

**EXPLANATORY MEMORANDUM TO  
THE GLASGOW COMMONWEALTH GAMES ACT 2008 (GAMES ASSOCIATION  
RIGHT) ORDER 2009**

**2009 No. 1969**

**1.** 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the Instrument**

2.1 This Order makes provisions that are necessary and expedient in consequence of the Glasgow Commonwealth Games Act 2008 (the “2008 Act”).

2.2 A condition of the award of the 2014 Commonwealth Games to Glasgow City (“the 2014 Games”) by the Commonwealth Games Federation (“CGF”) was a requirement to put legislation in place to prevent unauthorised associations with the 2014 Games. To meet this requirement, this Order creates a specific association right, similar to that provided for the London Olympic and Paralympic Games.

2.3 As Intellectual Property is a reserved matter under the Scotland Act 1998, and so that this protection applies across the United Kingdom, a section 104 Order is needed. This Order is crucial in the creation of an association right and will be essential to the successful delivery of the Games in 2014.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998 (the “1998 Act”). The Instrument is subject to negative resolution procedure. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any Act of the Scottish Parliament; in this case the 2008 Act.

3.2 A section 104 Order is necessary and expedient in consequence of the 2008 Act. The Order makes provisions to protect the Intellectual Property Rights of the 2014 Games. As Intellectual Property is a subject matter reserved to the UK Parliament a section 104 Order is needed to create a specific event association right in relation to the 2014 Games. This is defined as exclusive rights in relation to the use of any representation in a manner likely to suggest to the public that there is an association between the 2014 Games and goods and services or a person who provides goods and services.

3.3 An association may be suggested if there is an attempt in the course of business to create a commercial, contractual, corporate or financial link between a person, product or service and the 2014 Games.

3.4 The association right is not infringed where an association is made in an irrelevant context, provided it is not a promotional or commercial use and accords with honest industry practices. The Order will ensure that the 2014 Games are protected against ambush marketing across the United Kingdom.

3.5 The requirements of the CGF are similar to those required by the International Olympic Committee for the London 2012 Olympic and Paralympic Games.

3.6 The CGF make these requirements to restrict market clutter, prevent inappropriate marketing and to protect the high standards associated with the Commonwealth Games. The CGF also wish to maintain the integrity of the Commonwealth Games and prevent its over commercialisation.

3.7 The Order ensures that the association right is not infringed when the use is in accordance with an authorisation granted by the Glasgow 2014 Organising Committee (“the Organising Committee”). Authorisation to create an association with the 2014 Games, which would otherwise be prohibited, will require the written consent of the Organising Committee. The Organising Committee will be required to keep a register of authorised persons who have been authorised to create an association with the 2014 Games.

3.8 The Order provides a number of exceptions to infringement of the association right, including the use of registered trade marks and designs, and certain pre-existing rights.

3.9 The Order protects against groundless threats by the Organising Committee, by giving persons a right to apply to the Court if they consider they are being unreasonably threatened with proceedings.

3.10 The Order includes provisions to establish how the association right will be enforced. The Organising Committee may apply to the Courts for a variety of remedies, including the forfeiture and disposal of infringing goods. Such an application to the Courts must be served on all persons who can be identified as having an interest in the goods.

3.11 The Order will state who an application for forfeiture or destruction of offending goods must be served on. Following consultation with the Ministry of Justice, existing Court Rules in England and Wales on how the service of the application is to be effected will apply without any specific application or reference in the Order being necessary. The same will also apply to Northern Ireland and Scotland.

3.12 The Order contains a sunset clause which provides that it ceases to have effect six-months after the closing ceremony, however, this does not effect any ongoing Court action for infringement.

#### **4. Legislative Context**

4.1 This Order is in consequence of the 2008 Act. The 2008 Act is designed to meet the requirements of the CGF which are similar to those required by the International Olympic Committee for the London 2012 Olympic and Paralympic Games. For this reason the Order closely follows the drafting of the legislation which created the London Olympics association right.

4.2 In order to meet the requirements laid down by the CGF to protect the intellectual property rights of the 2014 Games it is necessary to create a specific association right, similar to that provided for the London 2012 Olympic and Paralympic Games.

4.3 This will ensure that unauthorised associations with the 2014 Games are prevented. The Scottish Executive have provided a guarantee, in response to the CGF requirement, that legislation will be put in place to protect the Intellectual Property Rights to the 2014 Games. This will need to be in place by 2010 if the brand that is being developed by the Organising Committee is to be protected and its value secured.

## **5. Territorial Extent and Application**

5.1 This Instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State at the Scotland Office has made the following statement regarding Human Rights:

In my view the provisions of the Glasgow Commonwealth Games Act 2008 (Games Association Right) Order 2009 are compatible with the Convention Rights.

## **7. Policy Background**

7.1 The 2008 Act makes provision in relation to the Commonwealth Games that are to be held predominantly in Glasgow in 2014. It provides the Scottish Ministers, local Councils and the Organising Committee with the powers necessary to ensure the successful delivery of the Games in 2014. It also provides the legislative framework needed to enable the Scottish Executive to fulfil the requirements which the CGF place on the host city.

7.2 In order to meet the requirements laid down by the CGF and protect the Intellectual Property Rights of the 2014 Games it is necessary to create a specific event association right. This Order defines an association with the 2014 Games as an attempt in the course of business to create a commercial, contractual, corporate or financial link between a person, product or service and the 2014 Games. It also makes clear that the association right is not infringed where an association is made in an irrelevant context, provided it is not a promotional or commercial use and accords with honest industry practices. The Order will ensure that protection against ambush marketing for the 2014 Games applies across the UK.

## **8. Consultation Outcome**

8.1 The Scottish Executive published the draft Glasgow Commonwealth Games Bill (the "Bill") on 28 June 2007. The 12 week consultation closed on 21 September 2007. The draft Bill covered a number of areas including advertising, outdoor vending, ticketing, enforcement, transport, compulsory purchase powers and grant making powers. The consultation document was sent to around 300 organisations with an interest in the subject areas addressed in the draft Bill. The document was also publicised on the Scottish Executive website and a press release issued. By its close, the consultation had attracted 39 responses, 38 of which were published on the Scottish Executive website (one respondent did not wish to have their response published) along with a list of the organisations which responded. The Scottish Executive published a response under the key headings contained within the revised Bill which was introduced to the Scottish Parliament on 9 November 2007.

8.2 As a matter of policy, the Scotland Office do not usually consult on draft Scotland Act Orders. Due to the nature of the provisions in this Order, and the level of interest from key stakeholders, it was agreed that an informal, online, consultation would be conducted by the Intellectual Property Office (“IPO”) on their website, on the main principles of the section 104 Order.

8.3 The IPO conducted a three-month informal online consultation which ran from 26 January to 27 April 2009. The consultation invited stakeholders to comment on the key areas that the Order makes provision for.

8.4 Submissions were received from two key stakeholders. The submissions mainly focused on the policy objectives that the Order seeks to make provisions for, but where appropriate the points raised in the submissions were considered in the development of the Order.

8.5 Key stakeholders have been involved throughout the development of this Order. This resulted in a three-month informal online consultation being conducted by the IPO and also agreement for the Order to come into force six-months after it is laid in the UK Parliament, in order to allow the industry time to adapt.

## **9. Guidance**

9.1 The Scottish Ministers intend to raise awareness of the implications of the Order in conjunction with the Organising Committee. The Organising Committee is a private Limited Company which has been set up to organise and host the 2014 Games. The Organising Committee in conjunction with the Scottish Executive shall provide guidance on the implications of the Order. General guidance documents will be produced by the Organising Committee and made available to the general public.

## **10. Impact**

10.1 A Regulatory Impact Assessment has not been prepared for this Instrument as the assessment of the potential impact on business finds that the provisions that this Order makes would not be significant or detrimental, and it has no impact on charities or the voluntary sector.

10.2 Restrictions created in order to prevent ambush marketing are subject to exceptions which allow enterprises to operate in accordance with honest business practices and places no additional burden upon them.

10.3 This Instrument has no impact on the public sector.

## **11. Regulating Small Business**

11.1 The legislation is not for the purposes of regulating small business.

## **12. Monitoring and Review**

12.1 The purpose of this Instrument is to create a specific event association right in relation to the 2014 Games which will protect the 2014 Games against ambush marketing. There is no intention for the Scottish Ministers to monitor or review its use.

### **13. Contact**

13.1 Jennifer Manton at the Scotland Office Tel: 020 7270 6749 or email: [jennifer.manton@scotlandoffice.gsi.gov.uk](mailto:jennifer.manton@scotlandoffice.gsi.gov.uk) can answer any queries regarding the Instrument.