

Draft Regulations laid before the Scottish Parliament under section 43(4) of the Glasgow Commonwealth Games Act 2008 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

SPORTS GROUNDS AND SPORTING EVENTS

The Glasgow Commonwealth Games Act 2008
(Ticket Touting Offence) (Exceptions for Use
of Internet etc.) (Scotland) Regulations 2012

Made - - - - 2012
Coming into force - - 29th November 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 19 and 43(2) of the Glasgow Commonwealth Games Act 2008⁽¹⁾ and section 2(2) of the European Communities Act 1972⁽²⁾ and all other powers enabling them to do so.

In accordance with section 43(4) of the Glasgow Commonwealth Games Act 2008⁽³⁾ and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement, cessation and extent

1.—(1) These Regulations may be cited as the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (Exceptions for Use of Internet etc.) (Scotland) Regulations 2012 and come into force on 29th November 2012.

(2) These Regulations cease to have effect on the day on which the Act ceases to have effect.

(3) These Regulations extend to Scotland only.

(1) 2008 asp 4.

(2) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Section 2(2) is relied upon in relation to regulation 3.

(3) Section 43(4) has been modified by paragraph 5 of, schedule 3 to, the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Interpretation

2.—(1) In these Regulations—

“the Act” means the Glasgow Commonwealth Games Act 2008;

“EEA state” means a state which for the time being is a member State or a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁴⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993⁽⁵⁾, as modified or supplemented from time to time;

“information society service” has the meaning given in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market⁽⁶⁾;

“information society service provider” means a person providing an information society service;

“law enforcement officer” means—

- (a) an enforcement officer within the meaning of section 21 of the Act; or
- (b) a constable;

“recipient” means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible; and

“the touting offence” means the offence in section 17(1) of the Act.

(2) For the purposes of these Regulations—

(a) an information society service provider is “established” in a country or territory if the provider—

- (i) effectively pursues an economic activity using a fixed establishment in that country or territory for an indefinite period; and
- (ii) is a national of an EEA state or a body mentioned in Article 54 of the Treaty on the Functioning of the European Union⁽⁷⁾;

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service is not itself sufficient to constitute the establishment of an information society service provider; and

(c) where it cannot be decided from which of a number of establishments an information society service is provided, the service is to be regarded as provided from the establishment at the centre of the information society service provider’s activities relating to that service.

Information society services: preconditions in relation to taking proceedings for the touting offence against providers established in another EEA state

3.—(1) Where an information society service provider is established in an EEA state (other than the United Kingdom), proceedings for the touting offence cannot be taken against that provider in respect of anything done by the provider in providing that service (including in the United Kingdom), unless the derogation and cooperation conditions are satisfied.

(4) Command Paper 2073 and OJ L 1, 3.1.1994, p.3.

(5) Command Paper 2183 and OJ L 1, 3.1.1994, p.572.

(6) OJ L 178, 17.7.2000, p.1. The Directive has been incorporated into the EEA agreement by Decision 91/2000 of the EEA Joint Committee (OJ L 7, 11.1.2001, p.13). Article 2(a) defines “information society services” to mean “services” within the meaning of Article 1(2) of Directive 98/34/EC (OJ L 204, 21.7.1998, p.37) as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p.18) which provides that it is any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service.

(7) OJ C 115, 9.5.2008, p.47.

- (2) The derogation condition is that the proceedings—
 - (a) are necessary to pursue any of the public interest objectives;
 - (b) are taken against an information society service which prejudices that objective or presents a serious and grave risk of prejudice to it; and
 - (c) are proportionate to that objective.
- (3) The public interest objectives are—
 - (a) public policy, in particular the prevention, investigation, detection and prosecution of the touting offence; and
 - (b) the protection of consumers, including investors.
- (4) The cooperation condition is that a law enforcement officer—
 - (a) has requested the EEA state in which the information society service provider is established to take measures which the officer considers to be of equivalent effect under the law of the EEA state and the EEA state has failed to take the measures; and
 - (b) has notified the Commission of the European Union and the EEA state of the intention to take proceedings.

Information society services: exception for mere conduit

4.—(1) Where an information society service provider provides so much of an information society service as consists in—

- (a) the provision of access to a communication network; or
- (b) the transmission in a communication network of information provided by the recipient of the service,

anything done by the provider in providing that part of the service is not capable of constituting the touting offence.

(2) But paragraph (1) applies only if the provider does not—

- (a) initiate the transmission;
- (b) select the recipient of the transmission; or
- (c) select or modify the information contained in the transmission.

(3) For the purposes of paragraph (1), the provision of access to a communication network, and the transmission of information in a communication network, includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Information society services: exception for caching

5.—(1) Where an information society service provider provides so much of an information society service as consists in the transmission in a communication network of information provided by a recipient of the service, anything done by the provider in connection with the automatic, intermediate and temporary storage of information so provided is not capable of constituting the touting offence if—

- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request; and
- (b) the condition in paragraph (2) is satisfied.

- (2) The condition is that the provider—
 - (a) does not modify the information;
 - (b) complies with such conditions as are attached to having access to the information; and
 - (c) where paragraph (3) applies, expeditiously removes the information or disables access to it.
- (3) This paragraph applies if the provider obtains actual knowledge that—
 - (a) the information at the initial source of the transmission has been removed from the network;
 - (b) access to it has been disabled; or
 - (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, such information.

Information society services: exception for hosting

6.—(1) Where an information society service provider provides so much of an information society service as consists in the storage of information provided by a recipient of the service, anything done by the provider in providing that part of the service is not capable of constituting the touting offence if—

- (a) the information society service provider had no actual knowledge when the information was provided that its provision amounted to a contravention of the touting offence; or
- (b) on obtaining actual knowledge that the provision of the information amounted to a contravention of the touting offence, the information society service provider expeditiously removed the information or disabled access to it.

(2) Paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the information society service provider.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the circumstances in which making facilities available in connection with electronic communications or the storage of data is, or is not, capable of constituting an offence under section 17(1) of the Glasgow Commonwealth Games Act 2008 (“the touting offence”). They also ensure compliance with Directive [2000/31/EC](#) on certain legal aspects of information society services in the Internal Market (OJ L 178, 17.7.2000, p.1). They cease to have effect on the same day that the Act ceases to have effect.

Regulation 3 provides that proceedings for the touting offence cannot be taken against an information society service provider based in a state (other than the United Kingdom) that is a member of the European Economic Area, in respect of anything done by the provider in providing that service, unless the derogation and cooperation conditions are met. This ensures that the touting offence provisions comply with Article 3(2) and (4) of Directive [2000/31/EC](#).

Regulations 4 to 6 specify circumstances involving mere conduit, caching and hosting of information society services which are not capable of constituting the touting offence. These ensure that the touting offence provisions comply with Articles 12 to 14 of that Directive.