

## **Submission in relation to the General Scheme of the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020.**

### **Introduction**

1. This submission is made following an invitation to do so made on behalf of the Joint Committee on Enterprise, Trade and Employment. It should be read in conjunction with my submission of 31 March 2017 in relation to The Consultation on the resale of Tickets for Entertainment and Sporting Events.<sup>1</sup>
2. While I am a practicing barrister, specialising in sports law, I have previously spent 15 years working in-house as the legal advisor to an International Sports Federation which is also the owner of one of the biggest Major Sporting Events in the world. Today, I am actively involved as an Independent Board Director with a sizable national governing body in Ireland and I am on the board of a government entity (UK) which is the organising committee of a major single sport event which will take place in 2023.
3. This submission is made following a review of the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020 (the “General Scheme”) and based upon my own personal experience.

### **General**

4. At the outset I would say that it is very encouraging to read the General Scheme as it goes a long way in the right direction towards regulating the currently unregulated secondary ticket market for cultural, entertainment, recreational and sporting (“CERS”) events. The introduction of the General Scheme is to be commended and final legislation in this important area will add to the attraction of Ireland as a location in which to host CERS events.
5. There are 7 areas where I have focused my contribution.

#### ***A. The Party who applies for designation***

6. The approach that has been adopted in the General Scheme appears to be focused upon the “venue operator” as the primary party who becomes the “applicant” for designation status, for the particular venue (Section 7(1)). This approach could have a limiting effect where;
  - (i) the venue operator is not the primary party (e.g. solely a licensor and not responsible for and/or concerned with secondary market ticket sales); or
  - (ii) where the venue is transitional in nature e.g. being created for a specified purpose and which will not come into existence until some future date well after the related ticket sales process has commenced; or
  - (iii) were the Scheme to be viewed through the eyes of a transitory event of a significant size where it is the “event owner” that will be the controller of the tickets e.g. a major sporting event (like UEFA Euro’s 2020) or an EXPO. In this latter scenario it is likely that multiple venues (with different venue ownership structure) are likely to be involved and

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<sup>1</sup> [Susan-Ahern-BL-submission-resale-of-tickets.pdf \(enterprise.gov.ie\)](#)

if the “venue operator” in each case has to make a separate application it could lead to a disjointed approach.

7. It would be useful to consider the perspective from that of the “event owner” (who is not also a “venue operator”) - it is likely to be easier and more appropriately reflect the rights dynamic, for the “event owner” to be the centralized party for the purposes of an overarching application for designation status where there is (a) more than one venue involved or it relates to venues that have yet to be created and (b) where the “event owner” fulfils pre-designated criteria e.g. they are a Major Event Owner (as appropriately defined).
8. Therefore, I would recommend that:
  - (i) The “event owner” be permitted in circumstances (perhaps similar to those outlined above) to be able to solely make the application for designated status or where it is a single venue application to do so in conjunction with the venue owner.
  - (ii) Addition of a definition for “venue” to deal with temporary structures etc.
  - (iii) It may also be useful to include either in the Scheme or supporting regulations a framework and standardized application for designation status.

#### ***B. The threshold for designation / refusal to designate***

9. The threshold requirements for the “applicant” for designation of a venue are venue specific – which is limiting in light of my comments in A. above.
10. The threshold is also referable to the applicant’s ‘opinion’ (subsection 7(1)(b)). While no issue is taken with that, it does leave open the possibility that the same standard of review may not apply to every applicant in particular where the Minister has to satisfy him/herself of the validity of that ‘opinion’ in every case.
11. It may be preferable to include guidance on the minimum factors that an applicant must take into account when forming their opinion. This would front load the work and also perhaps minimise the necessity of supplemental information by Ministerial request which is already contemplated in subsection 7(4).
12. The designation appears to be unlimited as to time. In the context of transitory events or temporary venues it may be useful to incorporate the ability for designations to be extinguished either as part of the designation approval, by expiry of time or otherwise.
13. The ability to engage with the Minister regarding a proposed refusal or revocation is a pragmatic addition before any recourse to the courts.

#### ***C. Access to tickets / ticket packages***

14. The section 8 prohibition on the advertising for sale / sale of tickets or ticket packages for events in a designated venue are very welcome. However, the scope of the provision as currently framed does leave open the opportunity for creating a loophole.
15. By way of background, there are persistent unauthorised re-sellers who specialise in bundling tickets with hospitality or travel packages. These are often larger more professional operations who structure their organizations and offerings in such a way so that there can be the

appearance of a package sale incorporating tickets (to a designed venue) but in fact the package is a means of 'access' to the tickets which are provided separately at face value. This decoupling exercise has survived legal challenge in certain jurisdictions.

16. Therefore, I would recommend that 'access to tickets' is also prohibited under Section 8. The scope of the "secondary ticket seller" definition might therefore also need to be adjusted.

#### ***D. Primary ticket seller***

17. Section 9 refers to the "primary ticket seller" (being one of four parties including the event organiser and venue operator) and their obligations with regard to certain information regarding the designated venue being incorporated onto the ticket. Subsection 4 makes it an offence to contravene that requirement. It appears disproportionate on the one hand only to give the designation ability to the "venue owner" and on the other to make the wider "primary ticket seller" group responsible for the breach. Some re-calibration would appear to be warranted.

#### ***E. Information secondary tickets sellers must provide***

18. Section 10 and the definition of "secondary ticket marketplace" appear to exclude from their scope ticket touting / ticket touts. It would be a missed opportunity not to include ticket touting within the scope of the General Scheme and to protect consumers in the process. (See footnote 1 for further background).
19. There is a reference in section 10(2) to "operator" which is not defined. In any event this section would appear to be more limited than perhaps intended (given the scope of section 10(1)) by reference to "the operator's secondary ticket marketplace", in particular where third party platforms or market sites are utilised.
20. It would be beneficial if the identify of the "primary ticket seller" was a mandatory piece of information that had to be provided per subsection 10(3) by secondary ticket sellers.

#### ***F. Offences and Penalties***

21. It is noted that only criminal sanctions are contemplated under the General Scheme. It would be beneficial if consideration could be had to a civil option also operating in parallel under the auspices of an enforcement authority with powers to impose financial penalties based upon the civil standard of proof.
22. Section 17(5) addresses offences and penalties for those bodies corporate which are managed by their members. Given the way some sports structure ticket sales it is conceivable that there could be inadvertent breaches by members of the sporting body giving rise to criminal penalties in addition to recourse by the sport against its own members. This is a double penalty that may need to be considered further in particular in proportionality terms.

#### ***G. Miscellaneous***

23. Section 12(2) would greatly benefit from the inclusion of an additional provision which would exclude from the scope of 12(1) a new category of 'designated event' in addition to UEFA Euro 2020. This could be extended to tickets to 'an event so designated by the Minister' and might

include for example world championship, world cup or EXPO level events, meeting a designation status. It is not suggested that such criteria need be included in the General Scheme, but it does provide the opportunity to give the Minister flexibility in the appropriate circumstances, such as a UEFA Euro 2020 event.

24. Section 13 could potentially be added to in order to enable the Minister to designate other similar type events to UEFA Euro 2020 in the future.

**Susan Ahern BL FCI Arb**  
**Dublin, 25 November 2020.**