receives a decision notice may request the relevant authority to review its decision.

(2) Such a request must—

- (a) be in writing;
  - (b) be made within—
    - (i) 14 days of the date on which the decision notice was received; or
    - (ii) such longer period as agreed by the relevant authority in writing; and
  - (c) include or be accompanied by such information or evidence as the claimant considers relevant.
- (3) Within 14 days of the date on which a relevant authority receives such a request it must review its decision under regulation 22.
- (4) On reviewing its decision, the authority may—
- (a) confirm the original decision; or
  - (b) substitute a new decision for the original decision.
- (5) On reviewing its decision the authority may not substitute a lesser amount of compensation than that stated in the decision notice.
- (6) The authority must send to the claimant a written notice informing that person of its decision on the review and the reasons for that decision.
- (7) A notice under paragraph (6) must contain particulars of the claimant’s right to appeal a decision on review under regulation 24.

**Appeal to the sheriff court**

- 24.—(1) A claimant dissatisfied with the decision of the relevant authority on a review under regulation 23 may appeal to the sheriff court.
- (2) An appeal must be brought within 21 days of the day on which the claimant received written notice of the authority’s decision on review.
- (3) The court may give permission for an appeal to be brought after the end of that period, but only if it is satisfied—
- (a) if permission is sought before the end of that period, that there is a good reason for the claimant being unable to bring the appeal in time; or
  - (b) if permission is sought after that time, that there was a good reason for the claimant’s failure to bring the appeal in time and for any delay in applying for permission.
- (4) On appeal under this regulation, the court may make such order confirming, quashing or varying the decision as it thinks fit.

Date

Authorised to sign by the Scottish Ministers

## SCHEDULE

Regulation 3

### Meaning of “event zone”

1. In these Regulations, “event zone” means the Hampden Park zone, being the zone comprised of the non-shaded area shown on the deposited map bound externally by a dotted green line together with—

- (a) any road on the deposited map that is marked with a blue line;
- (b) the pavement on each side of any such road.

2. The event zone includes the airspace above the land in that area.

3. All parts of a railway station (whether on, above or under the ground) and whether in or outside of an event zone are to be treated as being within the event zone if any part of the station is on or above the ground in the event zone.

4. In this Schedule, “deposited map” means, in relation to the event zone, the map bearing the name “Hampden Park zone”, the signature of a director of the Housing, Regeneration, Culture and Commonwealth Games directorate of the Scottish Government, the title of these Regulations and date September 2011, of which prints are deposited and available for inspection at the offices of—

- (a) the Scottish Ministers, Edinburgh;
- (b) Glasgow City Council.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations control advertising and trading activity in a designated area in Glasgow in respect of the London 2012 Olympic and Paralympic Games events at Hampden Park (“the event zone”) during a period when those events take place (an “event period”). The event zone is defined in Schedule 1 by reference to a map that is available for inspection at the offices of the Scottish Government and Glasgow City Council. The event period is defined in regulation 3.

Regulation 4 makes clear that nothing in the Regulations authorises a person to do anything that is prohibited by or under any enactment or rule of law or affects any requirement under an enactment or rule of law that a person hold a “licence”.

Regulation 6 prohibits a person from engaging in advertising activity in the event zone during the relevant event period (the “advertising prohibition”).

Regulation 5 defines “advertising activity” to mean displaying an advertisement or distributing or providing promotional material. “Advertisement”, “promotional material” and “displaying an advertisement” are defined in the same regulation. Specific provision is made in regulation 5(3) for advertisements displayed on hand held telephones and other personal interactive communication devices.

A person is to be treated as contravening the advertising prohibition if the person undertakes advertising activity in the event zone during the event period or arranges for advertising activity to take place in the event zone during the event period (see regulation 6(2)(a) and (b)). Under

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The London Olympic Games and Paralympic Games (Advertising and Trading) (Scotland) Regulations 2011* ISBN 978-0-11-101521-6

regulation 6(2)(c) a person is to be treated as engaging in advertising activity where advertising activity:

- relates to a good, service, business or other concern in which the person has an interest or for which the person is responsible, or
- takes place on land, premises or other property that the person owns or occupies or of which the person has responsibility for management.

Regulation 6(3) to (5) specifies when a person is to be treated as satisfying these criteria.

Under section 21(2) of the London Olympic Games and Paralympic Games Act 2006 (the “2006 Act”), a person charged with an offence of contravening the advertising prohibition has a defence if the person proves that the contravention occurred without his or her knowledge or despite his or her taking all reasonable steps to prevent it from occurring or (where he or she became aware of it after its commencement) from continuing.

In addition, regulations 7 to 10 specify exceptions to the advertising prohibition. The exception in regulation 7 is for activity intended to demonstrate support for or opposition to the views or actions of a person or body of persons, publicise a belief, cause or campaign, or mark or commemorate an event. The exception does not apply to advertising activity that promotes or advertises a good, service, or person or body (excluding a not-for-profit body as defined in regulation 5 that provides a good or service).

The exception in regulation 8 is for an individual who engages in advertising activity only by wearing advertising attire, displaying an advertisement on his or her body, or carrying or holding personal property on which an advertisement is displayed. “Advertising attire” is defined in regulation 5 to mean a costume that is an advertisement or clothing on which an advertisement is displayed. For the exception to apply, the person must not know or have reasonable cause to believe that he or she is participating in an ambush marketing campaign (also defined in regulation 5). The application of this exception to a person does not affect the application of the advertising prohibition to any other person (whether in respect of the same advertising activity or otherwise).

The exception in regulation 9 is modelled on provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (“the Town and Country Planning Regulations”). Under regulation 9(1)(a) the advertising prohibition does not apply to the display of an advertisement which is exempt from the requirement for deemed or express consent under Part 2 or 3 of the Town and Country Planning Regulations (i.e. the display of an advertisement of a description set out in column (1) of Schedule 4 to those Regulations, provided that the relevant conditions and limitations set out in that Schedule are complied with). Under regulation 9(1)(b) the advertising prohibition does not apply to the display of an advertisement for which “deemed consent” is granted by regulation 6(1) of those Regulations (i.e. any Class of advertisement specified in Part 1 of Schedule 4 to those Regulations, subject to the conditions and limitations referred to in regulation 6(1) of those Regulations). But the exception in regulation 9 does not apply to the display of an advertisement of a description set out in regulation 9(2) (which specifies certain advertisements by reference to the Classes of advertisement in Schedules 1 and 3 to the Town and Country Planning Regulations).

Regulation 10 specifies other exceptions to the advertising prohibition.

In addition to the defence set out in section 21 of the 2006 Act and the exceptions specified in regulations 7 to 10, regulation 11 provides that the advertising prohibition does not apply to advertising activity undertaken or controlled by:

- the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”), or
- a person authorised by LOCOG.

LOCOG’s right to engage in advertising activity under regulation 11 and any authorisation granted by it are subject to the conditions specified in regulation 11(4), including that the advertiser hold any

licence (as defined in regulation 11(5)) which, in addition to authorisation by or under regulation 11, is required before a person may engage in advertising activity (whether in a particular place or generally). A person who applies for an authorisation and is dissatisfied with LOCOG's decision may request the Olympic Delivery Authority (ODA) to review its decision (see regulation 17).

Regulation 13 prohibits a person from engaging in trading activity in the event zone during the event period (the "trading prohibition").

Regulation 12 defines trading activity as carrying out one or more of the activities specified in that regulation in an open public place. "Open public place" is defined in that regulation to mean a road or another place to which the public have access and which is not in a building (other than one designed or generally used for the parking of cars). The matters specified in regulation 12(2) are to be disregarded when determining whether activity amounts to trading activity.

A person is to be treated as contravening the trading prohibition if the person undertakes trading activity or arranges for trading activity to take place in the event zone during an event period (see regulation 13(1) and (2)(a)). Under regulation 13(2)(b) a person (a "business or land owner") is also to be treated as engaging in trading activity where that activity:

- is undertaken by a business or other concern in which the person has an interest or for which the person is responsible, or
- takes place on land that the person owns or occupies or of which the person has responsibility for management.

Regulation 13(4) and (5) specifies people who are to be treated as satisfying these criteria. But regulation 13(3) provides that a business or land owner is not to be treated as engaging in trading activity trading if he or she proves that the trading activity took place without his or her knowledge or that he or she took all reasonable steps to prevent the trading activity taking place or, where it has taken place, to prevent it continuing or recurring.

Regulation 14 specifies exceptions to the trading prohibition.

In addition, regulation 15 provides that the trading prohibition does not apply to trading activity undertaken in accordance with an authorisation granted by the ODA or a person to whom the function of granting authorisations is delegated by the ODA. The ODA (or its delegate, as the case may be) may impose terms and conditions on any authorisation under section 25(7) of the 2006 Act. Under regulation 15(4) an authorisation is subject to the condition that any person who engages in trading activity in reliance on the authorisation hold any licence (as defined in regulation 15(5)) which, in addition to authorisation under regulation 15, is required before the person may engage in street trading (whether in a particular place or generally). A person who applies for an authorisation and is dissatisfied with the ODA's (or its delegate's) decision may request ODA (or its delegate) to review its decision (see regulation 17).

Part 5 provides for compensation for a person whose property is damaged in the course of the exercise or purported exercise of an enforcement power under section 22 or 28 of the 2006 Act. Under regulation 19(2) a person who, in the reasonable belief of the ODA (or as the case may be the police authority), is responsible for a contravention of the Regulations is not entitled to compensation. The amount of compensation payable is specified in regulation 19(3). Regulations 20 to 24 set out the procedure by which compensation may be obtained.