
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The London Olympic Games and Paralympic Games
(Advertising and Trading) (Scotland) Regulations 2011

PART 3

Trading Activity

Interpretation of Part 3

12.—(1) In this Part—

- (a) any reference (however phrased) to selling an article includes a reference to offering or exposing an article for sale;
- (b) any reference (however phrased) to supplying a service includes a reference to offering to supply a service;
- (c) “motor vehicle” has the same meaning as in section 185 of the Road Traffic Act 1988⁽¹⁾;
- (d) “open public place” means—
 - (i) a road; or
 - (ii) another place—
 - (aa) to which the public have access (whether generally or only for the purpose of the trading); and
 - (bb) which is not in a building except one designed or generally used for the parking of cars;
- (e) “performance of a play” means performance of any dramatic piece, whether improvisational or not—
 - (i) given wholly or in part by one or more persons actually present and performing; and
 - (ii) in which the whole or a major proportion of what is done by the person performing, whether by way of speech, singing or action, involves the playing of a role;
- (f) “public entertainment” means entertainment of one of the following descriptions provided for members of the public—
 - (i) a performance of live music;
 - (ii) any playing of recorded music;
 - (iii) a performance of dance;
 - (iv) a performance of a play;
 - (v) any entertainment of a similar description to that in heads (i) to (iv);

⁽¹⁾ 1988 c.52.

- (g) “selling an article” includes trading by a person acting as a pedlar whether or not under the authority of a pedlar’s certificate granted under the Pedlars Act 1871(2); and
 - (h) “trading activity” means carrying out one or more of the following activities in an open public place—
 - (i) selling an article;
 - (ii) supplying a service;
 - (iii) making an appeal to members of the public to give money or other property (or both) for charitable or other purposes (whether authorised or not under any enactment);
 - (iv) providing public entertainment for gain or reward.
- (2) In determining whether an activity is trading activity for the purposes of this Part, the following matters are to be disregarded—
- (a) that any gain or reward arising from the activity does not accrue to the person actually carrying out the activity;
 - (b) that either party to a transaction is not in an open public place when one of the following activities occurs—
 - (i) an offer or exposure of an article for sale;
 - (ii) an offer to supply a service;
 - (iii) the completion of a transaction;
 - (c) that a transaction was not completed in an open public place, if one of the following activities occurs in such a place—
 - (i) an offer or exposure of an article for sale;
 - (ii) an offer to supply a service;
 - (d) that an article actually sold or service actually supplied was different from that originally offered or exposed for sale.

Control of trading

- 13.**—(1) A person must not engage in trading activity in the event zone during an event period.
- (2) A person is to be treated as contravening paragraph (1) if—
- (a) the person (at any time or any place) arranges for trading activity to take place in the event zone during an event period; or
 - (b) trading activity in the event zone during an event period—
 - (i) is undertaken by a business or other concern in which the person has an interest or for which the person is responsible; or
 - (ii) takes place on land that the person owns or occupies or of which the person has responsibility for management.
- (3) Paragraph (2)(b) does not apply to a person who proves that—
- (a) trading activity took place without the person’s knowledge; or
 - (b) the person took all reasonable steps to prevent the trading activity taking place or where it has taken place, to prevent it continuing or recurring.
- (4) A person will be treated as having an interest in or responsibility for a business or other concern if the person is an officer of the business or other concern.

(5) A person will be treated as having responsibility for the management of the land if the person is an officer of a business or other concern that owns, occupies or has responsibility for the management of the land.

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

(7) This regulation applies to trading activity whether or not it consists of the result or continuation of activity carried out before these Regulations came into force.

Exceptions

14.—(1) Regulation 13 does not apply to trading activity described in paragraphs (2) to (12).

(2) Selling current newspapers or periodicals.

(3) Trading activity undertaken or controlled by the London Organising Committee on enclosed land on which a London Olympic event is taking place or is to take place.

(4) Selling or delivering an article to a person in premises adjoining a road.

(5) Selling a motor vehicle on private land generally used for the sale of motor vehicles.

(6) Supplying motor vehicle cleaning services on private land generally used for the supply of those services.

(7) Supplying motor vehicle parking services in a building designed or on other land designed or generally used for the parking of motor vehicles.

(8) Providing a public sanitary convenience.

(9) Providing a permanent telephone kiosk.

(10) Trading as a walking tour operator.

(11) Supplying public transport services including tourist services.

(12) Trading activity on private land adjacent to exempt retail premises provided that the trading activity—

(a) forms part of the usual business of the owner of the premises or a person assessed for uniform business rate in respect of the premises; and

(b) takes place during the period during which the premises are open to the public for business.

(13) Paragraph (2) does not apply to selling current newspapers or periodicals in a street if the selling is done from a receptacle that causes undue interference or inconvenience to persons using the street.

(14) In this regulation—

“exempt retail premises” means a building normally used as—

(a) a shop;

(b) a restaurant or bar or otherwise used for the supply of meals, refreshments or alcohol to the public; or

(c) a petrol filling station;

“sanitary convenience” means closet or urinal;

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

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

Trading activity authorised by the Olympic Delivery Authority

15.—(1) Regulation 13 does not apply to trading activity undertaken in accordance with an authorisation granted by the Authority⁽³⁾.

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

(3) The Authority must have regard to the provisions of the Host City Contract before granting an authorisation under this regulation

(4) An authorisation granted under this regulation is subject to the condition that any person who engages in trading activity in reliance on the authorisation hold any licence which, in addition to authorisation under this regulation, is required before the person may engage in trading activity (whether in a particular place or generally).

(5) In this regulation—

“Authority” means—

- (a) the Olympic Delivery Authority; or
- (b) a person to whom the function of granting authorisations for the purpose of this regulation is delegated by the Olympic Delivery Authority; and

“licence” includes any kind of consent, certificate, permission or authority (by whatever name) granted by a landowner, local authority or other person in accordance with any enactment, Charter or other document.

(3) Under section 25(7) of the Act, an authorisation granted by the Authority under regulation 13 may be subject to terms and conditions.