

Final Business and Regulatory Impact Assessment

Title of Proposal

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

Purpose and intended effect

- **Objective**

To specify circumstances in which the use of the internet or other electronic media is, or is not, capable of constituting an offence to tout a Glasgow 2014 Commonwealth Games ticket.

- **Background**

It is a requirement of the Commonwealth Games Federation (CGF) that Scottish Ministers meet their commitment under the Host City Contract to put in place legislation which makes it an offence to tout Commonwealth Games tickets. The Glasgow Commonwealth Games Act 2008 ('the Act') satisfies this requirement in so far as it makes it an offence to tout a Commonwealth Games ticket ('the touting offence').

- **Rationale for Government intervention**

Further regulations are required to ensure that the touting offence provisions contained in the Act will satisfy the requirements of Directive 2003/31/EC on certain legal aspects of 'information society services'. In particular, they will specify circumstances in which making facilities available in connection with electronic communications or the storage of data is, or is not, capable of constituting the ticket touting offence under the Act. There are no existing regulations which specifically fulfil this function, therefore, a tailored approach is needed for the Glasgow 2014 Commonwealth Games.

The proposed regulations will help to contribute towards the Scottish Government's Strategic Priority of maintaining a supportive business environment.

Consultation

- **Within Government**

The Scottish Government consulted the Organising Committee (Glasgow 2014 Ltd), Glasgow City Council and trading standards officials on the proposal for the regulations.

UK Government officials and officials from the other devolved administrations were consulted separately on similar provisions contained in the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (England and Wales and Northern Ireland) Order 2012. That Order, which was made under section 104 of the Scotland Act 1998, makes it an offence to tout a Commonwealth Games ticket in England and Wales and Northern Ireland with effect from 29 November 2012. It similarly specifies the circumstances in which the use of the internet or other electronic media is not capable of constituting that offence. Comments on the draft Order resulted in changes being made to make the meaning clearer and these refinements are reflected in these regulations.

Officials within the Scottish Government Justice Directorate have provided advice on issues relating to enforcement. Scottish Government Legal Aid Team has provided advice on the implications for the legal aid fund. In addition, the experience of the Metropolitan Police in dealing with instances of touting London 2012 Olympic Games tickets was sought.

- **Public consultation**

A public consultation on the Glasgow Commonwealth Games Bill was carried out in 2007. Over 300 organisations were consulted including key Scottish businesses, local authorities and others with an interest in the provisions of the Bill including ticket touting provisions. The responses were broadly supportive of those ticket touting provisions, including the power in section 19 of the Act to, by regulation, specify circumstances in which making facilities available in connection with electronic communications or the storage of data is, or is not, capable of constituting the touting offence.

A 12 week consultation on the draft regulations was launched on the Scottish Government's website on 7 March 2012. Notification of the consultation was issued to 56 organisations and retail businesses including a number within the ticketing industry. In addition, anyone who wished to comment on the proposals had an opportunity to respond to this public consultation. Consultees were invited to comment on the regulations and provide evidence of any additional burdens to business or competitiveness. The consultation closed on 30 May 2012. Two responses were received and these both supported the introduction of the regulations. Comments from eBay resulted in the draft provisions in the regulations (and the s104 Order) being revised to improve their clarity.

- **Business**

A number of businesses that could potentially be affected by the introduction of the regulations were consulted during their development. These included the industry representative organisation - Society of Ticket Agents and Retailers - and a number of organisations within the Internet ticketing industry, including primary, resale and specialist ticketing agents.

The main purpose of these discussions was to provide ticketing agents, involved in resale of event tickets, with more details about the proposals for the regulations and to hear their views on how they could be affected. Businesses were specifically asked to comment on whether the regulations were likely to increase their running costs or administrative burden, but declared that this was not likely to be the case.

Internet auction websites and re-sale ticketing organisations generally have automated filter systems in place which potentially identify illegal sales in order to remove these adverts. These filter systems were deployed to identify the resale of tickets for the London 2012 Olympic Games events.

Prior to considering the introduction of these regulations two options were considered by the Scottish Government.

Option 1: Do nothing

Currently, provisions within the Act make it an offence for any unauthorised person to sell, offer to sell, expose for sale, advertise, make available or give away a Commonwealth Games ticket in a public space, for an amount exceeding the ticket's face value or with a view to making a profit. The absence of further provision would give rise to a risk that the touting offence in the Act would be enforced incompatibly with the requirements of Directive 223/31/EC. It may thereby hinder the proper functioning of the internal market by not ensuring (to the extent required) the free movement of information society services between Member States of the EU and parties to the Agreement on the European Economic Area..

Option 2: Introduce the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (Exceptions for Use of Internet etc) (Scotland) Regulations 2012

Regulations which restrict any and all resale of tickets for any event would impact adversely on the businesses within the Internet ticketing industry, who rely on the resale of event tickets as part of their business, as they would lose the auction fee – typically between 4 and 9% of the sale price. Specifying circumstances involving the mere conduit, caching and

hosting of information society services which are not capable of constituting the touting offence, enables such activity to take place without the threat of criminal sanction.

Sectors and groups affected

There is no legitimate market in touting Games tickets, therefore, consumers will benefit by not being exposed to illegal ticket sales. Only internet ticket resale companies will be affected by the need to ensure that no Games tickets are exposed for sale on their sites. The additional costs to business is expected to be negligible for the reasons outlined below. It is not envisaged that the regulations will affect any other individual, organisation or group.

- **Benefits**

Option 1: Do nothing

This option avoids the cost to Scottish Government of producing the regulations but the benefits highlighted under option 2 would not be realised.

Option 2: Introduce the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (Exceptions for Use of Internet etc) (Scotland) Regulations 2012

Specifying circumstances involving mere conduit, caching and hosting of information society services which are not capable of constituting a touting offence will ensure that legitimate businesses will not be penalised for providing such services.

- **Costs**

Option 1: Do nothing

Lack of clarity might discourage legitimate businesses from offering and providing internet services involving mere conduit, caching and hosting of information and thereby result in a loss of business opportunity and competition.

Option 2: Introduce the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (Exceptions for Use of Internet etc) (Scotland) Regulations 2012

It is envisaged that existing filtering systems adopted by the internet ticketing industry should be able to be modified at negligible cost to permit activity in the specified circumstances.

Scottish Firms Impact Test

As mentioned previously, a number of businesses who could potentially be affected by the introduction of the regulations were consulted during the development of the regulations. These included the industry representative organisation – Society of Ticket Agents and Retailers – and a number of organisations within the Internet ticketing industry, including primary, resale and specialist ticketing agents such as eBay.

The main purpose of these discussions was to provide ticketing agents, involved in resale of event tickets, with more details about the regulations and to hear their views on how they could be affected. Businesses were specifically asked to comment on whether the regulations were likely to increase their running costs or administrative burden, but declared that this was not likely to be the case.

Competition Assessment

There is no legitimate market in touting Commonwealth Games tickets. The regulations are expected to advantage rather than adversely impact on any businesses involved in the provision of services that fall within the specified circumstances. The regulations do not limit the number or range of such businesses nor do they place any additional burden on them.

Test run of business forms

The regulations will not introduce any new business forms.

Legal Aid Impact Test

The regulations are not expected to create any additional pressures on the legal aid fund. This view has been confirmed by the Scottish Legal Aid Board.

Enforcement, sanctions and monitoring

The ticket touting offence will be enforced by the police or by enforcement officers designated by the Glasgow 2014 Organising Committee. Designated enforcement officers will be drawn predominantly from local authority trading standards officers who are experienced in dealing with this type of offence.

A person convicted of the ticket touting offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Due to their time-limited nature, no specific monitoring of the effectiveness of the regulations will take place. However, intelligence on prosecutions may be gathered as a contribution to the Games knowledge transfer.

Implementation and delivery plan

The regulations are intended to come into force on the same day the touting offence comes into force, namely 29 November 2012. Details will be announced on the Organising Committee's website.

Post-implementation review

No formal review of these provisions will be carried out as the restrictions apply only to the Glasgow 2014 Commonwealth Games – a one-off event – and will cease to have effect on the day on which the Act ceases to have effect.

Summary and recommendation

The regulations are not expected to have an adverse impact on business. We recommend that regulations are produced which are proportionate, meet the CGF's requirements and which meet the Scottish Ministers commitments given in the Host City Contract. In particular, the regulations will specify the circumstances when the making of facilities available in connection with electronic communications or the storage of data is, or is not, capable of constituting a ticket touting offence.

Summary costs and benefits table

Option	Benefits	Costs
1. Do nothing	Avoids cost to Scottish Government in producing the regulations.	Potential loss of opportunity and competition as a result of businesses being discouraged from providing services in the specified circumstances.
2. Make the regulations	Ensures that legitimate business are able to provide services in the specified circumstances without threat of penalty.	Negligible cost to internet ticketing industry to modify existing filtering systems.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact on the policy, and (b) that the benefits justify the cost. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:****Shona Robison, Minister for Commonwealth Games and Sport****Scottish Government Contact point:**

Odette Burgess
Games Delivery Team
2F-South
Victoria Quay
0131 24(40986)