



Birmingham Commonwealth Games Act 2020

2020 CHAPTER 10

PART 3

TOUTING, ADVERTISING AND TRADING OFFENCES

Touting

10 Ticket touting offence

- (1) It is an offence to tout a Games ticket.
- (2) A person touts a Games ticket if the person—
 - (a) carries out an activity falling within subsection (3)—
 - (i) in a public place,
 - (ii) in the course of a business, or
 - (iii) with a view to any person making a profit, and
 - (b) does so otherwise than in accordance with an authorisation granted by the Organising Committee.
- (3) The following activities fall within this subsection—
 - (a) selling a Games ticket;
 - (b) offering to sell a Games ticket;
 - (c) exposing a Games ticket for sale;
 - (d) advertising that a Games ticket is available for purchase (but see subsection (4)).
- (4) It is not an offence for a person (“A”) to advertise that a Games ticket is available for purchase from another person (“B”) unless A knows, or ought to know, that B is touting a Games ticket.

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- (5) In this section, a reference to the sale of a Games ticket includes a reference to the giving of a Games ticket to a person who pays, or agrees to pay, for other goods or services; and a reference to “advertising that a Games ticket is available for purchase” is to be read accordingly.
- (6) A “Games ticket” is anything that is or purports to be a ticket to a Games event.
- (7) The Organising Committee cannot commit an offence under this section.
- (8) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding £50,000.
- (9) Any penalty imposed by a court in Scotland on a body corporate or Scottish partnership on conviction of an offence under this section is to be recoverable by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995.
- (10) This section and section 11 (ticket touting outside the United Kingdom) are subject to Schedule 2 (providers of information society services).

11 Ticket touting outside the United Kingdom

- (1) If a United Kingdom person does something outside the United Kingdom that, if done in the United Kingdom, would constitute an offence under section 10, the person commits an offence under that section.
- (2) A service provider that is not a United Kingdom person but is established in the United Kingdom commits an offence under section 10 if—
 - (a) the service provider does something in an EEA state other than the United Kingdom in the course of providing information society services, and
 - (b) the action, if done in the United Kingdom, would constitute an offence under that section.
- (3) Proceedings for an offence committed under section 10 by virtue of this section may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (4) In the application of subsection (3) to Scotland, proceedings against a person may be taken—
 - (a) in the sheriff court district in which the person is apprehended or in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine.
- (5) See paragraph 1 of Schedule 2 for restrictions on the institution of proceedings against service providers established in an EEA state other than the United Kingdom.
- (6) In this section—
 - “established”, in relation to a service provider, is to be read in accordance with paragraph 6 of Schedule 2;
 - “information society services” has the meaning given by paragraph 5 of Schedule 2;
 - “service provider” has the meaning given by paragraph 5 of Schedule 2;
 - “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act);

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“United Kingdom national” means—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who is a British subject under the British Nationality Act 1981;
- (c) a British protected person within the meaning of that Act;

“United Kingdom person” means—

- (a) a United Kingdom national;
- (b) an individual habitually resident in the United Kingdom;
- (c) a body incorporated under the law of a part of the United Kingdom;
- (d) a Scottish partnership.

12 Other provision about authorisations under section 10

- (1) An authorisation granted by the Organising Committee under section 10 may—
 - (a) be granted in respect of a person or a description of person;
 - (b) be subject to conditions;
 - (c) be revoked.
- (2) In considering whether or not to grant an authorisation under section 10, the Organising Committee may have regard to, among other things, any agreements entered into (whether by the Secretary of State or otherwise) for the purposes of the Games.
- (3) An authorisation granted under section 10 must be in writing.

Advertising

13 Advertising offence

- (1) It is an offence for a person—
 - (a) to carry out Games location advertising (see subsection (2));
 - (b) to arrange for such advertising to be carried out;
 - (c) to permit the carrying out of such advertising.
- (2) For the purposes of this section a person carries out “Games location advertising” if—
 - (a) the person does something in, or in the vicinity of, a specified Games location at any time during a specified period, and
 - (b) the thing is done wholly or partly for the purpose of promoting a product, service or business specifically to members of the public—
 - (i) who are in, or in the vicinity of, the Games location, or
 - (ii) who are watching or listening to a broadcast of a Games event.

“Specified” means specified in regulations made by the Secretary of State.

- (3) Any period specified for the purposes of this section must—
 - (a) begin no earlier than the beginning of the period of 21 days ending immediately before the day on which the Games begin, and
 - (b) end no later than the end of the period of 5 days beginning with the day after the day on which the Games end.

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- (4) Regulations made by the Secretary of State may make provision as to when a person is, or is not, to be treated for the purposes of this section as doing something, or as being, in or in the vicinity of a Games location.
- (5) For the purposes of this section a person does not permit the carrying out of Games location advertising if the person took all reasonable steps to prevent the advertising from occurring or (as the case may be) continuing.
- (6) It is not a defence to an offence under this section that the act constituting the offence was carried out in accordance with a licence (but see section 14).
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (8) This section is subject to—
 - (a) sections 14 and 15(1), and
 - (b) any regulations made under section 15(2).

Modifications etc. (not altering text)

C1 S. 13(1) excluded (19.11.2021) by [The Birmingham Commonwealth Games \(Advertising and Trading\) Regulations 2021 \(S.I. 2021/1198\)](#), regs. 1(2), 7-10, **Sch. 4 paras. 1-3**

14 Authorised advertising

- (1) It is not an offence under section 13—
 - (a) to carry out Games location advertising in accordance with an authorisation granted by the Organising Committee, or
 - (b) to arrange for, or permit, such advertising to be carried out in accordance with such an authorisation.
- (2) An authorisation granted under this section may—
 - (a) be granted in respect of a person or a description of person;
 - (b) be granted by reference to the nature, purpose or circumstances of the advertising;
 - (c) be subject to conditions;
 - (d) be revoked.
- (3) Conditions imposed under subsection (2)(c) may, for example—
 - (a) specify places where advertising may, or may not, be carried out;
 - (b) specify periods during which advertising may, or may not, be carried out;
 - (c) require steps to be taken for a particular purpose, including, for example—
 - (i) protecting the safety of any person;
 - (ii) preventing or reducing congestion, litter or noise;
 - (d) require a person in respect of whom authorisation is granted to produce evidence of the authorisation on request;
 - (e) be inconsistent with, or more onerous than, the conditions of any other advertising licence (whether granted under this section or otherwise).
- (4) In considering whether or not to grant an authorisation under this section, the Organising Committee may have regard to, among other things—

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- (a) any agreements entered into (whether by the Secretary of State or otherwise) for the purposes of the Games;
 - (b) any existing advertising licences (whether granted under this section or otherwise).
- (5) An authorisation granted under this section must be in writing.

15 Exceptions to the advertising offence

- (1) Section 13(1) does not apply in relation to anything done by the Organising Committee.
- (2) The Secretary of State may by regulations provide that section 13(1) does not apply in relation to—
- (a) conduct of a specified description, including conduct carried out in a specified place or in a place of a specified description;
 - (b) conduct of a specified person or description of person.
- “Specified” means specified in the regulations.
- (3) Before making regulations under subsection (2), the Secretary of State must consult—
- (a) the Organising Committee,
 - (b) the local authority for an area that includes any place where the regulations would have effect, and
 - (c) any other persons whom the Secretary of State considers it appropriate to consult.
- (4) The requirement in subsection (3) may be satisfied by consultation undertaken before the coming into force of this section.

Trading

16 Trading offence

- (1) It is an offence for a person—
- (a) to carry out Games location trading (see subsection (2));
 - (b) to arrange for such trading to be carried out;
 - (c) to permit the carrying out of such trading.
- (2) For the purposes of this section—
- “Games location trading” means—
- (a) trading in a specified Games location at any time during a specified period, or
 - (b) trading in a relevant public place in the vicinity of a Games location at any time during a specified period;
- “relevant public place” has the meaning given by subsection (8);
- “specified” means specified in regulations made by the Secretary of State;
- “trading” means—
- (a) selling an item, or offering or exposing an item for sale;
 - (b) providing a service, or offering to provide a service, for gain or reward;
 - (c) providing public entertainment for gain or reward;

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- (d) appealing for money or other property (whether for charitable or other purposes).
- (3) Any period specified for the purposes of this section must—
- (a) begin no earlier than the beginning of the period of 21 days ending immediately before the day on which the Games begin, and
 - (b) end no later than the end of the period of 5 days beginning with the day after the day on which the Games end.
- (4) Regulations made by the Secretary of State may make provision as to when a person is, or is not, to be treated for the purposes of this section as doing something in, or in the vicinity of, a Games location.
- (5) For the purposes of this section a person does not permit the carrying out of Games location trading if the person took all reasonable steps to prevent the trading from occurring or (as the case may be) continuing.
- (6) It is not a defence to an offence under this section that the act constituting the offence was carried out in accordance with a licence (but see section 17).
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (8) In this section “relevant public place” means—
- (a) a highway,
 - (b) a building to which the public have access and which is designed or generally used for the parking of motor vehicles, or
 - (c) any other place—
 - (i) to which the public have access (whether generally or only for the purposes of trading), and
 - (ii) which is not in a building.
- (9) This section is subject to—
- (a) sections 17 and 18, and
 - (b) any regulations made under section 19(1).
- (See also section 24(2).)

Modifications etc. (not altering text)

C2 S. 16(1) excluded (19.11.2021) by [The Birmingham Commonwealth Games \(Advertising and Trading\) Regulations 2021 \(S.I. 2021/1198\)](#), regs. 1(2), 12, **Sch. 4 paras. 1-3**

17 Authorised trading

- (1) It is not an offence under section 16—
- (a) to carry out Games location trading in accordance with an authorisation granted by the Organising Committee, or
 - (b) to arrange for, or permit, such trading to be carried out in accordance with such an authorisation.
- (2) An authorisation granted under this section may—
- (a) be granted in respect of a person or a description of person;

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- (b) be granted by reference to the nature, purpose or circumstances of the trading;
 - (c) be subject to conditions;
 - (d) be revoked.
- (3) Conditions imposed under subsection (2)(c) may, for example—
- (a) specify places where trading may, or may not, be carried out;
 - (b) specify periods during which trading may, or may not, be carried out;
 - (c) require steps to be taken for a particular purpose, including, for example—
 - (i) protecting the safety of any person;
 - (ii) preventing or reducing congestion, litter or noise;
 - (d) require a person in respect of whom authorisation is granted to produce evidence of the authorisation on request;
 - (e) be inconsistent with, or more onerous than, the conditions of any other trading licence (whether granted under this section or otherwise).
- (4) In considering whether or not to grant an authorisation under this section, the Organising Committee may have regard to, among other things—
- (a) any agreements entered into (whether by the Secretary of State or otherwise) for the purposes of the Games;
 - (b) any existing trading licences (whether granted under this section or otherwise).
- (5) An authorisation granted under this section must be in writing.

18 Exceptions for certain kinds of trading

- (1) Section 16(1) does not apply in relation to any activity falling within any of the Heads set out in—
- (a) subsection (2) (premises adjoining a highway);
 - (b) subsection (3) (public facilities);
 - (c) subsection (5) (motor vehicles);
 - (d) subsection (6) (the Organising Committee).
- (2) Head 1 is—
- (a) selling an item, or offering or exposing an item for sale, to a person who is in premises adjoining a highway;
 - (b) providing, or offering to provide, a service to such a person;
 - (c) providing a service that consists of doing something in relation to premises adjoining a highway (including, among other things, delivering an item to such premises);
 - (d) appealing for money or other property from a person who is in premises adjoining a highway.
- (3) Head 2 is—
- (a) providing a public lavatory;
 - (b) providing a permanent public call box;
 - (c) providing an automated teller machine.
- (4) In subsection (3)(b) “public call box” has the same meaning as in Class A of Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596).

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- (5) Head 3 is—
- (a) providing motor vehicle parking services in a building, or on other land, designed or generally used for the parking of motor vehicles;
 - (b) providing motor vehicle cleaning services on private land generally used for the provision of those services;
 - (c) selling a motor vehicle on private land generally used for the sale of motor vehicles;
 - (d) providing motor vehicle breakdown or recovery services.
- (6) Head 4 is anything done by the Organising Committee.

19 Power to provide exceptions to the trading offence

- (1) The Secretary of State may by regulations provide that section 16(1) does not apply in relation to—
- (a) conduct of a specified description, including conduct carried out in a specified place or in a place of a specified description;
 - (b) conduct of a specified person or description of person.
- “Specified” means specified in the regulations.
- (2) Before making regulations under subsection (1), the Secretary of State must consult—
- (a) the Organising Committee,
 - (b) the local authority for an area that includes any place where the regulations would have effect, and
 - (c) any other persons whom the Secretary of State considers it appropriate to consult.
- (3) The requirement in subsection (2) may be satisfied by consultation undertaken before the coming into force of this section.

Enforcement

20 Enforcement of offences under Part 3

- (1) Section 10 (ticket touting offence) may be enforced by—
- (a) a local weights and measures authority in Great Britain, or
 - (b) the Department for the Economy in Northern Ireland.
- (2) But subsection (1) does not authorise a local weights and measures authority in Scotland to bring proceedings for an offence under section 10.
- (3) Sections 13 (advertising offence) and 16 (trading offence) may be enforced by a local weights and measures authority in England.
- (4) For the investigatory powers available to a local weights and measures authority and the Department for the Economy, see Schedule 5 to the Consumer Rights Act 2015.
- (5) In paragraph 10 of Schedule 5 to that Act (duties and powers to which Schedule 5 applies), insert at the appropriate place— “ section 20(1) and (3) of the Birmingham Commonwealth Games Act 2020; ”.

- (6) Schedule 3 contains further provision about the enforcement of offences under this Part.

Supplementary and general

21 Offences by directors, partners, etc

- (1) Where an offence under this Part has been committed by a body corporate and it is proved that the offence—
- (a) has been committed with the consent or connivance of a person falling within subsection (2), or
 - (b) is attributable to any neglect on the part of such a person,
- that person (as well as the body corporate) is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (2) The persons are—
- (a) a director, manager, secretary or other similar officer of the body;
 - (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (4) Where an offence under this Part has been committed by a Scottish partnership and it is proved that the offence—
- (a) has been committed with the consent or connivance of a partner in the partnership or a person purporting to act as such a partner, or
 - (b) is attributable to any neglect on the part of such a person,
- that person (as well as the partnership) is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (5) Where a body corporate or Scottish partnership commits an offence under section 10 by virtue of section 11(1) or (2) (ticket touting outside the United Kingdom), subsections (1) to (4) apply only in respect of a person who is a United Kingdom person.
- “United Kingdom person” has the meaning given by section 11(6).

22 Existing restrictions to be unaffected

Nothing in this Part—

- (a) authorises a person to do anything that is prohibited (whether in a particular place or generally) by or under any other enactment or rule of law, or
- (b) affects a requirement of any other enactment or rule of law that a person hold a licence before engaging in a particular activity (whether in a particular place or generally).

23 Guidance and information

- (1) The Organising Committee must publish guidance about the operation of the advertising and trading provisions.

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- (2) In subsection (1) “the advertising and trading provisions” means—
- (a) sections 13 to 19,
 - (b) the remaining provisions of this Part, so far as relating to those sections, and
 - (c) any regulations made under any provision referred to in paragraph (a) or (b).
- (3) The Organising Committee may revise guidance published in accordance with subsection (1).
- (4) Every local authority must—
- (a) provide a copy of any guidance published in accordance with subsection (1) to each relevant trader in the authority's area who the authority consider may be affected by section 16 (the trading offence), and
 - (b) provide each such relevant trader with whatever information the authority consider appropriate for the purpose of assisting the relevant trader to mitigate the effect of that section.
- (5) In subsection (4) “relevant trader”, in relation to a local authority, means—
- (a) a person who holds a trading licence granted by the authority, or
 - (b) a person—
 - (i) who has applied to the authority for such a licence, and
 - (ii) whose application has not been determined or withdrawn.

24 Interpretation of Part 3

- (1) In this Part—
- “advertising” means anything done wholly or partly for the purpose of promoting a product, service or business to the public or a section of the public;
- “advertising licence” means a licence permitting the carrying out of advertising;
- “business” includes trade or profession;
- “enactment” includes an Act of the Scottish Parliament;
- “Games event” has the meaning given by section 1(3);
- “Games location” means a place in England which—
- (a) is, or is to be, used for a Games event, or
 - (b) is otherwise used, or to be used, in connection with the Games (whether before, during or after the Games);
- “Games location advertising” is to be read in accordance with section 13(2);
- “Games location trading” has the meaning given by section 16(2);
- “item” includes—
- (a) any substance;
 - (b) any animal or plant;
- “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;
- “local authority” means—
- (a) a county council,
 - (b) a district council,

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- (c) a London borough council, or
 - (d) the Common Council of the City of London;
- “motor vehicle” has the same meaning as in the Road Traffic Act 1988 (see section 185(1) of that Act);
- “relevant public place” has the meaning given by section 16(8);
- “trading” has the meaning given by section 16(2);
- “trading licence” means a licence permitting the carrying out of trading.
- (2) In determining for the purposes of section 16 whether a person is carrying out Games location trading—
- (a) it is not necessary for both of the following conditions to be met—
 - (i) that the making of an offer, or the exposure of an item for sale, occurs in a specified Games location or (as the case may be) a relevant public place;
 - (ii) that any person to whom the offer is made or item exposed is in a specified Games location or (as the case may be) a relevant public place when the offer is made or item exposed;
 - (b) a person is to be treated as doing something for gain or reward whether it is done for the person's own gain or reward or for that of another person.

Changes to legislation:

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