

# Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021

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## Abstract

The *Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021* aims to prohibit the sale or advertising for sale of tickets or ticket packages for a price exceeding their original sale price for events taking place in designated venues or for designated events. The Bill also provides for related matters including the designation process for events and venues, information requirements, enforcement and policing powers.



## Contents

Summary .....	2
Table of Provisions .....	4
Background.....	14
Consultation by the Department of Business, Enterprise and Innovation consultation on above price ticket selling.....	14
The <i>Sale of Tickets (Sporting and Cultural Events) Bill 2017</i> [PMB].....	15
The <i>Prohibition of Above-cost Ticket Touting Bill 2017</i> [PMB].....	16
Pre-Legislative Scrutiny of the General Scheme of the Bill.....	17
Regulatory Impact Analysis.....	21
Euro 2020 .....	22
The eCommerce Directive.....	23
Principal Provisions.....	25
Designation of certain venues and events.....	26
Prohibition on sale of tickets or ticket packages for above original sale price and related information requirements.....	30
Matters relating to the sale of tickets for events, including events in designated venues and designated events.....	32

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## Summary

The [\*Sale of Tickets \(Cultural, Entertainment, Recreational and Sporting Events\) Bill 2021\*](#) [the Bill] was published by the Minister for Enterprise, Trade and Employment [the Minister] on 21 April 2021. The Government approved drafting of the Bill on 29 September 2020.<sup>1</sup> Announcing the Government approval of the drafting of the Bill, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD stated that:

“Touts and reselling websites ruin gigs and matches for everyone making it harder to get a ticket in the first place and driving up prices. This is about making sure people aren’t getting ripped off once live events, matches and concerts get up and running again, especially considering numbers are likely to be restricted to begin with.

There is a specific provision in the Bill for the Euro 2020 championships next year, banning the unauthorised sale of tickets for matches. We want to make sure everyone gets a fair shot at getting tickets at face value.

This legislation is also hopeful. We’re planning for the time when we can go to gigs, festivals and matches again.”<sup>2</sup>

Announcing the Government approval of the publication of the Bill, Minister of State with responsibility for Trade Promotion, Digital and Company Regulation, Robert Troy TD stated that:

“This Bill will stop opportunists with no interest or involvement in music or sport enriching themselves at the expense of sports and music fans, sporting bodies, artists and promoters. And importantly, fans will have all the information they need to ensure they are not being ripped off. I recognise that sometimes there are justified reasons for reselling tickets above face value, for example, when charities are fund-raising, so allowances have been made in such instances.

While matches and concerts with fans are still some way off, we expect numbers allowed to attend are likely to be restricted in the initial phases of eased restrictions. Ticket touts could only be too willing to exploit the opportunities presented by restricted attendances for popular events. With this in mind, the Bill now includes a provision for the fast-track designation of venues or events if the normal designation procedure cannot be completed before events attended by fans resume.”<sup>3</sup>

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<sup>1</sup> See Department of Enterprise, Trade and Employment, Press Release, “Government agrees to bring forward anti-ticket touting and reselling legislation” (29 September 2020). Available at <https://www.gov.ie/en/press-release/ae798-government-agrees-to-bring-forward-anti-ticket-touting-and-reselling-legislation/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> See Department of Enterprise, Trade and Employment, Press Release, “Government approves Anti-Ticket Touting and Reselling Legislation” (20 April 2021). Available at <https://www.gov.ie/en/press-release/1075a-government-approves-anti-ticket-touting-and-reselling-legislation-tanaiste-and-minister-troy/>.

The Joint Committee on Enterprise, Trade and Employment carried out Pre-Legislative Scrutiny in relation to the General Scheme of the Bill on 9 December 2020. The Joint Committee made seven recommendations in respect of the General Scheme of the Bill.

The Explanatory Memorandum for the Bill notes that the purpose of the Bill is:

“to promote fairer access to tickets for cultural, entertainment, recreational and sporting events by prohibiting the sale of tickets or ticket packages for a price exceeding their original sale price for events taking place in designated venues or for designated events. The Bill also prohibits the unauthorised sale or advertising for sale of tickets or ticket packages for matches and official events during the UEFA EURO 2020 football championship in 2021. It further provides that a contract term shall be void insofar as it purports to exclude or limit the transfer of a ticket or ticket package or its sale for a price not exceeding the original sale price. The Bill provides in addition for certain information requirements where a primary ticket seller sells or advertises for sale, or a secondary ticket seller advertises or offers for sale, tickets or ticket packages for events in designated venues or for designated events. The Bill also gives effect, in relation to ticket sales, of certain provisions of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.”<sup>4</sup>

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<sup>4</sup> Explanatory Memorandum for the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021, at p 1. Available at <https://www.oireachtas.ie/en/bills/bill/2021/55/>.

## Table of Provisions

Section	Title	Effect
<b>Part 1: Preliminary and General</b>		
1.	Short title and commencement	<p>Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. The Bill will come into operation upon a commencement order being made by the Minister for Enterprise, Trade and Employment.</p> <p>Commencement orders may be limited to particular provisions of the Bill or purposes.</p>
2.	Interpretation	<p>Standard provision that provides for the definitions of various terms within this Bill. Section 2 defines “the Minister” as “the Minister for Enterprise, Trade and Employment”.</p>
3.	Expenses	<p>Standard provision that provides that expenses incurred in the administration of this Bill shall be paid out of monies provided by the Oireachtas.</p>
4.	Regulations	<p>Standard provision that provides for the making of regulations by the Minister. Regulations made under this Bill are required to be laid before each House of the Oireachtas as soon as possible after it is made and may be subject to a resolution in either House annulling the regulation, if passed within 21 days of the laying of the regulation.</p>
5.	Service of documents	<p>Provides for the means by which service (i.e., the formal delivery of legal documents or notices) as required in the Bill, can be carried out. Service can be completed by:</p> <ul style="list-style-type: none"> <li>• delivering the document to the person;</li> <li>• by leaving the document at the address at which the person ordinarily resides or an address that has been supplied for the purpose of service;</li> <li>• by sending the document by post in a prepaid registered letter to the address at which the person ordinarily resides</li> </ul>

		<p>or an address that has been supplied for the purpose of service; or</p> <ul style="list-style-type: none"> <li>• by electronic means where a person has given written notice of their consent to be served by such electronic means.</li> </ul>
6.	Application	Provides that the Act will apply to any sale, or advertising for sale, of a ticket or ticket package from the date on which section 6 of the Bill comes into operation.
<p><b>Part 2: Sale of Tickets for Cultural, Entertainment, Recreational and Sporting Events in Designated Venues and for Designated Events</b></p>		
7.	Designation of certain venues	<p>Provides for applications to be made to the Minister in respect of the designation of certain venues. To apply, the venue must have the capacity to hold at least 1,000 persons and the applicant must be of the reasonable opinion that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price.</p> <p>Section 7(6) provides that the Minister may designate a venue where no application is made, where the Minister, following consultation with the venue operator, is satisfied the venue (including venues with a smaller capacity than 1,000 persons) will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price, or a designation under section 7(5)(a) cannot be made prior to the venue holding events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. The Minister must also be satisfied that a designation under section 7(6) would be in the public interest.</p>
8.	Refusal or revocation of designation of certain venues	Provides for the conditions upon which the Minister may revoke a designation under section 7. These include:

		<ul style="list-style-type: none"> <li>• where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the venue applicant or venue operator that the venue has capacity to hold at least 1,000 persons;</li> <li>• where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the venue applicant or venue operator that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price; or</li> <li>• where the venue is no longer in operation or has ceased to hold events.</li> </ul> <p>Section 8 also provides for the written notification by the Minister of a proposed refusal or revocation of a designation, and the details to be included in such a notification.</p>
9.	Designation of certain events	<p>Provides for applications to be made to the Minister by event organisers or venues operators in respect of the designation of certain events, described in the Bill as designated events. Such applications may be made where the applicant is of the reasonable opinion that the event may give rise to the sale of tickets or ticket packages for that event by a secondary ticket seller for a price exceeding the original sale price. An application may be made for the designation of events which take place on an annual or periodic basis in the same venue.</p> <p>Section 9(7) provides that the Minister may designate an event where no application is made, where the Minister, following consultation with the event organiser or venue operator, is satisfied the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding</p>

		<p>the original sale price, or a designation under section 9(6)(a) cannot be made prior to the event which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. The Minister must also be satisfied that a designation under section 9(7) would be in the public interest.</p>
10.	Refusal or revocation of designation of certain events	<p>Provides for the conditions upon which the Minister may revoke a designation under section 9. These include:</p> <ul style="list-style-type: none"> <li>• where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the event applicant, event organiser or venue operator that the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for that event for a price exceeding the original sale price; or</li> <li>• where the Minister is not satisfied that the event the subject of the application under section 9(1) is the same as, or substantially similar to that specified in the application for designation or under the designation.</li> </ul> <p>Section 10 also provides for the written notification by the Minister of a proposed refusal or revocation of a designation, and the details to be included in such a notification.</p>
11.	Notification of designation	<p>Provides for the publication by the Minister of a designation or a revocation of a designation in <i>Iris Oifigiúil</i>. The Minister must also publish or make the following information available:</p> <ul style="list-style-type: none"> <li>• that a designation has been made or revoked;</li> <li>• the name and location of the venues, or where a designation of an event is made, the name of the event and the location where it is being held; and</li> </ul>

		<ul style="list-style-type: none"> <li>the date from which the designation or revocation takes effect.</li> </ul>
12.	Representations	<p>Provides that an applicant, venue operator or event organiser that has been notified of a proposal to refuse or revoke a designation may make representations to the Minister about the proposed refusal or revocation, within 14 days of being notified.</p> <p>Section 12(2) provides that the Minister is required to have regard to any representations in deciding whether to proceed with the proposed refusal or revocation and to notify the applicant, venue operator or event organiser in writing of his or her decision.</p> <p>Section 12(3) provides that where representations are made and no appeal is brought, the revocation shall come into operation 28 days from the date of service of the notification in section 12(2).</p>
13.	Appeals	<p>Provides for the making of an appeal to the District Court by an applicant, venue operator or event organiser in respect of a refusal or a revocation of a designation, and in respect of a venue that has been designated by the Minister under sections 7(6) or 9(7).</p>
14.	Register	<p>Provides that the Minister shall establish and maintain a register of designated venues and events which shall be published on the internet or in another manner which the Minister considers appropriate.</p>
<p><b>Part 3: Prohibition on Sale of Tickets for Cultural, Entertainment, Recreational and Sporting Events and Related Information Requirements</b></p>		
15.	Prohibition on sale or advertisement for sale of ticket or ticket package above original sale price	<p>Provides for a prohibition on the sale or advertisement for sale, by a secondary ticket seller, of a ticket or ticket package for an event taking place in a designated venue or a designated event, for a price exceeding the original sale price.</p> <p>Section 15(3) provides that a secondary ticket seller who breaches this prohibition will be guilty of an offence.</p>

<p><b>16.</b></p>	<p>Information required when primary ticket seller sells or advertises for sale ticket or ticket package</p>	<p>Provides for certain information that a primary ticket seller must provide when selling or advertising for sale a ticket or ticket package for an event taking place in a designated venue or a designated event.</p> <p>Section 16(4) provides for an offence where a primary ticket seller fails to provide the information required in section 16.</p>
<p><b>17.</b></p>	<p>Information required when secondary ticket seller advertises or offers for sale ticket or ticket package</p>	<p>Section 17(1) provides that a secondary ticket seller shall not advertise or offer for sale on a secondary ticket marketplace, a ticket or ticket package for an event taking place in a designated venue or a designated event unless the advertisement includes information specified in section 17(3).</p> <p>Section 17(2) provides that a secondary ticket operator shall ensure that a ticket or ticket package for an event taking place in a designated venue or a designated event is not advertised or offered for sale on a secondary ticket marketplace, without the secondary ticket seller providing the information specified in section 17(3) in the advertisement.</p> <p>Section 17(3) specifies the information that must be provided, which includes the original sale price of the ticket or ticket package and the information used to identify the seat or standing area where the ticket holder is entitled to gain admission.</p> <p>Section 17(4) provides for an offence where a secondary ticket seller contravenes section 17(1).</p> <p>Section 17(5) provides for an offence where a secondary ticket operator contravenes section 17(2).</p>
<p><b>18.</b></p>	<p>Exemption for charitable organisations and amateur sports clubs</p>	<p>Provides for an exemption to the requirements set out in sections 15, 16 and 17 of the Bill where the sale or advertising for sale of a ticket or ticket package is by or on behalf of a charitable organisation or an amateur sports</p>

		<p>club a ticket or ticket package for an event taking place in a designated venue or a designated event.</p> <p>This exemption applies where the sale of that ticket or ticket package has been approved by an event organiser and the proceeds of the sale are to be used only for the purpose of funding the activities of the charitable organisation or amateur sports club.</p>
<p><b>Part 4: Matters relating to Sale of Tickets for events, including events in designated venues and designated events</b></p>		
19.	Contract terms excluding or limiting sale of tickets	<p>Section 19(1) provides that a term in a contract between a primary ticket seller and another person for the sale of a ticket or ticket package shall be void where it excludes or limits the transfer of the ticket or ticket package for no monetary consideration or for a price not exceeding the original price.</p> <p>Section 19(2) provides that section 19(1) shall not apply in relation to a term in a contract for the sale of a UEFA EURO 2020 ticket or ticket package, or for a transfer or sale of a ticket or a ticket package for an event which excludes or limits the transfer or sale of the tickets or ticket package on the grounds of safety, public health or public order.</p>
20.	Sale of UEFA EURO 2020 ticket or ticket package	Provides for a prohibition on the sale or advertising for sale of UEFA EURO 2020 tickets or ticket packages by secondary ticket sellers, save where they are authorised to do so by UEFA. Provides for an offence where a secondary ticket seller breaches this prohibition.
21.	Powers of Garda Síochána to enter and search, etc.	Provides for powers of search and entry where a member of the Garda Síochána has reasonable grounds for believing that a person is at any place committing or has committed an offence or that evidence of, or relating to, the commission of an offence under this Bill is to be found in any place.

		<p>A dwelling may not be entered unless an authorised officer has the consent of the occupier or a warrant under section 21(3) of the Bill.</p>
<b>22.</b>	Obstruction	<p>Provides for an offence of obstruction. Subsection 1 provides for the description of the offence and the requisite elements of the offence. Subsection 2 provides that information given pursuant to requirements in section 21 of the Bill shall not be used in other criminal proceedings save in relation to proceedings brought under section 22(1).</p>
<b>23.</b>	Arrest without warrant	<p>Provides for a member of An Garda Síochána to have the power to arrest a person committing an offence under section 15 or section 20 of the Bill, without a warrant.</p> <p>Section 23(2) provides that where a member of An Garda Síochána believes that an offence has been committed under section 15 or section 20, they may demand the name and address of any person they suspect has committed an offence, or they find committing such an offence. A member of An Garda Síochána may also arrest without a warrant any such person who fails to give his name and address when demanded or provides a name or address which the member has reasonable grounds for believing is false or misleading.</p> <p>Section 23(3) provides for an offence of failing to provide a name and address or giving a false or misleading name or address when demanded pursuant to section 23(2).</p>
<b>24.</b>	Offences and penalties	<p>Section 24(1) provides that offences under sections 16(4), 17(4), 17(5), 22(1) or 23(3) are punishable on summary conviction. The punishment for a first offence is a class B fine (a maximum fine of €4,000) or imprisonment for a term not exceeding six months, or both. The punishment for a second or subsequent offence, is a class A fine (a maximum fine of</p>

		<p>€5,000) or imprisonment for a term not exceeding 12 months, or both.</p> <p>Section 24(2) provides that offences under sections 15(3) or 20(2) are punishable on either summary conviction or conviction on indictment. On summary conviction the punishment for a first offence is a class B fine or imprisonment for a term not exceeding six months, or both. On summary conviction the punishment for a second or subsequent offence is a class A fine or imprisonment for a term not exceeding twelve months, or both. On conviction on indictment the punishment is a fine not exceeding €100,000 or imprisonment for a term not exceeding two years, or both.</p> <p>Sections 24(4) and 24(5) provide that where offences under the Bill are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.</p>
25.	Defences generally	Provides for a general defence of making a reasonable effort to ensure compliance with the relevant provision of the Bill, in relation to offences under the Bill.
26.	Defence for secondary ticket operator	Provides for a defence for a secondary ticket operator for an offence under sections 15(3), 17(5) or 20(2) where a secondary ticket operator can show that at the time of the alleged offence, they were providing an information society service in line with Articles 12 to 14 of <a href="#">Directive 2000/31/EC</a> of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the eCommerce Directive).
27.	Legal Privilege	Provides that nothing in the Bill provides for the disclosure of privileged legal material. However, disclosure of information and possession of such information, pursuant to

		<p>the Bill may occur where a person believes that the information sought pursuant to the Bill contains privileged legal material, subject to confidentiality of the information being maintained pending a determination by the High Court as to whether the information is privileged legal material. Section 27 also provides for the manner in which such applications may be made to the High Court.</p>
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**Source:** L&RS Analysis of the Bill

## Background

This section provides general background information in relation to:

- The consultation held by the Department of Business, Enterprise and Innovation on above price ticket selling in 2017;
- The *Sale of Tickets (Sporting and Cultural Events) Bill 2017 [PMB]*;
- The *Prohibition of Above-cost Ticket Selling Bill 2017 [PMB]*;
- Pre-Legislative Scrutiny of the General Scheme of the Bill;
- Regulatory Impact Analysis;
- The 2020 UEFA European Football Championship [Euro 2020]; and
- The eCommerce Directive.

### Consultation by the Department of Business, Enterprise and Innovation consultation on above price ticket selling

The Department of Business, Enterprise and Innovation carried out a consultation on above price ticket selling in 2017. It received submissions from the GAA, the IRFU, Aiken Promotions and a secondary selling company Viagogo among others. The consultation report examined the availability of tickets for events and noted that:

“Though it is sometimes assumed that all of the tickets to entertainment or sporting events go on general sale to the public, this is not typically the case. Tickets for entertainment events are commonly made available to a range of parties – including performers and their managements, members of performers’ fan clubs, venues and members of their clubs, corporate sponsors, holders of some credit cards, customers of some telecoms services, record labels and media organisations – prior to going on general sale. Estimates from the US and the UK suggest that half or more of tickets for concerts by top acts may be allocated or sold prior to the commencement of the general public sale. Though we are not aware of any similar estimates for this country, it may be the case that allocations and sales prior to tickets going on general sale are a good deal smaller here.”<sup>5</sup>

The report also noted the different type of ticket resellers there are:

“Purchasers of tickets on the primary ticket market who subsequently go on to resell them can usefully be understood as falling into three broad categories. First, those who buy tickets with the intention of attending the event but later find that they are unable to attend it or to afford the travel and accommodation costs associated with attendance. Secondly, some ticket buyers who plan to attend an event may buy extra tickets in order to subsidise the purchase of their own tickets and the other costs associated with attendance. Thirdly, there are purchasers who buy tickets for events which they have no intention of attending in

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<sup>5</sup> Department of Jobs, Enterprise and Innovation, *Consultation on the Resale of Tickets for Entertainment and Sporting Events* (January 2017), at p. 4. Available at <https://enterprise.gov.ie/en/Consultations/Consultations-files/Consultation-Resale-of-Tickets-Entertainment-Sporting-Events.pdf>.

order to resell the tickets at a profit. Some may do so occasionally, while others may be engaged in this activity on a more systematic basis. This last category of ticket reseller, particularly those engaging in the activity on an organised, large-scale basis, is the one that gives rise to the greatest public concern and is most likely to be seen as engaged in ticket 'touting'.<sup>6</sup>

### **The Sale of Tickets (Sporting and Cultural Events) Bill 2017 [PMB]**

The [Sale of Tickets \(Sporting and Cultural Events\) Bill 2017](#) was introduced by Deputy Maurice Quinlivan TD on 1 March 2017. During the Second Stage debate of the Bill, Deputy Quinlivan set out the purpose of the Bill, stating that:

"The Sale of Tickets (Sporting and Cultural Events) Bill 2017 aims to eliminate the persistent problem of ticket touting while at the same time protecting ordinary consumers and charities. In drafting this Bill, my three main concerns were to ensure that those who buy tickets with the intention of attending an event but who later find that they are unable to attend are protected and allowed to re-sell their tickets, to target those ticket touts who purchase tickets for events they never intend to attend and who have only the intention of reselling at huge prices and to ensure there are exemptions for charities. This last concern is dealt with in section 5. This provides for registered charities to be allowed to sell tickets at a price greater than the 10% limit."<sup>7</sup>

The Bill was referred to the Joint Committee on Business, Enterprise and Innovation pursuant to Standing Orders 84A(3)(a) and 141 for detailed scrutiny. The Joint Committee published its [Report on the Scrutiny of the Sale of Tickets \(Sporting and Cultural Events\) Bill 2017 \[PMB\]](#) in October 2018. The Committee made the following observations and conclusions in relation to the Bill:

- The Committee notes the broad support expressed for the principle of the Bill and also notes that the Bill passed Second Stage reading;
- The Committee commends the proposer of the Bill for drafting and introducing the Bill to the House;
- The Committee notes that Department officials agreed that the Bill, or similar legislation, would have an impact on the levels of resale of tickets above face value;
- The Committee notes that the Minister has announced that the Government has agreed legislative measures to tackle ticket touting;
- The committee recognises that the problem of ticket touting must be addressed by legislation, as the continued absence of regulation is leaving consumers vulnerable to exploitation;

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<sup>6</sup> *Ibid*, at p. 5.

<sup>7</sup> Sale of Tickets (Sporting and Cultural Events) Bill 2017, Second Stage Debate, Dáil Éireann debate (Thursday, 11 May 2017). Available at <https://www.oireachtas.ie/en/debates/debate/dail/2017-05-11/29/>.

- The Committee notes that as part of the conditions agreed with UEFA for the staging of matches in the Euro 2020 championship, Ireland has given a commitment to introduce legislative provisions banning the unauthorised resale of tickets;
- The Committee recommends ticket touting legislation is introduced immediately to ensure consumers are protected;
- The Committee recognises that, if introduced, the Sale of Tickets (Sporting and Cultural Events) Bill 2017 would help eliminate the problem of ticket touting in Ireland;
- The Committee notes that, in accordance with Dáil Standing Order 179(2), Committee Stage of a Bill which involves the appropriation of revenue or other public moneys, shall not be taken unless the purpose of the appropriation has been recommended to the Dáil by a Message from the Government;
- The Committee recommends that, subject to the receipt of a Money Message, the Bill should proceed to Committee Stage.

This Bill lapsed with the dissolution of the 32nd Dáil.

### **The Prohibition of Above-cost Ticket Touting Bill 2017 [PMB]**

The [Prohibition of Above-cost Ticket Touting Bill 2017](#) was introduced as a Private Members Bill by Deputies Noel Rock and Stephen Donnelly, prior to being taken over by the Department of Business, Enterprise and Innovation. The Government made a number of changes to the Bill, including a change to the title of the Bill to the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020.

The Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020 was notified to the European Commission in accordance with the requirements of the [Directive \(EU\) 2015/1535](#).<sup>8</sup> The predominantly online nature of ticket resale means that it constitutes an information society service. No issue of compatibility with EU law or the Internal Market was raised by the European Commission or other Member States.

The Bill proposed the prohibition of the reselling of tickets relating to major sporting, musical or theatrical events for any profit, except by registered charities and voluntary and community groups who had received authorisation from the organiser of the event.

This Bill lapsed with the dissolution of the 32<sup>nd</sup> Dáil.

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<sup>8</sup> See Department Press Release, "Notification of Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020 to European Commission" (21 Feb 2020). Available at [https://merrionstreet.ie/en/news-room/releases/notification\\_of\\_sale\\_of\\_tickets\\_cultural\\_entertainment\\_recreational\\_and\\_sporting\\_events\\_bill\\_2020\\_to\\_european\\_commission.html](https://merrionstreet.ie/en/news-room/releases/notification_of_sale_of_tickets_cultural_entertainment_recreational_and_sporting_events_bill_2020_to_european_commission.html).

## Pre-Legislative Scrutiny of the General Scheme of the Bill

The Joint Oireachtas Committee for Enterprise, Trade and Employment [the Committee] undertook Pre-legislative Scrutiny [PLS] of the Bill on 9 December 2020.<sup>9</sup> The hearing at the Committee was attended by officials from the Department of Enterprise, Trade and Employment [the Department]. Mr John Newham delivered the opening statement on behalf of the Department.

Examining the background to the Bill and the previous PMBs relating to this area, Mr Newham noted that the overriding objective of the Bill and all the previous legislation has been to ensure that fans are treated fairly.

The Committee received submissions from a large number of interested parties, including:

- Aiken Promotions;
- Consumer Association of Ireland;
- Football Association of Ireland (FAI);
- Gaelic Athletic Association (GAA);
- Irish Rugby Football Union (IRFU);
- Live Nation;
- Susan Ahern BL;
- Tickets.ie;
- Toutless; and
- Viagogo.

The Committee published their report on pre-legislative scrutiny of the Bill on 18 February 2021.<sup>10</sup> Commenting on the publication of the report, the Committee Chairman, Deputy Maurice Quinlivan TD noted that:

“This Committee and the previous Committee have done a lot of work on this with stakeholders and considered many submissions on the issue of ticket-touting and selling tickets above face value. This is the second report the Committee has produced on this issue and we have made a number of recommendations which we believe will improve the Minister’s Bill in practice.

We now hope the Government will look favourably on our proposals and act decisively to legislate as quickly as possible, especially with the rescheduled Euro 2020 finals now due

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<sup>9</sup> Joint Committee on Enterprise, Trade and Employment (Wednesday 9, December 2020), PLS of the General Scheme of the Sale of Tickets (Cultural, Entertainment, Sporting and Recreational Events) Bill 2020. Available at [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_enterprise\\_trade\\_and\\_employment/2020-12-09/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2020-12-09/3/).

<sup>10</sup> Joint Committee on Enterprise, Trade and Employment (18 February 2021), Report on PLS of the General Scheme of the Sale of Tickets (Cultural, Entertainment, Sporting and Recreational Events) Bill 2020. Available at <https://www.oireachtas.ie/en/press-centre/press-releases/20210218-joint-committee-on-enterprise-trade-and-employment-launches-report-on-pre-legislative-scrutiny-of-the-sale-of-tickets-cultural-entertainment-recreational-and-sporting-events-bill-2020/>.

to take place this summer in Dublin and other European cities. The Bill proposes banning the unauthorised sale of tickets for the tournament, and we believe this should be treated as a priority should public health conditions permit the games to go ahead.”<sup>11</sup>

The Committee made seven recommendations aimed at strengthening the legislation.

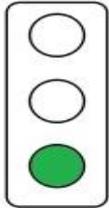
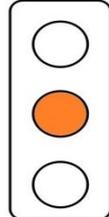
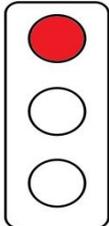
1. The Committee recommends that the application for designation of a venue be opened to both venue operators and event operators.
2. The Committee recommends that specific provisions be included to take into account event in “green field” venues.
3. The Committee recommends that consideration be given to including the factors for designation in the legislation or in secondary legislation.
4. The Committee recommends that consideration be given to how the tickets sold as part of hospitality/travel packages will be treated, as this may lead to a loophole in the legislation.
5. The Committee recommends that consideration be given to including provisions relating to the resale of long-term tickets for individual events, including for such tickets sold prior to the introduction of the legislation.
6. The Committee recommends that consideration be given to including civil sanctions under an enforcement authority (such as the Competition and Consumer Protection Commission), including the power to impose financial sanctions based on a civil standard of proof.
7. The Committee recommends that consideration be given to regulating the sale of tickets on primary markets to ensure that consumers are fully informed of the quantity of tickets for sale by that seller and the remaining tickets available.

Table 1 below presents the Committee’s recommendations as set out in its PLS report on the General Scheme. The Table also provides the Department of Enterprise, Trade and Employment’s response and analysis of whether the recommendations made by the PLS report are addressed (either in whole or in part) in the Bill or elsewhere.

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<sup>11</sup> *Ibid.*

**Table 1: Overview of the impact of the Oireachtas Committee PLS recommendations/key issues and response provided by the Department of Enterprise, Trade and Employment (04/05/2021).**

L&RS categorisation of the Department's response to the key issues identified by the Committee		'Traffic light dashboard' used in Digest to highlight the impact of the Committee's PLS report	
Key issue has had an impact on the drafting of the Bill.			
The Bill may be described as adopting an approach consistent with the key issue <u>or</u> the impact of the key issue on the drafting of the Bill is unclear.			
Key issue has not had an impact on the drafting of the Bill.			
No.	Recommendation as per Joint Committee on Enterprise, Trade and Employment (February 2021)	L&RS 'traffic light' identifier	Response from Department of Enterprise, Trade and Employment on whether addressed (either in whole or in part) in the Bill or elsewhere
1.	The Committee recommends that the application for designation of a venue be opened to both venue operators and event operators.		The definition of 'venue operator' in section 2 now includes at paragraph (b) a person, <i>including an event organiser</i> , acting for, on behalf, a person referred to in paragraph (a). This change, along with the addition of a provision at section 9 for the designation of events, addresses this recommendation.
2.	The Committee recommends that specific provisions be included to take into account events in "green field" venues.		The amendment to the definition of 'venue operator' as set out at recommendation 1 above and the addition of a provision for the designation of events addresses this recommendation also.
3.	The Committee recommends that consideration be given to including the factors for designation in the		The Bill now provides at section 7 that an applicant for the designation of a venue must be of the ' <i>reasonable opinion</i> ' that the venue

No.	Recommendation as per Joint Committee on Enterprise, Trade and Employment (February 2021)	L&RS 'traffic light' identifier	Response from Department of Enterprise, Trade and Employment on whether addressed (either in whole or in part) in the Bill or elsewhere
	legislation or in secondary legislation.		will hold events that may give rise to above sale price resale of tickets. An applicant for the designation of an event under section 9 must similarly be of the <i>reasonable</i> opinion that the event may give rise to above sale price resale of tickets. The AGO were of the view that the reasonable opinion requirement was sufficient.
4.	The Committee recommends that consideration be given to how the tickets sold as part of hospitality/travel packages will be treated, as this may lead to a loophole in the legislation.		The definition of "ticket package" in section 2 is now amended to include paragraph (b), and so addresses this recommendation.
5.	The Committee recommends that consideration be given to including provisions relating to the resale of long-term tickets for individual events, including for such tickets sold prior to the introduction of the legislation.		<p>The prohibition on above sale price resale would clearly cover the resale of a season or other long-term ticket for a price above its original sale price. In the case of the resale of a ticket for an individual match which was obtained as part of a season or other long-term ticket package and for which the price for which the ticket was originally sold could not readily be determined, paragraph (b) of the definition of 'original sale price' in the Bill would apply.</p> <p>The Bill already addressed this recommendation, so no amendment was deemed necessary.</p>
6.	The Committee recommends that consideration be given to including civil sanctions under an enforcement authority (such as the CCPC), including the power to impose financial sanctions based on a civil standard of proof.		<p>The inclusion of a provision for civil sanctions for contraventions of the legislation raises constitutional and legal issues. No consumer protection legislation other than that dealing with regulated financial services currently provides for such sanctions.</p> <p>Much ticket resale is undertaken by persons who would be regarded as 'consumers' under the standard definition of that term and it is not considered appropriate that the CCPC's enforcement function should extend to C2C transactions. Also, an enforcement function in respect of street ticket touting would not be appropriate to a body such as the CCPC.</p> <p>On this basis, recommendation 6 is not addressed in the Bill.</p>

No.	Recommendation as per Joint Committee on Enterprise, Trade and Employment (February 2021)	L&RS 'traffic light' identifier	Response from Department of Enterprise, Trade and Employment on whether addressed (either in whole or in part) in the Bill or elsewhere
7.	The Committee recommends that consideration be given to regulating the sale of tickets on primary markets to ensure that consumers are fully informed of the quantity of tickets for sale by that seller and the remaining tickets available.		<p>This recommendation would substantially alter the scope of the Bill and require its resubmission both to Government and to the European Commission under Directive (EU) 2015/1535. This would have undermined the wish expressed by the Chairman of the Joint Committee that the Committee's report will enable the Minister to proceed quickly with the Bill.</p> <p>Recommendation 7 is not addressed in the Bill.</p>

**Source:** The L&RS is grateful to the Department of Enterprise, Trade and Employment for providing an analysis of how the Committee's PLS recommendations impact on the Bill. The traffic light assessment represents the analysis of the L&RS.

## Regulatory Impact Analysis

A Regulatory Impact Analysis [RIA] of the Bill was published by the Department of Enterprise, Trade and Employment.<sup>12</sup> The RIA considered two policy options:

1. No policy change; and
2. Introduction of legislation.

The RIA notes that the impact of no policy change would be that:

“The Government would not fulfil its commitment to UEFA to prohibit the unauthorised sale of tickets for matches and official events during the EURO 2020 tournament. This could have an adverse effect on the credibility of Government commitments for future international sporting events.”<sup>13</sup>

The RIA set out the impact of the introduction of legislation as:

“Some secondary ticket sellers may resort to the resale of event tickets on online marketplaces based in other countries or through black market and other sales channels that may be difficult to monitor and which do not provide the type of guarantees offered to ticket purchasers by established secondary ticket marketplaces.

Given the borderless nature of online transactions, some Irish sports or music fans unable to obtain for tickets for sold-out events here may seek out tickets on websites in other

<sup>12</sup> Department of Enterprise, Trade and Employment, *Regulatory Impact Analysis: Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021* (April 2021). Available at <https://enterprise.gov.ie/en/Legislation/Sale-of-Tickets-Bill-2021.html>.

<sup>13</sup> *Ibid*, at p. 4.

jurisdictions. As the proceedings taken against a Norwegian reseller for the sale of tickets for the London Olympics outlined below demonstrate however, a secondary ticket seller outside Ireland who, after the enactment of the present Bill, states or otherwise creates the impression that the sale of tickets for events in Ireland for a price above the original sale price is lawful would be in breach of the Unfair Commercial Practices Directive.

If resale above the original sale price is no longer an option on established secondary ticket marketplaces, some secondary sellers may shift their activities to underground or black market sales channels and some buyers may purchase tickets through these channels. Those who purchase tickets from illicit secondary sellers in the knowledge that such purchases are in breach of the law on the resale of event tickets would take, and would have to accept, the risk that they would have no redress if tickets were not delivered or were counterfeit.”<sup>14</sup>

The RIA also considers the changes made to Bill by the Department of Enterprise, Trade and Employment since the General Scheme was submitted for PLS. It states that:

“A number of changes to the Bill since the Scheme of the Bill approved by Government in September 2020 was submitted to the Joint Committee on Enterprise, Trade and Employment address matters raised in the recommendations in the Committee’s pre-legislative scrutiny report and in submissions to the Committee from stakeholders. The main such change involves the inclusion of a provision for the designation of events as well as the designation of venues. Other changes relate to the conditions applying to the designation of venues and events and the definitions of ‘venue operator’ and ‘ticket package’. A number of recommendations in the Committee’s report have not been adopted as, among other considerations, they involved enforcement measures that raise legal and constitutional issues or would have required the renotification of the Bill to the European Commission under Directive (EU) 2015/1535. Renotification is required where changes made to a proposed national measure following its original notification significantly alter the scope of the measure, add specifications or requirements, or make such specifications and requirements more restrictive. The Office of the Attorney General have advised the Department that the changes to the Bill since its notification in February 2020 are not such as to require its renotification.”<sup>15</sup>

## Euro 2020

The 2020 UEFA European Football Championship [Euro 2020] is due to be held between 11 June and 11 July 2021.<sup>16</sup> Dublin was chosen as one of the 12 host cities for Euro 2020.<sup>17</sup> The following games were due to be held at the Aviva Stadium:

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<sup>14</sup> *Ibid*, at pp. 4-5.

<sup>15</sup> *Ibid*, at p. 24.

<sup>16</sup> Euro 2020 was initially due to be held in June 2020 but was postponed to June 2021 due to the global Covid 19 pandemic.

<sup>17</sup> The Republic of Ireland team failed to qualify for Euro 2020, losing (4 – 2 on penalties) in a play-off semi-final against Slovakia on 8 October 2020.

- Poland v Slovakia;
- Sweden v Slovakia;
- Sweden v Poland; and
- A round of 16 match between the winner of Group D and the runner up of Group F.<sup>18</sup>

During PLS it was noted by Mr Newham that in line with a commitment given by Government to UEFA, the Bill will prohibit the unauthorised sale of tickets for matches during Euro 2020.<sup>19</sup>

Dublin will no longer host games with tickets for matches in Dublin being cancelled, with all impacted ticket buyers to receive a full refund for the face value of their cancelled tickets.<sup>20</sup> The games originally assigned to Dublin are now due to be held in Saint Petersburg and London.<sup>21</sup> UEFA have noted that Dublin remains a good venue to host future UEFA events.<sup>22</sup>

## The eCommerce Directive

[Directive 2000/31/1 EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the eCommerce Directive) established harmonised rules for electronic commerce in the EU. Articles 12 to 15 of the eCommerce Directive are particularly relevant to the Bill as they limit the extent to which monitoring obligations can be placed on data hosts.

Article 12 provides that where an “information society service”<sup>23</sup> is provided so long as the provider is acting as a mere conduit for the transmission of information on the communication network it shall not be liable for the information that is transmitted. Article 13 provides a similar immunity in relation to caching services. Article 14 provides that where an information society service is provided that consists of the hosting of information it shall not be liable for the information hosted provided that host does not have actual knowledge of the illegality of the content or having become aware of the illegal content acts swiftly to remove access to the illegal content.

Article 15 provides that there is a general prohibition on placing a general obligation on providers of information society services to monitor the content which is transmitted or stored on the services which they provide. However, Member States may impose general takedown obligations. Article 15 states:

“1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit

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<sup>18</sup> The full draw including match times and venues is available at <https://www.uefa.com/uefaeuro-2020/fixtures-results/#/md/33673>.

<sup>19</sup> See Note 9.

<sup>20</sup> See UEFA press release, “Change of venues for some UEFA EURO 2020 matches announced” (23 April 2021). Available at <https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/0268-121bc78c82d5-1ba16401b4f0-1000--change-of-venues-for-some-uefa-euro-2020-matches-announced/>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> An information society service is defined under Article 2 of the eCommerce Directive.

or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.”

The provisions of Articles 12 to 15 have been considered in detail by the Court of Justice of the European Union [CJEU] in a number of cases. In *Google France v. Louis Vuitton*<sup>24</sup> the CJEU held that in determining whether the defence under Article 14 applies:

“... it is necessary to examine whether the role played by that service provider is neutral, in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data it stores.”<sup>25</sup>

In *L’Oreal SA v. eBay International AG and Others*<sup>26</sup> the Court considered the provisions of Articles 12 to 15 in the context of eBay and its online marketplace platform. The Court gave guidance in relation to the knowledge requirements of Article 14 and stated that:

“... although such a notification admittedly cannot automatically preclude the exemption from liability provided for in Article 14 of Directive 2000/31, given that notifications of allegedly illegal activities or information may turn out to be insufficiently precise or inadequately substantiated, the fact remains that such notification represents, as a general rule, a factor of which the national court must take account when determining, in the light of the information so transmitted to the operator, whether the latter was actually aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality.”<sup>27</sup>

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<sup>24</sup> Joined Cases [C-236/08 to C-238/08](#) *Google France v. Louis Vuitton* OJ C134/2.

<sup>25</sup> *Ibid*, at para 114.

<sup>26</sup> C-324/09 *L’Oreal SA v. eBay International AG and Others* [\[2011\] OJ C269](#).

<sup>27</sup> *Ibid*, at para 122.

## Principal Provisions

This section of the Digest examines the main provisions of the Bill. The Bill comprises 27 sections. Section 1 of the Bill relates to the short title and commencement of the Bill. Section 3 relates to expenses that arise in the administration of this Bill. Section 4 provides for the making of regulations for matters arising in the Bill. Section 5 relates to the service of documents as provided for in the Bill. Section 6 provides for the application of the Bill. Section 14 provides for the establishment of a register of designated venues and events. Sections 1, 3, 4, 5, 6 and 14 are standard provisions and for that reason are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

### Interpretation

Section 2 of the Bill relates to the definition of various terms in the Bill. These definitions include:

“original sale price” which is defined as:

- “(a) the price for which a ticket or ticket package was sold by a primary ticket seller and includes any additional charge or fee applying to the sale of the ticket or ticket package, or
- (b) the price for which an equivalent ticket or ticket package was on sale by a primary ticket seller where a secondary ticket seller obtained the ticket or ticket package other than through payment of the price”;

“primary ticket seller” which is defined as:

- “(a) an event organiser,
- (b) a venue operator,
- (c) a person authorised to sell tickets or ticket packages on behalf of an event organiser or venue operator, or
- (d) a person acting for, or on behalf of, a person referred to in paragraphs (a), (b) or (c),

but does not include a secondary ticket seller”;

“secondary ticket operator”, in relation to a secondary ticket marketplace which is defined as:

- “(a) a person who owns or manages the marketplace or is otherwise responsible for the operation of the marketplace, or
- (b) a person acting for, or on behalf of, a person referred to in paragraph (a)”;

“secondary ticket seller” which is defined as “a person who sells a ticket or ticket package that was originally sold by, or otherwise originally made available by or through, a primary ticket seller”;

“secondary ticket marketplace” which is defined as “a website, online service, electronic application or print publication which provides a secondary ticket seller with a facility for the sale or advertising for sale of tickets or ticket packages and includes a marketplace that also provides a facility for the sale or supply, or advertising for sale or supply, of other goods or services”;

## Designation of certain venues and events

Part 2 of the Bill provides for the designation of certain venues and events by the Minister, both where an application has made and in circumstances where no application for designation has been made.

### Designation of certain venues

Section 7 of the Bill provides for the designation of certain venues. Section 7(1) provides for applications to be made to the Minister in respect of the designation of certain venues by venue operators. To apply, the venue must have the capacity to hold at least 1,000 persons and the applicant must be of the reasonable opinion that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price.

Section 7(2) provides that an application must be in writing and in a form prescribed by the Minister. Section 7(3) provides that the Minister may prescribe a fee for the application. Section 7(4) provides that following receipt of the application the Minister may require the applicant to provide additional information.

Section 7(5)(a) provides that the Minister may designate a venue, the subject of an application under section 7(1), where the Minister is satisfied of the matters specified in section 7(1). Section 7(5)(b) provides that, subject to section 8(2) concerning notification of a proposed refusal, the Minister may refuse to designate a venue, the subject of an application under section 7(1), where the Minister is not satisfied of the matters specified in section 7(1).

Section 7(6) provides that the Minister may designate a venue where no application is made under section 7(1). This may arise where the Minister, following consultation with the venue operator, is satisfied the venue (including venues with a smaller capacity than 1,000 persons) will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price, or a designation under section 7(5)(a) cannot be made prior to the venue holding events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. The Minister must also be satisfied that a designation under section 7(6) would be in the public interest.

Section 7(7) provides that the Minister shall notify the venue operator in writing of the designation. Section 7(8) sets out the information to be provided in a notification under section 7(7).

Section 7(9) provides that a designation under section 7(6) shall come into effect upon the making of the designation or on such later date as specified in a notification under section 7(7). Section 7(9) also provides that the bringing of an appeal under section 13 of the Bill shall not affect the operation of the designation.

### Refusal or revocation of designation of certain venues

Section 8(1) provides for the conditions upon which the Minister may revoke a designation under section 7. These include:

- in the case of a designation made under section 7(5), where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the venue applicant or venue operator that the venue has capacity to hold at least 1,000 persons;
- in the case of a designation made under section 7(5), where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the venue applicant or venue operator that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price;
- in the case of a designation made under section 7(6), where the Minister is no longer satisfied that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price or
- where the venue is no longer in operation or has ceased to hold events.

Section 8(2) provides for the written notification by the Minister of a proposed refusal or revocation of a designation. Section 8(3) provides for the details to be included in such a notification.

### Designation of certain events

Section 9(1) provides for applications to be made to the Minister by event organisers or venues operators in respect of the designation of certain events, described in the Bill as designated events. Such applications may be made where the applicant is of the reasonable opinion that the event may give rise to the sale of tickets or ticket packages for that event by a secondary ticket seller for a price exceeding the original sale price.

Section 9(2) provides that an application may be made for the designation of events which take place on an annual or periodic basis in the same venue.

Section 9(3) provides that an application shall be in writing and in a form prescribed by the Minister. Section 9(4) provides that the Minister may prescribe a fee for the application. Section 9(5) provides that following receipt of the application the Minister may require the applicant to provide additional information.

Section 9(6)(a) provides that the Minister may designate an event, the subject of an application under section 9(1), where the Minister is satisfied of the matters specified in section 9(1). Section 9(6)(b) provides that, subject to section 10(1) concerning notification of a proposed refusal, the Minister may refuse to designate an event, the subject of an application under section 9(1), where the Minister is not satisfied of the matters specified in section 9(1).

Section 9(7) provides that the Minister may designate an event where no application is made under section 9(1). This may arise where the Minister, following consultation with the event organiser or venue operator, is satisfied the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price, or a designation under section 9(6)(a) cannot be made prior to the event which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. The Minister must also be satisfied that a designation under section 9(7) would be in the public interest.

Section 7(7) provides that the Minister shall notify the venue operator in writing of the designation. Section 7(8) sets out the information to be provided in a notification under section 7(7).

Section 7(9) provides that a designation under section 7(6) shall come into effect upon the making of the designation or on such later date as specified in a notification under section 7(7). Section 7(9) also provides that the bringing of an appeal under section 13 of the Bill shall not affect the operation of the designation.

Section 9(7) provides that the Minister may designate an event where no application is made, where the Minister, following consultation with the event organiser or venue operator, is satisfied the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price, or a designation under section 9(6)(a) cannot be made prior to the event which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price.

Section 9(8) provides that the Minister shall notify the venue operator in writing of the designation. Section 9(9) sets out the information to be provided in a notification under section 9(8).

Section 9(10) provides that a designation under section 9(7) shall come into effect upon the making of the designation or on such later date as specified in a notification under section 9(8). Section 9(10) also provides that the bringing of an appeal under section 13 of the Bill shall not affect the operation of the designation.

### Refusal or revocation of designation of certain events

Section 10(1) provides for the conditions upon which the Minister may revoke a designation under section 9. These include:

- in the case of a designation made under section 9(6), where the Minister is no longer satisfied that there is a reasonable basis for the opinion of the event applicant, event organiser or venue operator that the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price;
- in the case of a designation made under section 9(7), where the Minister is no longer satisfied that the event which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price or
- where the Minister is not satisfied that the event the subject of the application under section 9(1) is the same as, or substantially similar to that specified in the application for designation or under the designation.

Section 10(2) provides for the written notification by the Minister of a proposed refusal or revocation of a designation. Section 10(3) provides for the details to be included in such a notification.

### Notification of designation

Section 11 provides for the publication by the Minister of a designation or a revocation of a designation in *Iris Oifigiúil*. The Minister must also publish or make the following information available:

- that a designation has been made or revoked;

- the name and location of the venues, or where a designation of an event is made, the name of the event and the location where it is being held; and
- the date from which the designation or revocation takes effect.

## Representations

Section 12(1) provides that an applicant, venue operator or event organiser that has been notified of a proposal to refuse or revoke a designation under sections 8(2) or 10(2) may make representations to the Minister about the proposed refusal or revocation, within 14 days of being notified.

Section 12(2) provides that the Minister is required to have regard to any representations in deciding whether to proceed with the proposed refusal or revocation and to notify the applicant, venue operator or event organiser in writing of his or her decision.

Section 12(3) provides that where representations are made and no appeal is brought, the revocation shall come into operation 28 days from the date of service of the notification in section 12(2).

## Appeals

Section 13(1) provides for the making of an appeal to the District Court by an applicant, venue operator or event organiser in respect of a refusal or a revocation of a designation, and in respect of a venue that has been designated by the Minister under sections 7(6) or 9(7). The appeal must be brought within 28 days from the date of service of the notification under section 8(2), 10(2), 12(2), 7(7) or 9(8) of the Bill.

Section 13(2) provides that where appeal is brought the appellant must notify the Minister in writing at the same time of the making of the appeal.

Section 13(3) provides that appeals in respect of a designation of a venue under section 7 of the Bill are to be brought before a judge of the District Court assigned to the district court district within which, the venue the subject of the designation, is located.<sup>28</sup>

Section 13(4) provides that appeals in respect of a designation of an event under section 9 of the Bill are to be brought before a judge of the District Court assigned to the district court district within which, the event the subject of the designation, is being held.

Section 13(5) provides for the orders which may be made by a judge of the District Court on the hearing of an appeal under section 13(1), in relation to an application for the designation of a venue under section 7.

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<sup>28</sup> A map of the District Court areas is available at <https://www.courts.ie/content/map-district-court-areas>.

Section 13(6) provides for the orders which may be made by a judge of the District Court on the hearing of an appeal under section 13(1), in relation to an application for the designation of an event under section 9.

Section 13(7) provides that the decision of the District Court under section 13 on a question of fact shall be final.

### **Prohibition on sale of tickets or ticket packages for above original sale price and related information requirements**

Part 3 of the Bill provides for the prohibition on the sale of tickets for cultural, entertainment, recreational and sporting events and related information requirements.

The Joint Committee in their report on pre-legislative scrutiny of the Bill, considered issues raised by a general prohibition. The Report notes that:

“Viagogo highlighted that dynamic pricing will make it impossible to identify an original sale price. Season tickets and promotional tickets will also create difficulties in identifying the original sales price.

Viagogo contends that this Head is fundamentally harmful to consumers and presents a deep misunderstanding of how pricing works.

The Department addressed questions on the possibility of allowing a margin above the original sales price to ensure the seller is not left out of pocket, stating that they came to the view that it would be too complex to introduce the concept of a margin.”<sup>29</sup>

### **Prohibition on sale or advertisement for sale of ticket or ticket package above original sale price**

Section 15(1) provides, subject to section 18 of the Bill, for a prohibition on the sale, by a secondary ticket seller, of a ticket or ticket package for an event taking place in a designated venue or a designated event, for a price exceeding the original sale price.

Section 15(2) provides, subject to section 18 of the Bill, for a prohibition on the advertisement for sale, by a secondary ticket seller, of a ticket or ticket package for an event taking place in a designated venue or a designated event, for a price exceeding the original sale price.

Section 15(3) provides that a secondary ticket seller who breaches this prohibition will be guilty of an offence.

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<sup>29</sup> See Note 10, Joint Committee on Enterprise, Trade and Employment (18 February 2021), Report on PLS of the General Scheme of the Sale of Tickets (Cultural, Entertainment, Sporting and Recreational Events) Bill 2020, at p. 5.

### **Information required when primary ticket seller sells or advertises for sale ticket or ticket package**

Section 16(1) provides that a primary ticket seller must provide certain information when selling or advertising for sale a ticket or ticket package for an event taking place in a designated venue or a designated event.

Section 16(2) sets out the information that must be provided under section 16(1).

Section 16(3) provides that the information referred to in section 16(1) shall be produced in any advertisement for the sale of the ticket or ticket package, on the face of the ticket or on a durable medium supplied with the ticket or ticket package.

Section 16(4) provides for an offence where a primary ticket seller fails to provide the information required in section 16.

Section 16(5) defines a “durable medium” as “any medium on which information is provided and stored, including paper and e-mail, that renders the information accessible for future reference for a period of time adequate for the purposes of the information, and allows the unchanged reproduction of the information.”

### **Information required when secondary ticket seller advertises or offers for sale ticket or ticket package**

Section 17(1) provides that, subject to section 18, a secondary ticket seller shall not advertise or offer for sale on a secondary ticket marketplace, a ticket or ticket package for an event taking place in a designated venue or a designated event unless the advertisement includes information specified in section 17(3).

Section 17(2) provides, subject to section 18, that a secondary ticket operator shall ensure that a ticket or ticket package for an event taking place in a designated venue or a designated event is not advertised or offered for sale on a secondary ticket marketplace, without the secondary ticket seller providing the information specified in section 17(3) in the advertisement.

Section 17(3) specifies the information that must be provided, which includes the original sale price of the ticket or ticket package and the information used to identify the seat or standing area where the ticket holder is entitled to gain admission.

Section 17(4) provides for an offence where a secondary ticket seller contravenes section 17(1).

Section 17(5) provides for an offence where a secondary ticket operator contravenes section 17(2).

### **Exemption for charitable organisations and amateur sports clubs**

Section 18 provides for an exemption to the requirements set out in sections 15, 16 and 17 of the Bill where the sale or advertising for sale of a ticket or ticket package is by or on behalf of a charitable organisation or an amateur sports club a ticket or ticket package for an event taking place in a designated venue or a designated event.

This exemption applies where the sale of that ticket or ticket package has been approved by an event organiser and the proceeds of the sale are to be used only for the purpose of funding the activities of the charitable organisation or amateur sports club.

The Joint Committee in their report on pre-legislative scrutiny of the Bill, note that in the submission they received from Viagogo, issues were raised with this exemption, stating that:

“Viagogo questioned why there should be an exemption, stating that the proposal is not coherent if all above-price selling is to be prohibited. It also notes that it would be impossible for secondary market to validate if a seller complies with the provision.”<sup>30</sup>

## **Matters relating to the sale of tickets for events, including events in designated venues and designated events**

Part 4 of the Bill provides for several matters relating to the sale of tickets, including matters relating to the enforcement and policing of the prohibitions outlined in the Bill.

### **Contract terms excluding or limiting transfer or sale of ticket or ticket package**

Section 19(1) provides that a term in a contract between a primary ticket seller and another person for the sale of a ticket or ticket package shall be void where it excludes or limits the transfer of the ticket or ticket package for no monetary consideration or for a price not exceeding the original price.

Section 19(2) provides that section 19(1) shall not apply in relation to a term in a contract for the sale of a UEFA EURO 2020 ticket or ticket package, or for a transfer or sale of a ticket or a ticket package for an event which excludes or limits the transfer or sale of the tickets or ticket package on the grounds of safety, public health or public order.

Section 19(3) provides that section 19 does not prevent or limit an event organiser from enforcing a term in a contract for the sale of a ticket or ticket package that prohibits the sale of the ticket or ticket package for a price exceeding the original sale price.

Section 19(4) provides that section 19 applies to term in a contract between a primary ticket seller and another person for the sale of a ticket or a ticket package on or after the day on which section 19 comes into operation.

### **Sale of UEFA EURO 2020 ticket or ticket package**

Section 20(1) provides for a prohibition on the sale or advertising for sale of UEFA EURO 2020 tickets or ticket packages by secondary ticket sellers, save where they are authorised to do so by UEFA.

Section 20(2) provides for an offence where a secondary ticket seller breaches this prohibition.

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<sup>30</sup> See Note 10, Joint Committee on Enterprise, Trade and Employment (18 February 2021), Report on PLS of the General Scheme of the Sale of Tickets (Cultural, Entertainment, Sporting and Recreational Events) Bill 2020, at p. 6.

## **Powers of An Garda Síochána**

Section 21(1) provides for powers of search and entry where a member of the Garda Síochána has reasonable grounds for believing that a person is at any place committing or has committed an offence or that evidence of, or relating to, the commission of an offence under this Bill is to be found in any place. These include powers to:

- inspect and take copies of any books, records, other documents or extracts of documents, which are found in the course of an inspection;
- require any person present to give their name and address;
- search any person present;
- require any person at the place or the owner or person in charge of the place and any person employed there to give to the member such assistance and information and to produce to him or her such books, records or other documents that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Bill;
- examine, seize and retain anything found at that place, or anything found in the possession of a person present at that place at the time of the search, that the member reasonably believes to be evidence of, or evidence relating to, the commission of an offence under this Bill; and
- secure for later inspection any place or part of any place in which books, records or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of this Bill.

Section 21(2) provides that a dwelling may not be entered unless an authorised officer has the consent of the occupier or a warrant under section 21(3) of the Bill.

Section 21(3) provides for the conditions that must be met in order for a member of An Garda Síochána, not below the rank of sergeant, to obtain a warrant from a judge of the District Court authorising entry of a dwelling and the performance of the functions under section 21(1).

Section 21(4) provides that section 21 is without prejudice to any other statutory power of search and entry exercisable by a member of An Garda Síochána.

Section 21(5) provides that the power to issue a warrant is without prejudice to any other statutory power to issue a warrant for the search of any place or person.

Section 21(6) provides for a definition of "record" for the purposes of section 21.

## **Obstruction**

Section 22 provides for a new offence of obstruction. Section 22(1) provides that this offence is committed where a person:

- Obstructs, interferes with or impedes a member of An Garda Síochána in the exercise of any powers conferred on the member under the Bill or a warrant under section 21(3); or

- Fails or refuses to comply with a request or requirement pursuant to section 21, or in purported compliance knowingly gives false or misleading information in any material respect.

Section 22(2) provides that any statement or admission provided pursuant to a requirement under section 21 will not be admissible as evidence in criminal proceedings against the person, save in relation to proceedings for an offence under section 22(1).

### Arrest without warrant

Section 23(1) provides for a member of An Garda Síochána to have the power to arrest a person committing an offence under section 15 or section 20 of the Bill, without a warrant.

Section 23(2) provides that where a member of An Garda Síochána believes that an offence has been committed under section 15 or section 20, they may demand the name and address of any person they suspect has committed an offence, or they find committing such an offence. A member of An Garda Síochána may also arrest without a warrant any such person who fails to give his name and address when demanded or provides a name or address which the member has reasonable grounds for believing is false or misleading.

Section 23(3) provides for an offence of failing to provide a name and address or giving a false or misleading name or address when demanded pursuant to section 23(2).

### Offences and penalties

Section 24(1) provides that offences under sections 16(4), 17(4), 17(5), 22(1) or 23(3) are punishable on summary conviction.<sup>31</sup> The punishment for a first offence is a class B fine or imprisonment for a term not exceeding six months, or both.<sup>32</sup> The punishment for a second or subsequent offence, is a class A fine or imprisonment for a term not exceeding 12 months, or both.<sup>33</sup>

Section 24(2) provides that offences under sections 15(3) or 20(2) are punishable on either summary conviction or conviction on indictment.<sup>34</sup> On summary conviction the punishment for a first offence is a class B fine or imprisonment for a term not exceeding six months, or both. On summary conviction the punishment for a second or subsequent offence is a class A fine or imprisonment for a term not exceeding twelve months, or both. On conviction on indictment the punishment is a fine not exceeding €100,000 or imprisonment for a term not exceeding two years, or both.

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<sup>31</sup> A summary conviction relates to a conviction for an offence in the District Court before a Judge without a jury.

<sup>32</sup> A class B fine refers to a maximum fine of €4000.

<sup>33</sup> A class A fine refers to a maximum fine of €5000.

<sup>34</sup> A conviction on indictment relates to a conviction for an offence in the Circuit Court or the Central Criminal Court before a Judge and jury.

Section 24(3) provides that notwithstanding [section 10\(4\) of the \*Petty Sessions \(Ireland\) Act 1851\*](#), summary proceedings for offences under the Bill may be instituted at any time within two years from the alleged date of the offence. Section 10(4) of *Petty Sessions (Ireland) Act 1851* provides that, as a general rule, a complaint in a summary prosecution before the District Court must be made within six months of the date of the alleged offence.

Sections 24(4) and 24(5) provide that where offences under the Bill are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.

### Defences generally

Section 25 provides for a general defence of making a reasonable effort to ensure compliance with the relevant provision of the Bill, in relation to offences under the Bill.

### Defence for a secondary ticket operator

Section 26(1) provides for a defence for a secondary ticket operator in relation to an offence under sections 15(3), 17(5) or 20(2) where a secondary ticket operator can show that at the time of the alleged offence, they were providing an information society service in line with Articles 12 to 14 of [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 particular electronic commerce, in the Internal Market (the eCommerce Directive).

Section 26(2) provides that words and expressions in section 26 that are also used in the eCommerce Directive have the same meaning.

### Legal Privilege

Section 27(1) provides that nothing in the Bill provides for the disclosure of privileged legal material.

Section 27(2) provides for the disclosure of information and possession of such information, pursuant to the Bill, notwithstanding that a person believes that the information sought pursuant to the Bill contains privileged legal material, subject to confidentiality of the information being maintained pending a determination by the High Court as to whether the information is privileged legal material.

Section 27(3) provides that where the circumstances in section 27(2) arise the person to whom the information has been disclosed or who has taken possession of it, shall apply to the High Court for a determination as to whether the information is privileged legal material. An application under section 27(3) shall be made within 30 days after the disclosure or the taking of possession.

Section 27(4) provides that a person who is required to disclose information or from whose possession information is taken pursuant to the Bill, may also apply to the High Court for a determination as to whether the information is privileged legal material.

Section 27(5) provides for interim or interlocutory directions which the court may make pending the final determination of an application under section 27(3) or 27(4).

Section 27(6) provides that applications under sections 27(3), 27(4) or 27(5) shall be made by motion and the High Court may direct for such applications to be heard *in camera*.<sup>35</sup>

Section 27(7) provides for definitions of “computer” and “information” for the purpose section 27.

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<sup>35</sup> *In camera* hearings are court hearings held in private and members of the public are not allowed to attend.

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