EXPLANATORY MEMORANDUM TO

THE GLASGOW COMMONWEALTH GAMES ACT 2008 (TICKET TOUTING OFFENCE) (ENGLAND AND WALES AND NORTHERN IRELAND) ORDER 2012

2012 No. 1852

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. The Order is made under section 104 of the Scotland Act 1998. It makes provision which is considered necessary or expedient in consequence of the Glasgow Commonwealth Games Act 2008 ("the 2008 Act") and, in particular, section 17 which makes it an offence in Scots law to tout a Commonwealth Games ticket.

2.2 It establishes an equivalent ticket touting offence ("the touting offence") in the law of England and Wales and the law of Northern Ireland in relation to acts done in or outside these parts of the United Kingdom. This makes it an offence for an unauthorised person to sell, offer to sell, expose for sale, advertise, make available or give away a Commonwealth Games ticket in a public place, for an amount exceeding the ticket's face value or with a view to making a profit. However, the offence does not apply to acts done by the Organising Committee or the Commonwealth Games Federation and acts otherwise done in accordance with an authorisation given by the Organising Committee.

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

2.4 In so far as the touting offence applies to information society service providers that are based in the United Kingdom, proceedings may be taken in England, Wales or Northern Ireland in relation to acts which take place in another EEA state. However, where the provider is based in another EEA state, proceedings cannot be taken unless certain conditions are met, including that the other state has been informed but has failed to take equivalent measures. The Order also specifies circumstances involving mere conduit, caching and hosting of information society services which are not capable of constituting a touting offence. These provisions comply with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services in the Internal Market.

2.5 The Order provides that it ceases to have effect on the day on which the Glasgow Commonwealth Games Act 2008 ceases to have effect, however, this will not effect any ongoing court action for infringement.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The Order is to be made in exercise of powers conferred by sections 104, 112(1) and 113(1), (2) and (3) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made by the UK Government, which contains provisions that are necessary or expedient in consequence of an Act of the Scottish Parliament; in this case, the 2008 Act. The Order is subject to negative resolution procedure and is to be laid in the UK Parliament.

3.2 The Order is necessary or expedient in consequence of the 2008 Act as the Scottish Government does not have the legislative competence to make provision for a criminal offence, equivalent to that introduced by the 2008 Act, in the law in England and Wales and the law of Northern Ireland.

4. Legislative Context

4.1. It is a requirement of hosting the 2014 Commonwealth Games, that the Scottish Government meet its commitments to the Commonwealth Games Federation (CGF) under the Host City Contract – the contract between the CGF, Glasgow City Council and the Scottish Government which provides for the staging of the Commonwealth Games in Glasgow in 2014.

4.2 The Host City Contract requires the host country to take measures to prevent the touting of Commonwealth Games tickets. On 23rd March 2007, the then Secretary of State for Scotland, Douglas Alexander, wrote to the President of the Commonwealth Games Federation to state that Glasgow's bid had the full support of the UK Government. He guaranteed the UK Government would take all necessary measures in order that the city fulfils its obligations completely.

5. Territorial Extent and Application

5.1 This Order forms part of the law of England and Wales and the law of Northern Ireland. Consent to the inclusion of provision in relation to Northern Ireland was provided by Northern Ireland's Minister for Justice, David Ford MLA. Consent was received on 4th April 2012.

5.2 For the purposes of the law of England and Wales, the Order applies to acts done in or outside England and Wales. For the purposes of the law of Northern Ireland, it applies to acts done in or outside Northern Ireland.

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 (Ticket Touting Offence) (England and Wales and Northern Ireland) Order 2012 are compatible with the Convention rights.'*

7. Policy background

7.1 The United Kingdom has not hosted a Commonwealth Games since 2002. The 2014 Games will draw international attention to the country and the way the Games are staged will have a lasting impact on the UK's international reputation. The UK and Scottish Governments promised to respect commitments made to the CGF in the Host City Contract and to take all necessary measures to fulfil these obligations (including measures to prevent the touting of Games tickets).

7.2 There is already legislation in place across the United Kingdom which regulates trading standards and fraud. However, additional measures are needed to prevent the touting of Commonwealth Games tickets across the United Kingdom. The 2008 Act makes it an offence in Scots law to tout a Commonwealth Games ticket but this offence in not enforceable under the law of England and Wales and Northern Ireland. It is considered necessary and expedient in consequence of the 2008 Act, to make provision for an equivalent criminal offence in the law in England and Wales and Northern Ireland to ensure that these measures to prevent ticket touting can be enforced anywhere in the United Kingdom.

7.3 With regard to ticket touting in England, Wales and Northern Ireland, in general, it is not in itself an offence. However:

(a) the Criminal Justice and Public Order Act 1994 (s. 166) prohibits (in England and Wales) any unauthorised person from selling tickets for designated football matches; and

(b) the London Olympic Games and Paralympic Games Act 2006 (s. 31) prohibits (in the whole of the UK and elsewhere) any unauthorised person from selling tickets for the London 2012 Games.

Consolidation

7.4 This Order stands alone.

8. Consultation outcome

8.1 As a matter of policy the Scotland Office does not consult on draft Scotland Act Orders. However, a public consultation was carried out by the Scottish Government in relation to the corresponding provisions of the 2008 Act between 28 June 2007 and 21 September 2007. The consultation document was sent to around 300 organisations with an interest in the subject areas addressed in the Bill, including in relation to ticket touting.

8.2 Provisions relating to information services providers were not included in the above consultation. However, a separate public consultation was carried out by the Scottish Government between 7 March 2012 and 31 May 2012 in relation to similar information services provider provisions the Scottish Government was considering. This Order takes contributions to that consultation into account.

8.3 The document was also published on the Scottish Government's website and a press release issued. In addition, policy stakeholders, the Glasgow 2014 Organising Committee and relevant UK Government departments were separately consulted on the provisions in this Order.

9. Guidance

9.1 None.

10. Impact

10.1 The ticking touting offence may be enforced by the police in England, Wales and Northern Ireland. Enforcement by the police will impose no additional regulatory burden on business, charities or voluntary bodies.

10.2 An impact assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 Although the legislation applies to small business, since no impact is foreseen, no separate approach is required to minimise the impact on small business.

12. Monitoring & review

12.1 This Order will only have effect for the Glasgow Commonwealth Games 2014. Monitoring and review is not considered necessary.

13. Contact

13.1 Emma Lopinska at the Scotland Office Tel: 0131 244 9026 or email: emma.lopinska@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.