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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

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

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(1).

- (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 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.

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

### **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>(2)</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;

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

- (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—
    - (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>(3)</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>(4)</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

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(3) "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.

(4) "Host City Contract" is defined in section 1(3) of the Act.

- (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.