

2012 No. 1852

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (England and Wales and Northern Ireland) Order 2012

<i>Made</i>	- - - -	<i>16th July 2012</i>
<i>Laid before Parliament</i>		<i>18th July 2012</i>
<i>Coming into force</i>	- -	<i>29th November 2012</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(1), (2) and (3) of the Scotland Act 1998(a).

Citation, commencement, extent and cessation

1.—(1) This Order may be cited as the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (England and Wales and Northern Ireland) Order 2012 and comes into force on 29th November 2012.

(2) This Order extends to England and Wales and Northern Ireland only.

(3) This Order ceases to have effect on the day on which the Act ceases to have effect.

Interpretation

2.—(1) In this Order—

“the Act” means the Glasgow Commonwealth Games Act 2008(b);

“Games ticket” has the meaning given in section 48(1) of the Act;

“information society service” has the meaning given in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)(c);

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

(a) 1998 c. 46.

(b) 2008 asp 4.

(c) 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.

“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 article 3(1).

(2) For the purposes of this Order—

- (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;
- (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.

The touting offence

3.—(1) It is an offence for a person to tout a Games ticket.

(2) A person touts a Games ticket if the person does anything falling within the meaning of that expression in section 17(2) of the Act (as construed in accordance with section 17(6) and (7) of that Act).

(3) Paragraph (1) applies—

- (a) in the law of England and Wales, to acts done in or outside England and Wales; and
- (b) in the law of Northern Ireland, to acts done in or outside Northern Ireland.

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

Exception for authorised acts

4.—(1) The touting offence does not apply in relation to acts done—

- (a) by the Organising Committee or the Commonwealth Games Federation; or
- (b) in accordance with an authorisation given by the Organising Committee.

(2) An authorisation given for the purposes of paragraph (1)(b)—

- (a) may be subject to conditions imposed by the Organising Committee;
- (b) must be given in writing (and an authorisation which is transmitted by electronic means is to be treated as being in writing if it is received in legible form and capable of being used for subsequent reference).

(3) In this article, “Organising Committee” means the company named Glasgow 2014 Limited which was incorporated on 11th June 2007.

Exception for certain advertisers etc.

5. A person (“A”) who advertises that a Games ticket is available for purchase from, or makes a ticket available for sale by, another person (“B”) does not commit the touting offence if—

- (a) the proposed ticket sale would constitute the touting offence only because B intends to—
 - (i) sell the ticket for an amount exceeding the ticket’s face value; or
 - (ii) make a profit as a result of the sale; and

- (b) A does not, and could not reasonably be expected to, know B's intention.

Information society services: proceedings for the touting offence committed elsewhere

6. Where an information society service provider is established in the United Kingdom and the provider, in providing that service, does anything in an EEA state (other than, in the United Kingdom, the areas of England and Wales and Northern Ireland) which is capable of constituting the touting offence in England and Wales or Northern Ireland—

- (a) proceedings for the offence may be taken at any place in England, Wales or Northern Ireland, as the case may be, in which the conduct in question is capable of constituting the touting offence; and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

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

7.—(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.

- (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 constable—
 - (a) has requested the EEA state in which the information society service provider is established to take measures which the constable 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

8.—(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

9.—(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

10.—(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.

David Mundell
Parliamentary Under Secretary of State
Scotland Office

Dover House,
London
16th July 2012

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision which is necessary or expedient in consequence of the Glasgow Commonwealth Games Act 2008 (“the Act”). Section 17 of the Act makes it an offence in the law of Scotland to tout a Commonwealth Games ticket and this applies to acts done in or outwith Scotland. Section 18 provides an exception for certain advertisers. Section 19 enables the Scottish Ministers, by regulations, to specify circumstances in which making facilities available in connection with electronic communications or the storage of data is not capable of constituting an offence under section 17 as it applies in the law of Scotland. Section 20 makes further provision in relation to the authorisation of ticket sales by the Organising Committee under the Act.

Article 3 of this Order makes it an offence (“the touting offence”) under the law of England and Wales and the law of Northern Ireland to tout a Commonwealth Games ticket within the meaning of section 17(2) of the Act in relation to acts done in or outside these areas of the United Kingdom. The Order ceases to have effect on the same day as the Act ceases to have effect.

Article 4 disapplies the offence in relation to acts done by the Organising Committee or the Commonwealth Games Federation, and acts otherwise done in accordance with an authorisation given by the Organising Committee. It also enables the Organising Committee to apply conditions in relation to such authorisations.

Article 5 provides an exception for certain advertisers in the same terms as section 18 of the Act.

Article 6 provides that if an information society service provider based in the United Kingdom does anything in a state (other than, in the United Kingdom, the areas of England and Wales and Northern Ireland) that is a member of the European Economic Area which is capable of constituting the touting offence in England and Wales or Northern Ireland, proceedings for the touting offence may be taken at any place in England, Wales or Northern Ireland in which the conduct in question is capable of constituting the touting offence and may be treated as having been committed at any such place.

Article 7 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. Articles 8 to 10 specify circumstances involving mere conduit, caching and hosting of information society services which are not capable of constituting the touting offence. These provisions comply with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services in the Internal Market (OJ L 178, 17.7.2000, p.1).

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STATUTORY INSTRUMENTS

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