
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

The Glasgow Commonwealth Games (Trading and Advertising) (Scotland) Regulations 2013

PART 1

Introductory

Citation, commencement and cessation

1.—(1) These Regulations may be cited as the Glasgow Commonwealth Games (Trading and Advertising) (Scotland) Regulations 2013 and come into force on the day after the day on which they are made.

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

General interpretation

2. In these Regulations—

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

“article” includes a living thing;

“building” means a permanent building but excludes a telephone kiosk;

“event zone” has the meaning given in Schedule 1;

“newspaper” excludes a newspaper intended specifically to advertise one or more of the following in an event zone at a prohibited time—

(a) a good or service;

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

“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.

PART 2

Trading Regulations

Interpretation of Part 2

3.—(1) In this Part—

- (a) any reference (however phrased) to selling an article includes a reference to offering or exposing an article for sale;
- (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⁽¹⁾;
- (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⁽²⁾;
- (h) “trading activity” means activity which, in terms of regulation 4, is to be treated as trading for the purposes of the trading offence.

Trading activity

4.—(1) The activities set out in paragraph (2) are to be treated as trading for the purposes of the trading offence if carried out in an open public place.

(2) Those activities are—

- (a) selling an article;
- (b) supplying a service;
- (c) 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);
- (d) providing public entertainment for gain or reward.

(3) In determining whether an activity is to be treated as trading for the purposes of the trading offence, the following matters are to be disregarded—

⁽¹⁾ 1988 c.52.
⁽²⁾ 1871 c.96.

- (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;
- (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.

Prescribed places and prohibited times

5.—(1) The event zones (other than the zones referred to in paragraphs 4, 5 and 6 of Schedule 2) are the places which are to be treated as being in the vicinity of a Games location⁽³⁾ for the purposes of the trading offence.

(2) The times set out in Schedule 2 are the prohibited times for the purposes of the trading offence.

Trading offence

6.—(1) A person commits the trading offence where—

- (a) that person (at any time or any place) arranges for trading activity to take place in contravention of subsection (1) of section 2 of the Act; or
- (b) trading activity in contravention of that subsection—
 - (i) is undertaken by a business or other concern in which that person has an interest or for which that person is responsible; or
 - (ii) takes place on land that that person owns or occupies or of which that person has responsibility for management.

(2) Paragraph (1)(b) does not apply to a person who proves that—

- (a) The 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.

(3) 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.

(4) 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.

(5) In paragraphs (3) and (4), “officer” means a director, manager, secretary or other similar officer.

(3) In terms of section 1(2) of the Act, a “Games location” is a place in which an event is held as part of the Games and any other place specified by order (*see* the Glasgow Commonwealth Games (Games Locations) Order 2013 ([S.S.I. 2013/259](#)) for such an order).

(6) 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.

Trading permitted without authorisation

7.—(1) The following trading activities are permitted without authorisation—

- (a) selling current newspapers;
- (b) activity undertaken or controlled by the Organising Committee on enclosed land which is a Games location;
- (c) selling or delivering an article, or supplying a service, to a person in premises adjoining a road;
- (d) selling a motor vehicle on private land generally used for the sale of motor vehicles;
- (e) supplying motor vehicle cleaning services on private land generally used for the supply of those services;
- (f) supplying motor vehicle parking services in a building designed or on other land designed or generally used for the parking of motor vehicles;
- (g) supplying motor vehicle breakdown and recovery services;
- (h) providing a public sanitary convenience;
- (i) providing a permanent telephone kiosk;
- (j) providing an automated teller machine in or from a building for cash withdrawals and other banking services;
- (k) trading as a walking tour operator;
- (l) supplying public transport services, including tourist services but not including supplying pedicabs; and
- (m) activity on land adjacent to exempt retail premises provided that the activity—
 - (i) forms part of the usual business of the owner of the premises or a person assessed for rating in respect of the premises; and
 - (ii) takes place during the period for which the premises are open to the public for business.

(2) Paragraph (1)(a) does not apply to—

- (a) selling current newspapers in a street if the selling is done from a receptacle that causes undue interference or inconvenience to persons using the street; or
- (b) selling a newspaper if the purchaser is provided with an article or advertising supplement accompanying the newspaper.

(3) 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;

“supplying pedicabs” means supplying pedal operated tricycles for hire;

“tourist services” means public transport services primarily for the benefit of tourists; and

“walking tour operator” means a person who supplies services to the public comprising tours of an area on foot.

Trading by master licensee

8.—(1) Any trading activity carried out by the master licensee is permitted without authorisation.

(2) In paragraph (1), “the master licensee” is Venue Retail 2014 Limited, a company the registration number of which is 08088948 and the registered office of which is at 7 Billing Road, Northampton, NN1 5AN.

Trading authorised by the Organising Committee

9.—(1) The Organising Committee may authorise persons to trade in a way which would otherwise constitute a trading offence.

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

(3) The Organising Committee 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 holds any trading licence required for the activity in question.

(5) Any fee charged by the Organising Committee in connection with an authorisation under this regulation (or an application for such an authorisation) is not to exceed £70.

PART 3

Advertising Regulations

Interpretation of Part 3

10.—(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 an activity which is to be treated as advertising under section 11(1) of the Act;

“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 an event zone during a prohibited time one or more of the following—

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

“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(4).

(2) In this Part, “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 for the purposes of section 11(1) of the Act 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.

Prescribed places and prohibited times

11.—(1) The places which are to be treated as being in the vicinity of a Games location for the purposes of the advertising offence are—

- (a) any place within an event zone; and
- (b) the frontage of any building, where that frontage can be seen from an event zone and any part of it is within 20 metres of that zone.

(2) The times set out in Schedule 2 are the prohibited times for the purposes of the advertising offence.

Advertising offence

12.—(1) A person commits the advertising offence where—

- (a) that person (at any time or any place) arranges for advertising activity to take place in contravention of subsection (1) of section 10 of the Act; or
- (b) advertising activity in contravention of that subsection—
 - (i) relates to a good, service, business or other concern in which that person has an interest or for which that person is responsible; or
 - (ii) takes place on land, premises or other property that that person owns or occupies or of which that person has responsibility for management.

(2) Paragraph (1)(b) does not apply to a person who proves that—

(4) [S.I. 1984/467](#) as amended by [S.I. 1992/1763](#).

- (a) the advertising activity took place without the person's knowledge; or
 - (b) the person took all reasonable steps to prevent the advertising activity taking place or where it has taken place, to prevent it continuing or recurring.
- (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, etc.

- 13.—**(1) Advertising activity is permitted without authorisation where it is 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 that provides a good or service.

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

- 14.—**(1) Advertising activity is permitted without authorisation where it is engaged in by an individual 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 section 10(1) of the Act to any other person (whether in respect of the same advertising activity or otherwise).

Exceptions modelled on the Town and Country Planning Regulations

- 15.—**(1) Advertising activity is permitted without authorisation where it 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; or

- (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 Schedules 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) which is a Games location;
 - (c) an advertisement mentioned in regulation 3(1)(e) or (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 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 which is a Games location.
- (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) “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;
 - (c) 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.

Other exceptions

16.—(1) Advertising activity is permitted without authorisation if it constitutes—

- (a) displaying an advertisement employed wholly as—
 - (i) a memorial; or
 - (ii) a railway signal;
- (b) distributing or providing current newspapers.
- (c) activity undertaken in accordance with a condition attached to an authorisation granted under regulation 9;
- (d) displaying an advertisement on an aircraft for one or more of the following purposes—
 - (i) complying with the law of Scotland or any other country, being law in force in relation to the aircraft;
 - (ii) securing the safety of the aircraft or any person or property;
 - (iii) the furtherance, by or on behalf of the Scottish Ministers or 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;
 - (iv) civil defence, military or police purposes;
- (e) displaying a mark or inscription (other than an illuminated sign) on the body of an aeroplane or helicopter; or
- (f) displaying an advertisement on street furniture provided that the advertisement—
 - (i) is not illuminated;
 - (ii) 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
 - (iii) is not displayed as part of an ambush marketing campaign.

(2) Paragraph (1)(b) does not apply to distribution or provision of current newspapers 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 Organising Committee

17.—(1) The Organising Committee may authorise persons to advertise in a way which would otherwise constitute an advertising offence.

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

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

(4) The Organising 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 holds any advertising licence required for the advertising activity in question
- (b) that no advertisement is sited or displayed so as to—
 - (i) endanger persons using any road, 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 maintains any advertisement in a condition that does not—
 - (i) impair the visual amenity of the site; or
 - (ii) endanger the public.

PART 4

Rights of review

Right to seek review

18.—(1) A person who has applied for an authorisation (“an applicant”) and is dissatisfied with the decision of the Organising Committee in relation to that application may request that the Scottish Ministers review that decision.

(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 Organising Committee’s decision was communicated to the applicant.

(3) The Scottish Ministers must review the Organising Committee’s decision within 21 days of receiving a request for review.

(4) On reviewing the Organising Committee’s decision, the Scottish Ministers 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 Scottish Ministers must send to the applicant written notice informing that person of the decision and the reasons for the decision.

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

(7) In this regulation, “authorisation” means an authorisation granted—

- (a) under regulation 9 in relation to trading activity, or
- (b) under regulation 17 in relation to advertising activity.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers