

GLASGOW COMMONWEALTH GAMES BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Glasgow Commonwealth Games Bill introduced in the Scottish Parliament on 9 November 2007. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 4–EN.

POLICY OBJECTIVES OF THE BILL

2. Glasgow has been selected as the Host City for the 2014 Commonwealth Games. The primary policy aim of the Bill is to meet the Scottish Government's obligations under the Host City Contract and deliver the commitments given in the Candidate City File. The Bill provides the Scottish Ministers and councils with the powers necessary to achieve this.

3. The Commonwealth Games is one of the largest multi-sport events in the world and has been held every four years since 1930 with a short intermission between 1938 and 1950. It involves elite athletes from around the Commonwealth drawn from the 71 different nations and territories which are members of the Commonwealth Games Federation.

4. On 16 August 2005, Glasgow formally launched its bid to host the 2014 Commonwealth Games. The bid had three main partners: the Scottish Government, Glasgow City Council and the Commonwealth Games Council for Scotland, who together established a Bid Team to take forward the bid on their behalf. This bid was funded on a 50/50 split between the Scottish Government and Glasgow City Council. It was agreed at that time, however, that if the bid was successful, the net cost of the Games would be funded on an 80/20 split between the Scottish Government and Glasgow City Council respectively.

5. Glasgow was initially competing against Halifax in Canada and Abuja in Nigeria. However, on 8 March 2007 Halifax withdrew from the competition. On 9 May 2007 the Commonwealth Games Council for Scotland submitted the Candidate City File for a Glasgow Games to the Commonwealth Games Federation. This contained detailed information on a number of areas including sports, venues, security, finance and transport.

6. On 9 November 2007, Glasgow was selected as the Host City for the 2014 Commonwealth Games at the Commonwealth Games Federation General Assembly in Colombo, Sri Lanka. Immediately after the announcement, the Scottish Government, Glasgow City Council, the Commonwealth Games Council for Scotland and the Organising Committee all signed the Host City Contract as required by the Commonwealth Games Federation. This contract covers the obligations of the parties to that contract, which include fulfilling all commitments contained within the Candidate City File and those made in the bidding process, and Commonwealth Games Federation requirements relating to the Games. The majority of these requirements are set out in the Commonwealth Games Federation Technical Manuals. The Organising Committee is a Company Limited by Guarantee and is jointly owned by the three bid partners (the Scottish Government, Glasgow City Council and the Commonwealth Games Council for Scotland). The Organising Committee will be tasked with delivering the 2014 Games.

7. The Host City Contract requires the Scottish Government to introduce legislation necessary to prohibit ambush marketing, eliminate street vending and control advertising space during the period of the Games and to do so no later than 30 June 2010. The Technical Manuals - which form part of the Host City Contract - also contain measures which require a legislative response, for example that “appropriate regulations should be put in place to prevent ticket scalping”.

8. It is not unusual for the organisers of major sporting events to require host cities to introduce specific legislative protection. Such legislation has been or is being introduced in a number of countries, including:

- Australia for the 2000 Sydney Olympic Games and the 2006 Melbourne Commonwealth Games;
- China for the 2008 Beijing Olympic Games;
- New Zealand for the 2011 Rugby World Cup;
- Canada for the 2010 Vancouver Winter Olympic Games;
- South Africa for the 2010 FIFA World Cup; and
- The UK for the 2012 London Olympic & Paralympic Games.

9. Much of this legislation is designed to tackle ambush marketing and, as mentioned above, the Scottish Government is now obliged to ensure the introduction of legislation necessary to prohibit this. Major events such as the Commonwealth Games attract large audiences and have positive values associated with their brand. They are, therefore, attractive to businesses seeking to promote their goods or services. Such businesses pay significant sums to the organisers of these events to become official sponsors, thereby securing the right to promote themselves and their goods or services as associated with the event. The sale of such sponsorship rights provides a significant revenue stream for events which would otherwise have to rely more heavily on public subsidy.

10. If sponsors do not have confidence in the exclusivity of such sponsorships rights, their value as a source of revenue can become eroded. Ambush marketing, or parasitic marketing, describes the actions of companies or advertisers who seek to capture these benefits for

themselves without the authorisation of the event organisers. If unregulated, such activity can prove very lucrative for those organisations as they gain the benefits of association without paying the sponsorship fee. Not paying this fee also allows them to direct greater levels of resource at traditional marketing activities. Such practices can frustrate an event's ability to attract private investment and undermine its revenue base. Many sponsors now insist that protection against such tactics is in place before they commit.

11. There are two principal types of ambush marketing. The first involves an advertiser creating an association through misleading the public into thinking that the ambush marketer is an authorised sponsor or otherwise officially connected with the event. This can be achieved in a number of subtle ways that do not necessarily use the name of the event or its protected trade marks. The second type of ambush marketing involves the creation of association through proximity to or intrusion into venues where the event is being held. Ambush marketers could, for example, put in place advertisements around venues which could be seen by spectators or picked up by television coverage. They could also, for example, hand out free branded merchandising to spectators that could then be carried into venues.

12. The Town and Country Planning (Scotland) Act 1997, the Trade Marks Act 1994, the Trade Descriptions Act 1968, the Control of Misleading Advertising Regulations 1998 and the common law of "passing off" already provide some protection against these activities. Nonetheless the short term, high profile nature of these Games leaves them vulnerable to ambush marketing strategies which could operate successfully within the law.

13. We intend to tackle the first type of ambush marketing through the creation of an association right similar to the one found in section 33 of the London Olympic Games & Paralympic Games Act 2006. As intellectual property is a reserved issue under the Scotland Act 1998, the UK Government has agreed to introduce such a measure. The Games will be protected from the second form of ambush marketing and any other unregulated commercialism by the provisions contained within the Bill.

14. The Bill was developed with particular regard to the London Olympic Games & Paralympic Games Act 2006 which was brought forward in response to International Olympic Committee requirements very similar to those of the Commonwealth Games Federation. For example, they also require controls to be placed on advertising, street trading and ticket touting, and offences for those activities now exist in relation to the 2012 London Olympic Games and Paralympic Games. These measures were extended to Scotland during the previous parliamentary session through a Legislative Consent motion.

15. The main measures of the Bill will:

- create new criminal offences prohibiting unauthorised advertising and outdoor trading within the vicinity of Games venues, with penalties on summary conviction of a fine not exceeding £20,000 or an unlimited fine on conviction on indictment;
- create a new criminal offence to prohibit the unauthorised sale of Games tickets in public, in excess of face value or with a view to making a profit, with penalties on summary conviction of a fine not exceeding level 5 on the standard scale (currently £5,000);

- provide for the designation of enforcement officers empowered to enforce the Games advertising, street trading and ticket touting offences, and make it a criminal offence to obstruct them in their duties, with penalties on summary conviction of a fine not exceeding level 5 on the standard scale;
- provide councils with the power to make Games traffic regulation orders;
- provide the Scottish Ministers with the power to direct councils to make, vary or revoke any instrument which regulates road use in relation to the Transport Plan for the Games;
- provide councils with the power to issue a Compulsory Purchase Order for land within their area which they believe is required for Games purposes;
- provide the Scottish Ministers with powers to pay grants and provide other forms of assistance to the Organising Committee of the Games and set conditions on such assistance; and
- provide the Scottish Ministers with the power to repeal the Act from the statute book once the Games have ended.

CONSULTATION

16. In preparing to meet the obligations given during the bid phase, the Scottish Government published the “Draft Glasgow Commonwealth Games Bill: Consultation Document” on 28 June 2007. This set out draft legislative plans to address these issues. The Scottish Government received 39 written responses to the consultation. These were overwhelmingly supportive of the aims of the Bill, however some raised practical issues around implementation and enforcement which are dealt with below. The consultation responses can be found on the Scottish Government website.

BILL PROVISIONS

Street trading etc.

Policy objectives

17. The policy intention is to prohibit unauthorised outdoor vending in the vicinity of Games events during the Games period. This prohibition is needed in order to fulfil obligations imposed by the Commonwealth Games Federation through the Host City Contract which requires that legislation is put in place to eliminate street vending during the period of the Commonwealth Games and in order to address issues of amenity and public safety.

18. The Commonwealth Games Federation make these requirements not only because of financial motivation, but also to restrict market clutter, prevent inappropriate marketing, and to protect the high standards associated with the Games. They also aim to protect the integrity of the Games and prevent over-commercialisation.

Key information

19. The Bill will make it a criminal offence to trade within the vicinity of a Games event, unless that trading takes place within a building, or is done in accordance with regulations made by the Scottish Ministers (the “trading offence”). The trading offence can be committed only at such times and in such places as set out in those regulations. A person convicted of a trading offence will be liable on conviction on indictment to an unlimited fine or on summary conviction to a fine not exceeding £20,000. This level of fine recognises that the offence is likely to be of a commercial nature. The level of penalties associated with this offence are also equivalent to the penalties available for a very similar offence under the London Olympic Games & Paralympic Games Act 2006.

20. The Commonwealth Games Federation may find it necessary to change the requirements which are placed on the Host City or the proposed sporting programme or venues may alter during the period leading up to the Games. For this reason, much of the detail of these restrictions, such as what will be defined as trading, the definition of vicinity and the time periods during which the restrictions will apply will be brought forward in secondary legislation in order to make a proper assessment of what is required closer to 2014. The regulations are likely to apply restrictions for different periods and in a different way for different Games events. This would enable the characteristics of different venues and different events to be taken into account and ensure any restrictions are proportionate in their compliance with the Host City Contract. For example, Strathclyde Park is currently proposed to be used only for the one day Triathlon whereas the SECC Arena is currently proposed to be used for 11 days of Netball.

21. The trading regulations may also prescribe circumstances in which the Organising Committee could authorise persons to trade in a way which would otherwise constitute a trading offence. This would allow the Organising Committee to provide authorisation to approved vendors.

22. Before the Scottish Ministers can make the trading regulations, the Bill will require them to consult the councils for the areas where it is proposed that the regulations apply, the Organising Committee and any other persons they consider appropriate. The local business community would have a key role to play in any such consultation. The Bill will also require the Scottish Ministers to publish the general nature of the trading regulations at least 2 years before the Games begin and the detail of those regulations at least 6 months before the Games begin.

23. Having an existing trading licence or being issued with a new one will not be a defence against this offence. However, councils will be under an obligation to work with existing traders to identify alternative arrangements. The trading regulations may also require persons who issue such licenses to inform the holders that this defence is not available. Such a trader would have to seek authorisation to trade or only carry out certain permitted trading in order not to commit an offence under the Bill. The Regulations may also prescribe circumstances in which trading that would otherwise constitute a trading offence would be permitted without authorisation from the Organising Committee. This could be used to mitigate the effect of the regulations on local traders.

24. The Bill allows the Organising Committee to issue guidance about trading within the vicinity of Games events.

Consultation

25. The consultation responses were broadly supportive of the policy objectives, however some concerns were raised around implementation issues. The majority of these, such as the definition of vicinity or trading will be dealt with in the trading regulations. Some respondents suggested that those who are authorised to trade by the Organising Committee be required to produce evidence of their authorisation on request by a constable or enforcement officer in order to aid enforcement of the offence. Section 5(2)(b) allows the Organising Committee to set such a condition on their authorisation and similar provisions have been made for advertising under section 13(2)(b). Other respondents felt that the definition of existing trader was too wide and this has now been refined in section 8(2). The duty to work with existing traders has also been moved from the Scottish Ministers to councils as they will be better placed to offer such assistance. Some respondents also suggested that the £20,000 maximum fine originally proposed for this offence would not be a sufficient deterrent given its commercial nature, therefore, under section 35(1) a person convicted of a trading offence on indictment is now liable to an unlimited fine.

Alternative approaches

26. Current legislation only relates to street trading/peddling, as controlled in Scotland under the Civic Government (Scotland) Act 1982 and the Pedlars Acts. The Commonwealth Games Federation require the prevention of street vending which would necessitate control by the Scottish Ministers over street trading, and the prevention of markets, fairs, pedlars or trading on public or private land from taking place in the vicinity of Games venues during the Games period. The Scottish Ministers do not have power to direct how councils exercise their discretionary powers under the 1982 Act. The penalties associated with these offences are also unlikely to discourage attempts to target the Games. Relying on current legislation would, therefore, not deliver the Government's obligations under the Host City Contract and risk legal action by the Commonwealth Games Federation. Failure to control street vending around Games events during the Games period could also threaten the image of the Games and undermine Scotland's ability to attract major events in the future.

27. As the introduction of legislation necessary to eliminate street vending is a requirement of hosting the 2014 Commonwealth Games, there is no alternative to the introduction of a prohibition on street trading that would deliver the policy objectives.

Advertising

Policy objectives

28. The policy intention is to prohibit unauthorised advertising in the vicinity of Games events during the Games period. This ban is needed in order to fulfil obligations imposed by the Commonwealth Games Federation through the Host City Contract which requires that legislation is put in place to control advertising space during the period of the Commonwealth Games. The Commonwealth Games Federation technical manual on Brand Protection, which forms part of the Host City Contract, also requires "that during the period of the Games the venues and their immediate precincts are free of any unauthorised branding, signage, advertising, commercial and/or other propaganda" and that "all structures, facilities and areas that are visible by spectators, accredited people and broadcast cameras at the Commonwealth Games, should be

free of commercial advertising and other messages deemed inappropriate for the Commonwealth Games environment”.

29. As with street vending, the Commonwealth Games Federation make these requirements not only because of financial motivation, but also to restrict market clutter, prevent inappropriate marketing, and to protect the high standards associated with the Games. They also aim to protect the integrity of the Games and prevent over-commercialisation.

Key information

30. The Bill will make it a criminal offence to advertise in the vicinity of a Games event unless done in accordance with regulations made by the Scottish Ministers (the “advertising offence”). The offence can be committed only at such times and in such places as set out in those regulations. A person convicted of an advertising offence will be liable on conviction on indictment to an unlimited fine or on summary conviction to a fine not exceeding £20,000. This level of fine reflects that the offence is likely to be of a commercial nature. The level of penalties associated with this offence are also equivalent to the penalties available for a very similar offence under the London Olympic Games & Paralympic Games Act 2006.

31. As with the ban on trading within the vicinity of Games events, much of the detail of the restrictions has been left to secondary legislation in order to make a proper assessment of what is required closer to 2014. This could involve changes in the requirements of the Commonwealth Games Federation or proposed venues. The advertising regulations will define where and when an advertising offence could take place.

32. The advertising regulations may also prescribe circumstances in which the Organising Committee could authorise persons to advertise in a way which would otherwise constitute an advertising offence. This would allow the Organising Committee to provide authorisation to approved sponsors.

33. Before the Scottish Ministers can make the advertising regulations, the Bill will require them to consult the councils for the areas where it is proposed that the regulations apply, the Organising Committee and any other persons they consider appropriate. The local business community would have a key role to play in any such consultation. The Bill will also require the Scottish Ministers to publish the general nature of the advertising regulations at least 2 years before the Games begin and the detail of those regulations at least 6 months before the Games begin.

34. Having an existing advertising licence will not be a defence against this offence. However, the advertising regulations may prescribe circumstance in which advertising that would otherwise constitute an advertising offence would be permitted without authorisation from the Organising Committee.

35. The Bill allows the Organising Committee to issue guidance about advertising within the vicinity of Games events.

Consultation

36. The consultation responses were broadly supportive of the policy objectives. However, some concerns were raised around implementation issues. The majority of these focussed on issues such as the definition of vicinity, which will be dealt with in the advertising regulations. Some respondents also suggested that the £20,000 maximum fine originally proposed for this offence would not be a sufficient deterrent given its commercial nature, therefore, under section 35(1) a person convicted of an advertising offence on indictment is now liable to an unlimited fine.

Alternative approaches

37. The Town and Country Planning (Scotland) Act 1997 (c.8) and the Town and Country Planning (Control of Advertisements) (Scotland) Amendment Regulations 1984 provide some control over advertising. However, this is inadequate to meet Commonwealth Games Federation requirements. It is too limited in scope physically, being applicable only to advertisements which are either outdoors or visible from outdoors, and too limited in the degree of substantive control which they provide, not permitting restriction on the basis of content or form. Relying on current legislation would therefore not deliver the Scottish Government's obligations under the Host City Contract and risk legal action by the Commonwealth Games Federation. Failure to control advertising around Games events during the Games period could also threaten the image of the Games and undermine Scotland's ability to attract major events in the future.

38. As the introduction of legislation necessary to control advertising space is a requirement of hosting the 2014 Commonwealth Games, there is no alternative to the introduction of a prohibition on advertising that would deliver the policy objectives.

Ticket touting

Policy objectives

39. The policy intention is to prohibit the scalping or touting of Games tickets. The Commonwealth Games Manual: Ticketing, which forms part of the Host City Contract, states that "the unauthorised sale of tickets should not be allowed" and requires that "appropriate regulations should be put in place to prevent ticket scalping". Fairness and equity are also seen as the first principle of any ticketing strategy for the Commonwealth Games. Any ticket touting would undermine that principle, reducing equity of access and eroding public confidence in the Games.

Key information

40. The Bill will make it a criminal offence to tout a Games ticket (the "touting offence"). A Games ticket is defined in section 48 as any ticket, card, electronic device or other thing which entitles an individual to attend a Games event. A person touts a ticket if in a public place they sell, offer to sell or expose for sale a Games ticket, advertise a Games ticket is available for purchase, make a Games ticket available for sale by another person or give a Games ticket to another person who pays for some other goods or services. An offence will also be committed if a person sells or offers to sell a ticket for an amount exceeding the ticket's face value or does such an act with a view to making a profit (whether or not it occurs in a public place). A person convicted of this offence will be liable on summary conviction to a fine not exceeding level 5 on

the standard scale (currently £5,000). This offence can be committed both in or outwith Scotland.

41. The Bill allows the Organising Committee to authorise individuals to sell a Games ticket without committing an offence.

42. The Bill provides an exception for advertisers if the sale of the ticket would be in the course of business by reason only that the person selling the ticket is doing so at above face value or makes or aims to make a profit from that sale and the advertiser does not, and could not reasonably be expected to know that fact. The Bill also provides the Scottish Ministers with the power to make regulations which may specify circumstances in which making facilities available in connection with the electronic communication or the storage of data is, or is not, to be capable of constituting a touting offence. These regulations will in practice make exceptions from the offence for providers of these facilities in the circumstances set out in the regulations.

Consultation

43. The consultation responses were broadly supportive of the policy objectives, however, one respondent raised concerns around the detail of the provision concerning the use of the internet. The draft Bill was revised subsequently and as stated above, section 19 now allows the Scottish Ministers to make regulations to control the secondary sale of Games tickets on the internet.

Alternative approaches

44. The only restriction on ticket touting in Scots law at present is section 55 of the Civic Government (Scotland) Act 1982. This does not specifically criminalise the touting of tickets but rather causing annoyance, either to persons being approached to purchase tickets, or any other person who has reasonable grounds to be annoyed by the selling operation. The offence can be committed only by touting in a public place. Furthermore, the offence arises only where touting has continued in spite of a request from a constable in uniform that the tout desists.

45. The Civic Government (Scotland) Act 1982 is not truly concerned with the prevention of ticket touting but rather the prevention of a public nuisance. As such it is incapable of satisfying the Commonwealth Games Federation's requirements. As with advertising and street trading, there is no alternative to the introduction of a prohibition on ticket touting, that would deliver the policy objectives.

Enforcement

Policy objectives

46. The policy intention is to provide enforcement mechanisms for the ticketing, trading and advertising offences contained within the Bill that have a minimal effect on the ability of the police to meet their other obligations during the Games period.

Key information

47. The Bill allows the Organising Committee to designate Trading Standards Officers (with the consent of the council they work for) as enforcement officers. It also allows for the Scottish Ministers to specify in regulations criteria for others who could also be designated as enforcement officers.

48. These officers will have a range of powers available to them, including the power to seize, conceal or destroy anything which the officer reasonably believes to be an infringing article. An infringing article is anything used in connection with the commission of a Games offence. They will also be empowered to enter and search any place they believe a Games offence has been, or is being committed. This includes the power to use reasonable force to gain entry, although only when granted a warrant and accompanied by a police constable. They may also require any person to provide such information as the officer considers appropriate for the purposes of enforcing a Games offence.

49. The Bill places a range of restrictions on the powers of enforcement officers. For example, an infringing article may only be destroyed if it concerns the advertising offence and if the officer does not consider seizing or concealing the article to be a reasonable alternative course of action in the circumstances. Power to use reasonable force to enter and search a home are also restricted to reasonable times and where a sheriff has granted a warrant and the officer is accompanied by a police constable.

50. The Bill makes it a criminal offence to obstruct an enforcement officer. A person convicted of this offence will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Consultation

51. The majority of respondents accepted the principle that the Bill should provide for enforcement officers to take primary responsibility for enforcing the offences within the Bill. However, significant concerns were raised around their accountability and the limits of their powers. The amendments to the enforcement sections are summarised below.

52. The Organising Committee can still designate individuals as enforcement officers. However, section 22(2) now restricts who those individuals can be. The power to conceal or destroy an infringing article has now also been restricted under section 24(3) and (5) to an article being used in connection with an advertising offence. An enforcement officer's powers to use reasonable force to gain entry to search a place have also been restricted by specifying that the officer must be accompanied by a police constable. The responsibility for deciding when such force can be used without a warrant where there is a real and substantial risk that delay in seeking a warrant would defeat or prejudice the purpose of taking action is, under section 26(1)(b), now the responsibility of the police constable accompanying the officer. This section also clarifies that the officer is not authorised to use force against an individual. Enforcement officers are no longer restricted to exercising all of their powers at reasonable times, however, under section 27(2)(a) they may enter a house only at reasonable times. Warrants to enter a house no longer expire after 72 hours and now, under section 27(5), expire when it is no longer required for the purpose it was granted or on a date set by the sheriff who grants it. The power to

obtain information is now subject to an exception under section 28 which allows a person to refuse to provide information if the person would be entitled to refuse to provide the information in, or for the purpose of, court proceedings.

Alternative approaches

53. One alternative approach would have been to rely on the police to enforce the Games offences and not to create enforcement officers.. Additional funds have been set aside within the Games budget to meet security costs. However, the police will be heavily committed during the Games period and the enforcement of these offences may strain their resources or may even not be possible. The police, therefore, recommended that an alternative body take primary responsibility for the enforcement of Games offences. The police will retain all of their existing statutory and common law powers in relation to Games offences (see section 33) and may be required to play a supporting role, much in the same way they already support Trading Standards officers. For example, they would be required to accompany enforcement officers when using their power of reasonable force to gain entry. They are also likely to have a significant role to play in tackling any ticket touting.

54. The Bill could also have designated all Trading Standards Officers as enforcement officers, rather than allowing the Organising Committee to designate individual officers. But enforcement officers are unlikely to be required in such numbers and regard had to also be given to the continuing need for such officers to carry out their trading standards functions. Such an approach could have had a negative impact on the consistency of enforcement, with diverse teams tackling these offences around the country. It may also have hampered the financial planning for such activity.

Transport

Policy objectives

55. The policy intention is to ensure that the commitments given in the transport section of the Candidate City File can be and are delivered. Hosting a major sporting event will inevitably place strain upon the local and national transport networks. It is anticipated that this burden will fall particularly heavily on roads in and around Glasgow. In addition to providing rapid transit for competitors from the Games Village to the Games venues, some events will also directly utilise the road network as their venue.

56. Section 15 of the Host City Contract imposes requirements upon the Host City in relation to transport provision. Responding to these requirements the Candidate City File stated that Glasgow has developed a Transport Plan for the Games traffic that is founded on the delivery of a core Games Route Network that is dedicated to the Games Family (athletes and officials). A route network has been established that links the Games Village with each of the Games venues as well as the media centre and main hotel area. The network comprises of dedicated Games Lanes (similar to bus lanes) which will be restricted to use by Games Family traffic for the duration of the Games.

57. The Games Lanes will be directly supported by a combination of:

- rigorous lane enforcement and temporary banning of all car parking along the core route network.
- diverting general traffic, where appropriate, to alternative routes.
- signal priority at key junctions.
- network of alternative contingency routes.
- extensive monitoring of the Games Route Network.
- proactive working with developers and utility companies to introduce a moratorium on non-emergency roadworks and street works on the local road network.

58. This is a Scotland-wide commitment to provide dedicated Games Lanes, although these lanes are most likely to be required within Glasgow City Council boundaries. Different Lanes will be in operation for different periods during the course of the Games. Some Lanes will comprise the entirety of a particular road; whilst others only portions of the road's width. Only Games authorised traffic will be allowed to travel along the Games Lanes while they are in force.

Key information

59. The Bill makes it clear that it is the responsibility of the Organising Committee to make a plan about transport matters relating to the Games and before doing so, to consult the Scottish Ministers, every council in whose area a Games event is to take place and any other person they consider appropriate.

60. The Bill allows a traffic authority to make a Games traffic regulation order. This order would enable them to create Games Lanes as described in the Candidate City File or to restrict access to a road for a Games event such as the marathon or road cycling. The Bill also makes provision for traffic authorities to restrict the use of a road without delay in urgent circumstances. This could be used for example to create an alternative route if emergency utility works are needed to a section of the Games Route Network.

61. The Bill provides the Scottish Ministers with the power to direct a council to make, vary or revoke a traffic regulation instrument where they consider such action to be necessary for implementing the Games Transport Plan or facilitating transport services in connection with the Games. For example, if a council refused to implement a Games traffic regulation order that would be needed to deliver the commitments given in the Candidate City File, the Scottish Ministers would have the power to instruct the council to do so. If they then ignored that instruction, the Bill then allows the Scottish Ministers to take the directed action in place of the council and recover the cost of that action from them as a debt.

Consultation

62. The consultation responses were broadly supportive of the policy objectives. However, some concerns were raised around who should be consulted on the Games Transport Plan and the ability of the Scottish Government to ensure compliance with such a plan. Section 37(2)(c) now requires the Organising Committee also to consult any other persons whom they consider appropriate before making the Games Transport Plan. If a council fails to comply with a direction from the Scottish Government under section 40, the Scottish Government will now,

under subsections (4) and (5), be able to take the directed action in place of the council and recover from the council, as a debt, the cost of acting.

Alternative approaches

63. It is anticipated that councils will have initial responsibility for ensuring that all Games Lanes required by the Transport Plan will be put in place. This will be effected by exercise of their powers to create Temporary Traffic Regulation Orders under section 14(1) of the Road Traffic Regulation Act 1984 (the “1984 Act”).

64. Section 14(1) of the 1984 Act permits councils, for certain specified purposes to:

“...by order restrict or prohibit temporarily the use of that road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, to such extent and subject to such conditions or exceptions as they may consider necessary.”

65. The purposes for which a council may make such an order, as specified by the statute, would not currently allow the creation of Games Lanes by way of a Temporary Traffic Regulation Order. Relying on existing powers would, therefore, not allow councils to deliver the Games Lanes required to create a Games Route Network.

Organising Committee: funding and other assistance

Policy objectives

66. The policy intention is to provide the Scottish Ministers with a clear power to provide the Organising Committee of the Games with any assistance it will need to deliver the 2014 Glasgow Commonwealth Games and ensure that any public investment delivers Ministerial objectives.

Key information

67. The Bill allows the Scottish Ministers to provide or arrange for the provision of assistance to the Organising Committee for the purpose of securing compliance with the Host City Contract or for any other purpose connected with the Games. This assistance could for example take the form of grants, providing goods or services or making facilities or the services of staff available. The Bill also allows the Scottish Ministers to impose conditions on such assistance.

Consultation

68. The consultation responses were broadly supportive of the policy objectives.

Alternative approaches

69. The Scottish Ministers could have relied on existing powers. However, as this is a unique event and the main delivery body, the Organising Committee, will be a company limited by guarantee it was felt that a clear power to provide financial or other assistance with the ability to set conditions on such assistance would better deliver the policy objectives.

Acquisition of land for Games purposes

Policy objectives

70. The policy intention is to ensure that any land required to deliver the Games can be brought within public ownership. For example, the Candidate City File provides an assurance that any land needed to deliver the Games Village can be brought within the ownership of Glasgow City Council.

Key information

71. The Bill amends Part 8 of the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”) to allow councils to exercise their compulsory acquisition powers under that Act for land that is suitable for and required in order to facilitate the holding of the Glasgow Games 2014.

Consultation

72. The consultation responses were broadly supportive of the policy objectives.

Alternative approaches

73. Councils could have been left to attempt to secure ownership of land required to deliver the Games using the powers they currently have available to them under the 1997 Act. However, there would be an unacceptable degree of uncertainty that such powers would enable such acquisition. Compulsory purchase can be contentious and unless the power is clear there would be a greater risk of challenge and, therefore, an unacceptable risk to the delivery of the policy objectives.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

74. It is assessed that the provisions of the Bill are not discriminatory on the basis of gender, age, disability, sexual orientation, marital or civil partnership status, race or religion. The Games Transport Plan could potentially impact on disabled access, however, this will be fully considered by the Organising Committee during the development of the plan.

Human rights

75. The Scottish Government is satisfied that the Bill’s provisions are compatible with the European Convention on Human Rights. Some specific issues considered in respect of this statement are discussed below.

76. The Bill creates four new criminal offences, the trading offence, the advertising offence, the touting offence and the obstruction offence. Whenever a new offence is created it is vital for the purposes of compliance with Articles 5 and 6 of the Convention that each offence be effectively prescribed by law, which is to say that the offence must be set out with enough clarity and certainty so as to allow the citizen to regulate their behaviour and to allow the authorities to

effectively inform an offending citizen of the reasons for their arrest, detention and/or subsequent charge in relation to that offence. The offences will be set out in the Bill and in regulations made under the Bill and, therefore, the four offences created within this Bill meet this criteria.

77. This Bill also raises issues under Article 1 of Protocol 1 to the Convention in relation to the protection of property. The Bill will regulate street trading and advertising within the vicinity of Games events during the Games period. This could prevent existing businesses from trading or advertising during this period, therefore, potentially restricting or interfering with their right to the peaceful enjoyment of their possessions. The Bill will also regulate the secondary sale of Games tickets and make touting such tickets a criminal offence. This could also potentially restrict the right of the holder of the ticket to the peaceful enjoyment of their possessions as it controls their disposal of their possession. Enforcement officers will also be empowered by the Bill to destroy or conceal any article which infringes the advertising offence. This is a measure of last resort, however, and is only available when there is no reasonable alternative course of action. The Bill also makes provision allowing councils to make compulsory purchase orders to secure land that is suitable for and required in order to facilitate the holding of the Glasgow Commonwealth Games. The Scottish Government is putting these restrictions in place in order to meet their obligations under the Host City Contract. If these were not going to be put in place, then Scotland would not have been able to secure the 2014 Commonwealth Games. Such restrictions are being made to deliver on promises that were made in the interests of securing the Games. The restrictions in relation to trading and advertising constitute interference with property which will be time limited. The restriction in relation to ticket touting does not prevent the private re-sale of tickets at face value. These measures are proportionate to the aim and are in the public interest. The power of destruction results in deprivation but is very limited and is subject to safeguards. It is an exceptional measure and one that is proportionate to the aim. The power of compulsory purchase of property will be subject to the normal rules and procedure for compensation to the owner of property which is subject to compulsory purchase by payment of a sum which is agreed or market value as assessed by the District Valuer. This measure is proportionate to the aim and is in the public interest. These provisions are therefore compatible with the European Convention on Human Rights.

78. This Bill also raises issues under Article 8 of the Convention in relation to the right to respect for private and family life. The Bill allows enforcement officers to use force to gain entry into and to search a house or other property. These powers are subject to significant safeguards. The power to enter a house can only be exercised with permission of the occupier or a warrant from a sheriff, at reasonable times and, in either case, when the officer is accompanied by a constable. Power to enter other premises can only be exercised with permission of the occupier, under warrant or when accompanied by a constable. These powers are for the specific purpose of enforcing offences under the Bill. They are proportionate to the aims and in the public interest and are therefore compatible with Convention rights.

Island communities

79. This Bill has no differential effect on island communities.

Local government

80. This Bill will have an impact on any council in whose area a Games event takes place. These impacts are described above. Currently events are expected to take place within the boundaries of Glasgow City Council, North Lanarkshire Council, South Lanarkshire Council, Angus Council and the City of Edinburgh Council.

Sustainable development

81. This Bill has no impact on sustainable development. However, the Games will. That is why the Scottish Government has supported an Environmental Forum for the 2014 Games which includes representatives from the World Wide Fund for Nature, the Royal Society for the Protection of Birds, Glasgow City Council, Glasgow 2014 Bid Team, the British Trust Conservation Volunteers, the Ramblers Association, the Scottish Environmental Protection Agency, the Soil Association, Scottish Natural Heritage and the Scottish Wildlife Trust. This forum advised the bid partners on all matters relating to the environmental impact and sustainability of the bid and will continue to play that advisory role in delivering the 2014 Glasgow Commonwealth Games.

Business community

82. The Bill seeks to secure a positive economic opportunity for Scotland by meeting the terms and conditions of the Host City Contract, allowing the 2014 Commonwealth Games to come to Glasgow. The Games will allow us to demonstrate to the world that Glasgow is a vibrant, cosmopolitan, dynamic city of the 21st century and that Scotland is a place in which people would want to live, study and do business; a place capable of hosting the worlds second largest multi-sport event. The Games will help develop a new sense of confidence and pride in the community, encourage social involvement and will leave a legacy of a regenerated east end of Glasgow.

83. The provisions in the Bill will restrict business activity, but only for those seeking to benefit from the Games without authorisation from the Organising Committee. If such restrictions were not put in place, then those opportunities would not exist, as Glasgow would not be able to host the Games. Restrictions on road use brought in as a result of the Games Transport Plan may also impact on the business community. However, the Organising Committee will be expected to engage the business community fully in the development of that plan.

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

GLASGOW COMMONWEALTH GAMES BILL

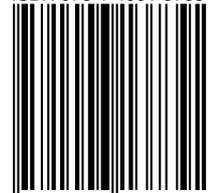
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