

# **GLASGOW COMMONWEALTH GAMES BILL**

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## **DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A.1 of the Parliament's Standing Orders. Its purpose is to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Standing Orders, of provisions in the Glasgow Commonwealth Games Bill conferring powers to make subordinate legislation. It describes the purpose of each such provision and explains why the matter is to be left to subordinate legislation. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

### **OUTLINE OF THE BILL**

2. The Glasgow Commonwealth Games Bill gives effect to the commitments made by the Scottish Government as part of Glasgow's bid to host the 2014 Commonwealth Games. It provides Scottish Ministers, Councils and the Organising Committee with the powers necessary to ensure the delivery of the Games. It also provides the legislative framework needed to enable the Scottish Government to fulfil the requirements which the Commonwealth Games Federation place on host cities.

### **KEY PROVISIONS**

3. The main provisions in the Bill are those relating to:
- Restrictions on street trading
  - Restrictions on advertising
  - Ban on ticket touting
  - Enforcement of games offences
  - Trial and punishment
  - Transport
  - Funding
  - Compulsory acquisition of land.

#### **Street trading etc**

4. Sections 2 to 9 of the Bill set out the substance of the new trading offence, namely the ban on outdoor trading in the vicinity of a games event. They also give the Scottish Ministers

power to make regulations which will, for example, provide criteria for determining what is to be treated as being in the vicinity of a games event for the purposes of street trading and to set out the conditions for authorised and unauthorised but permissible trading.

### **Advertising**

5. Sections 10 to 16 of the Bill set out the substance of the new advertising offence, namely that advertising, as it is defined in section 11, within the vicinity of a games event will be prohibited. They also give the Scottish Ministers power to make regulations which will, for example, provide the criteria for determining what places are to be treated as being within the vicinity of a games event for the purposes of advertising and set out the conditions for authorised and unauthorised but permissible advertising.

### **Ticket touting**

6. Sections 17 to 20 of the Bill make it an offence to tout a games ticket, which can include selling, offering to sell or making a games ticket available for sale by another person. The exceptions to this general prohibition include situations such as re-sale of a games ticket at face value or less, authorised ticket sales and provision will be made by regulations concerning the application of the offence in relation to internet service providers.

### **Enforcement**

7. Sections 21 to 33 of the Bill enable persons who are designated as enforcement officers, in accordance with the Bill, to take certain enforcement action. These provisions give power to the Scottish Ministers to make regulations which will specify the criteria which individuals must meet in order to be designated as enforcement officers. They set out the general powers of enforcement and the specific restrictions on these powers. Provision is also made relating to powers of search and entry, with further restrictions relating specifically to entering houses. There are also provisions relating to the use of reasonable force, the power to obtain information, the requirement to produce authority, test purchases, compensation in relation to enforcement action, obstruction of an enforcement officer and police powers. In relation to compensation, the Scottish Ministers are required to make provision relating to claiming compensation, the amount awarded and conferring jurisdiction in relation to disputes.

### **Trial and Punishment**

8. Sections 34 to 36 of the Bill set out the mode of trial and applicable penalties for games offences and make provision for offences committed by bodies corporate.

### **Transport**

9. Sections 37 to 40 of the Bill make provision for a transport plan to be put in place and give power to the Scottish Ministers to make games traffic regulation orders, being orders under section 14(1) of the Road Traffic Regulation Act 1984. There are also provisions relating to urgent traffic regulation measures and the procedures relating to directions from the Scottish Ministers to local authorities.

## **Funding**

10. By section 41 provision is made to allow the Scottish Ministers to provide financial assistance to the Organising Committee.

## **Compulsory acquisition of land**

11. Section 42 of the Bill modifies Part 8 of the Town and Country Planning (Scotland) Act 1997 to allow for any relevant compulsory acquisition of land which is required to facilitate the holding of the 2014 Games.

## **SUBORDINATE LEGISLATIVE POWERS – OUTLINE**

12. The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. All of these powers are new with the exception of that in section 38(1) of the Bill which modifies existing delegated powers contained in the Road Traffic Regulation Act 1984 and that in section 42 modifying Part 8 of the Town and Country Planning (Scotland) Act 1997.

13. This memorandum sets out—

- the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

14. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered the importance of each matter against the need to—

- ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation; and
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.

15. In addition to the powers outlined below the Bill also contains certain direction making powers. It is considered that these are of an executive nature rather than a legislative nature and as such they are not detailed in this memorandum.

## **SUBORDINATE LEGISLATIVE POWERS – DETAIL**

### **Section 1(2) - Games Event**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by Statutory Instrument  
**Parliamentary procedure:** Negative resolution procedure

#### *Reason for taking power*

16. Section 1(2) defines the term “Games event” as being any event which forms part of the Games. Paragraph (b) of that section confers power upon Scottish Ministers to include any other event, whether before, during or after the Games as falling within this definition. The intention is to ensure that all of the events which are associated with and form part of the Games are included within the scope of the Bill. An order made under this section will allow Scottish Ministers to ensure that this is the case and enable clarity to be achieved concerning events that are covered by the terms of the Bill.

#### *Choice of procedure*

17. Orders made under this section will be subject to negative resolution procedure. Given that such an order will be uncontroversial and administrative in nature it is considered that negative resolution procedure is appropriate

### **Section 2 - Trading activities, places and prohibited times**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Negative resolution procedure

18. Section 2 sets out the scope of the ban on outdoor trading. Section 2(3) enables Scottish Ministers to make trading regulations. Section 3 provides that the trading regulations may prescribe, or provide specific criteria for determining, which activities are to be treated as trading, the places that are to be treated as being within the vicinity of a Games event and at what times trading will be prohibited for the purpose of the trading offence.

19. Section 4 relates specifically to the regulation of authorised trading. It enables the trading regulations made under section 2(3) to prescribe the circumstances in which the Organising Committee can authorise a person to trade in a manner which would otherwise constitute a trading offence under section 2. Section 4(2) provides further specification in relation to authorised trading. Authorisations may be made in relation to a particular place or location and in relation to a person who currently holds a licence to trade. An authorisation may be treated as if it were a licence granted by virtue of another enactment. The regulations may give the Organising Committee authority to grant authorisations, may regulate the fees in relation to authorisations, regulate fairs or market trading and to provide for a right of appeal against refusal to grant an authorisation.

20. Section 5 provides that the trading regulations may impose conditions upon those who are authorised to trade. Trading in breach of these conditions will constitute unauthorised trading and will therefore constitute an offence under section 2. The intention of this section is to allow Ministers to control certain operational aspects of authorised advertising, such as the particular times when authorised advertising can be carried out.

21. Section 6(1) allows the trading regulations to prescribe or provide criteria for determining the circumstances in which unauthorised trading will be permitted. Such permission may relate to a specific trader, trading which has a particular application of profits or trading with a particular nature or purpose. The intention of this section is to allow Ministers to determine which persons can trade without having to apply for authorisation.

22. Section 9(1) specifies that the Organising Committee is responsible for issuing guidance about trading in the vicinity of Games events. Section 9(2) allows the trading regulations to include provisions which require other persons to provide guidance about the effect of section 2 and the trading regulations. They may also require a person who grants a trading licence to inform the licensee of the effect of section 7 (relating to existing trading licences).

#### *Reason for taking power*

23. Regulations made under section 2 will make detailed provision in relation to aspects of the offence and in particular about authorised trading. In relation to the trading offence the regulations will set out the times and places in which an offence may be committed. This will, in turn, be determined by the nature and location of the particular venue and is very much a matter of detail which is not appropriate for primary legislation. In addition the Commonwealth Games Federation (CGF) could change the detail of requirements which are placed on host cities and proposed sporting programmes or venues could alter during the period leading up to the Games. An assessment of the detail required in relation to the definition of trading activities, vicinity and times for prohibition can only be undertaken when CGF requirements are finalised and detailed operational plans become available. Subordinate legislation will allow Scottish Ministers to exercise an appropriate degree of flexibility at a time when these factors can be taken into account. It is therefore appropriate for these matters to be addressed in regulations.

#### *Choice of procedure*

24. In deciding the appropriate procedure to be adopted in relation to the trading regulations made under section 2, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily.

25. Whilst the regulations will serve to provide some further detail in relation to the offence these really concern only the time and place at which offences may be committed. The substance of the offence remains on the face of the Bill. The measures will also have a very short life span being concerned only with the period of the Games. The majority of the provisions in the trading regulations will concern wholly administrative issues being authorisations to trade, conditions in relation to authorisations, permitted trading without authorisation, limits on fees that may be charged and provision in relation to guidance and information.

26. There is also an obligation placed upon Ministers to consult the councils for the areas where the proposed regulations will apply, the Organising Committee and any other appropriate persons. In addition, section 46 of the Bill requires Scottish Ministers to publish information on the general nature of the regulations at least two years in advance of the Games and to publish the detailed provisions contained within those regulations at least six months in advance of the Games.

27. The trading regulations will therefore be predominantly administrative in nature and, to the extent that they may be considered to have substantive effect, they will have very short term application and in any event be subject to consultation and advance publication. In the circumstances negative resolution procedure is considered to be appropriate.

### **Section 10 - Ban on advertising in the vicinity of Games events**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations made by Statutory Instrument**  
**Parliamentary procedure: Negative resolution procedure**

28. Section 10 sets out the scope of the ban on advertising and enables the Scottish Ministers to make the advertising regulations. Section 11 sets out the activities that are to be treated as advertising for the purposes of section 10. Section 11(4) provides that the advertising regulations may prescribe or provide specific criteria for determining which places are to be treated as being within the vicinity of a Games event and at what times advertising will be prohibited for the purposes of the advertising offence.

29. Section 12 relates specifically to the regulation of authorised advertising. It enables the advertising regulations made under section 10(2) to prescribe the circumstances in which the Organising Committee can authorise a person to advertise in a manner which would otherwise constitute an advertising offence. Section 12(2) makes specific provision in relation to authorised trading. Authorisations may be made in relation to a particular location or in relation to a person who already holds a particular licence. An authorisation may be treated as if it were a licence granted by virtue of another enactment. The advertising regulations may give the Organising Committee authority to grant authorisations, may regulate the fees in relation to authorisations, may regulate fairs or market trading and may provide for a right of appeal against refusal to grant an authorisation.

30. Section 13(1) provides that the advertising regulations may impose conditions upon those who are authorised to advertise. Advertising in breach of these conditions will constitute an offence under section 10. The intention of this section is to allow Ministers to control certain operational aspects of authorised advertising, such as the particular times when authorised advertising can be carried out.

31. Section 14(1) allows the advertising regulations to prescribe or provide criteria for determining the circumstances in which unauthorised advertising will be permitted. Such permission may relate to a specific advertiser, the circumstances of the particular display or advert with a particular nature or purpose. The intention of this section is to allow Ministers to determine which persons can advertise without having to apply for authorisation.

32. Section 16(1) specifies that the Organising Committee is responsible for issuing guidance about advertising in the vicinity of Games events. Section 16(2) allows the trading regulations to include provisions which require other persons to provide guidance about the effect of section 10 and the advertising regulations. They may also require a person who grants an advertising licence to inform the licensee of the effect of section 15 (relating to existing advertising licences).

*Reason for taking power*

33. Regulations made under section 10 will make detailed provision in relation to aspects of the offence and in particular about authorised advertising. As with the trading regulations, provision will be made which will set out the times and places in which an offence may be committed. This will, in turn, be determined by the nature and location of the particular venue and is very much a matter of detail which is not appropriate for primary legislation. In addition the Commonwealth Games Federation (CGF) could change the detail of requirements which are placed on host cities and proposed sporting programmes or venues could alter during the period leading up to the Games. An assessment of the detail required in relation to the definition of advertising activities, vicinity and times for prohibition can only be undertaken when CGF requirements are finalised and detailed operational plans become available. Subordinate legislation will allow Scottish Ministers to exercise an appropriate degree of flexibility at a time when these factors can be taken into account. It is therefore appropriate for these matters to be addressed in regulations.

*Choice of procedure*

34. In deciding the appropriate procedure to be adopted in relation to the advertising regulations made under section 10, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily.

35. Whilst the regulations will serve to provide some further detail in relation to the offence these really concern only the time and place at which offences may be committed. The substance of the offence remains on the face of the Bill. The measures will also have a very short life span being concerned only with the period of the Games. The majority of the provisions in the advertising regulations will concern wholly administrative issues being authorisations to advertise, conditions in relation to authorisations, permitted advertising without authorisation, limits on fees that may be charged and provision in relation to guidance and information.

36. There is also an obligation placed upon Ministers to consult the councils for the areas where the proposed regulation will apply, the Organising Committee and any other appropriate persons. In addition, section 46 of the Bill requires Scottish Ministers to publish information on the general nature of the regulations at least two years in advance of the Games and to publish the detailed provisions contained within those regulations at least six months in advance of the Games.

37. The advertising regulations will therefore be predominantly administrative in nature and, to the extent that they may be considered to have substantive effect, they will have very short

term application and in any event be subject to consultation and advance publication. In the circumstances negative resolution procedure is considered to be appropriate.

### **Section 19 - Use of Internet etc.**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Orders made by statutory instrument  
**Parliamentary procedure:** Negative resolution procedure

#### *Reason for taking power*

38. Section 19 enables Scottish Ministers to make regulations which will specify the circumstances in which a touting offence is committed by a person who makes facilities available in connection with electronic communications or storage of data, essentially the internet. Section 17 will prohibit advertising that a Games ticket is available and exposing such a ticket for sale and therefore would have application in relation to internet service providers who provide advertising and sales services. Directive 2000/3 EC of the European Parliament on electronic commerce sets out certain requirements which must be implemented in national law in relation to the liability of information society services (which include internet providers) in relation to the services that they provide. Different requirements apply to different types of information society services. These require detailed provision the effect of which will be to exclude providers of such services from liability in relation to the touting offence to the extent required by the Directive. The detail is of such a level that it is not appropriate to be included on the face of the Bill.

#### *Choice of procedure*

39. The regulations will make detailed provisions in compliance with the Directive which will act as an exception to the offence and will be uncontroversial in nature. In the circumstances we consider that it is appropriate for the regulations to be subject to negative resolution procedure.

### **Section 20(4) - Authorised ticket sales**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Negative resolution procedure

#### *Reason for taking power*

40. Section 17 sets out the scope of the ticket touting offence. Section 17(4)(b) allows the Organising Committee to authorise tickets sales which would otherwise constitute a ticket touting offence. Section 20 allows the Organising Committee to impose certain conditions relating to authorised ticket sales. Section 20(4) confers power upon Scottish Ministers to regulate the fees being charged in connection with an authorisation or application for authorisation under section 17. The intention of this subsection is to allow Ministers to control the fees which may be charged by the Organising Committee in relation to authorisations. The substance of these regulations cannot be determined until such times as the Organising

Committee sets out its plan for charging fees. It is therefore considered appropriate that this issue should be dealt with through subordinate legislation which can respond if such need arises.

*Choice of procedure*

41. Regulations made under this section will be subject to negative resolution procedure. Given that these regulations are administrative in nature it is considered that negative resolution procedure is appropriate.

**Section 21(1) - Enforcement of games offences**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations made by Statutory Instrument**  
**Parliamentary procedure: Negative resolution procedure**

42. Sections 21 to 33 set out the provisions relating to the enforcement of games offences. The powers of enforcement officers, including the restriction of their powers, procedures for search and entry, the use of force, the power to obtain information, the power to make test purchases, provisions dealing with obstruction of enforcement officers and provisions relating to compensation are all covered in these sections. Section 21 states that Games offences will be enforced in accordance with the Bill or the enforcement regulations. The intention of section 21(1) is to create a power which will allow Ministers to supplement current provisions within sections 21 to 33 with additional provisions which may be considered necessary or appropriate at a later date. The substance of the enforcement provisions is, however, set out on the face of the Bill.

43. The Organising Committee is given power to designate enforcement officers under section 22(1). An individual can only be appointed as an enforcement officer if they are a trading standards officer and the appropriate council has given consent, or if they meet criteria specified by Scottish Ministers in the enforcement regulations. This allows Ministers to specify who can be designated as an enforcement officer.

44. Section 31 makes provision relating to compensation for damage caused to property by any act done by an enforcement officer in the exercise of their powers under sections 23 or 25. Subsection (2) places an obligation upon Ministers to include within the enforcement regulations provisions relating to the criteria for determining the amount of compensation due and conferring jurisdiction for determining disputed compensation on to a court. The regulations will therefore provide detail regarding the procedure for claiming compensation and the systems which are put in place to calculate the appropriate awards for compensation

*Reason for taking power*

45. The enforcement regulations will concern matter of detail the level of which is not suitable to be included on the fact of primary legislation. The criteria for and appointment of enforcement officers is a matter of detail and will be informed by the needs in relation to events which will become clear once the detailed plans for the Games emerge. As for compensation issues this is a matter of particular detail as the regulations will include many procedural issues

concerning applications for compensation. For these reasons, it is considered that this issue should be dealt with through subordinate legislation.

*Choice of procedure*

46. The enforcement regulations will provide detail relating to the appointment of enforcement officers and the operational aspects of the compensation scheme. The appointment of enforcement officers is considered to be an administrative aspect which supplements the substantial provisions which govern enforcement officers in sections 21 to 33. Details of the compensation scheme are also considered to be predominantly administrative in nature. It is therefore considered that negative resolution procedure is appropriate.

**Section 38(1) - Games traffic regulation orders**

47. Section 39 modifies the order making powers in section 14(1) of the Road Traffic Regulation Act 1984 relating to temporary prohibitions or restrictions on roads. This power will allow Scottish Ministers to make orders under section 14 of the 1984 Act specifically for the purpose of the Games. This section does not alter the procedure to be applied to the making of orders under section 14(1) of the Road Traffic Regulations Act 1984, which remains negative procedure.

**Section 43(2) - Orders and Regulations**

48. Section 43(2) provides that any power to make an order or regulations under the Bill includes power for Scottish Ministers to make any supplementary, incidental, consequential, transitory, transitional or saving provisions in relation to subordinate legislation which is created under a power given in this Bill. Regulations including such provision will remain subject to negative resolution procedure. Nothing in this power alters the fundamental nature of the substantive orders and regulations and therefore does not alter the procedure that should be applied to those orders or regulations.

**Section 47(1) - Ancillary provision**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Orders made by statutory instrument  
**Parliamentary procedure:** Negative resolution procedure

*Reason for taking power*

49. Section 48 gives the Scottish Ministers powers to make supplementary, incidental, consequential, transitory, transitional or saving provisions for the purpose of, in connection with or to give full effect to any provision of the Bill.

*Choice of procedure*

50. The purpose of this provision is to create power for the Scottish Ministers to act upon any unforeseen changes which could not be accounted for or reasonably anticipated in the drafting of the Bill. This may relate to a provision contained within this Bill or any other enactment.

51. The powers contained within this section give the Scottish Ministers the power to add to the substance of the Bill (in so far as can be done in a supplementary, incidental, consequential, transitory, transitional or saving manner). The intention is to allow the Scottish Ministers to make changes which are required to ensure compliance with the Host City Contract and obligations imposed upon the Host City in relation to the delivery of the Games, some of which could change prior to the Games taking place. There is no power to amend other Acts but only to apply or disapply them. Any such measure would also have a very short lifespan given the short life nature of the Games. In light of the fact that these powers are intended for such purposes and would be limited in time, it is considered that negative resolution procedure is appropriate.

#### **Section 49(2) - Commencement**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** None

52. Section 49 gives the Scottish Ministers power to commence provisions of the Bill by order.

53. As the order will only bring into force the provisions of the Bill which will have already been approved by Parliament, it is not considered that there is a need for Parliamentary procedure.

#### **Section 50(2) - Repeal**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** None

54. Section 50 provides for the repeal of the Bill. It gives the Scottish Ministers power to make an order which specifies a day after the Games have ended as being the repeal day.

55. The order will remove the Bill from the statute book on the repeal day. As the Bill is concerned only with the Glasgow Commonwealth Games and will have no continuing application or purpose after the Games have ended, rather like a commencement order, it is not considered that there is a need for Parliamentary procedure.

*This document relates to the Glasgow Commonwealth Games Bill (SP Bill 4) as introduced in the Scottish Parliament on 9 November 2007*

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