



Department
for Business
Innovation & Skills

**Consumer Rights Act:
Secondary Ticketing**

Guidance for Business

SEPTEMBER 2015

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Introduction

1 General Introduction

This guidance relates to Part 3, Chapter 5 of the Consumer Rights Act 2015 (“the Act”). These measures relate to the online secondary ticketing marketplaces where tickets for sporting, recreational and cultural events are re-sold. It sets out:

- i. details of information to be provided when a ticket is offered for re-sale;
- ii. certain protections that will apply to the re-sale of tickets;
- iii. the duty to report criminal activity; and
- iv. the requirement for a review to be established to consider the consumer protection measures in relation to the secondary ticketing market.

2 Scope

The scope of these measures are set by the definitions set out in Section 95 of the Act “*Interpretation of this Chapter*” and apply to all events in the UK. The information requirements set out in Section 90 (see below) apply whenever a ticket is re-sold using a secondary ticketing facility that offers its services to buyers in the UK. This includes both ordinary consumers selling on a ticket they no longer want and traders who operate as more frequent resellers of tickets. Similarly, the prohibitions set out in Section 91 apply to all organisers of events taking place in the UK. Section 92 requires operators of “secondary ticketing facilities” available to users in the UK to report criminal activity where they become aware of it to the police and event organisers.

The Act in Section 95 requires a review to be undertaken looking at consumer protection measures in relation to the secondary ticketing market. The Review’s report is to be submitted to Parliament.

3 What Counts as a Ticket?

From a practical perspective most people will understand a ticket as the mechanism by which you demonstrate your entitlement to gain access to an event and/or claim use of a particular location or area (such as a seat). It might take paper form, be electronic (e.g. on your smartphone) be a physical token or wristband. Neither this guidance, nor the Act, attempts to provide a legal definition of a ticket.

4 FAQ

When do the new rules come into force?

27th May 2015 (see further in paragraph 5 below)

Where can I find the Act and the Explanatory Memorandum?

<http://bit.ly/1FmQQFb>

Consumer Rights

5 Time implications

These rules apply when a ticket is first offered for re-sale through a secondary ticketing facility on or after 27th May 2015. Tickets put up for re-sale in advance of that date will not be required to meet the new information requirements that the Act sets out in Section 90, however the protections set out in section 91 will apply to the tickets re-sold or offered for re-sale before or after 27th May 2015 but only in respect of cancellations or blacklisting that takes place after that date.

Sellers that are operating as “traders” of tickets and the operators of secondary ticketing facilities that they use should already be complying with the very similar information requirements that are set out in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (“CCRs”) (see guidance <http://bit.ly/1kg6J5c>). There may also be other requirements in consumer protection legislation such as the Consumer Protection from Unfair Trading Regulations 2008 (known as “CPRs”) (see guidance <http://bit.ly/1IQ27vc>).

6 Definitions

“*Ticket information*” will normally be the seat number and row to which the ticket applies but where no seat is provided it could be a standing area at the venue or just the details for general admission (e.g. gate number). On some occasions it may be that information such as the seat number is not issued at the time of purchase (e.g. because the ticket refers to a general area with a seat to be allocated closer to the date of an event). In this case full information will not be given, but as much relevant information as possible should be provided and where information subsequently comes to light (before a ticket is resold) the supplementary details should be provided to a prospective purchaser.

“*Restrictions*” are limitations on who can use a ticket e.g. by a certain category of user such as meeting a specified age range or having a disability.

“*Face value*” will normally be the price shown on the ticket, where applicable.

A “*secondary ticketing facility*” is defined in Section 95 of the Act. It may be a website but could also be an app or some other online tool that is used or can be used for the purpose of reselling tickets.

An “*operator*” of a secondary ticketing facility is also defined in Section 95. They are jointly responsible with the “seller” for providing the “buyer” with the information required under Sections 90(3) and 90(6) as appropriate. They also have obligations to report criminal activity as set out in Section 92. The Act includes provision for the definition of “operator” to be amended to include persons of a certain description should that be necessary (e.g. to take account of future changes in the market).

The “*buyer*” is defined in Section 90(2) and will be entitled to receive the information set out in Sections 90(3) and 90(6) where relevant. They may subsequently become a seller

should they decide to offer a ticket they have purchased for re-sale on a secondary ticketing facility.

The “*seller*” is defined in Section 90(1) and must provide the “*buyer*” with the information set out in Section 90(3). Where they additionally fall into a category described in Section 90(6) then along with the operator they must ensure they provide the “*buyer*” with the information required under Section 90(7).

An event “*organiser*” is defined in Section 95(1), it would normally include the promoter or producer of the event and often the venue at which the event is to be held but could include other parties.

A ticket is to be considered as “*cancelled*” if it is no longer accepted by an organiser as valid to enable the holder to gain access to an event.

An organiser “*blacklists*” a person when they take any steps to prevent or restrict that person from buying tickets in any form. This could include preventing that person from buying tickets altogether or banning them from membership of a fan club through which tickets can be purchased.

A term may be deemed as “*unfair*” following assessment under Part 2 of the Act or, prior to that part of the Act coming into force, under the Unfair Terms in Consumer Contracts Regulations 1999. The Competition and Markets Authority will be producing guidance on this part of the Act in due course.

“*Criminal activity*” means any offence committed under the law of any part of the UK, however the primary focus of the relevant reporting duty is offences for which the police are the principal enforcer, such as theft and fraud. This specific duty does not obviate the general duty to report a crime to the appropriate authorities where it becomes known.

A “*trader*” is defined in the CCRs as “*a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf*”. (See also the definition of a trader in the glossary of the guidance on CPRs - <http://bit.ly/1IQ27vc>).

An individual selling a ticket because they can no longer attend an event is unlikely to be considered a “*trader*”. However, someone who regularly purchases large numbers of tickets with the intention of re-selling them for a profit is more likely to be a “*trader*”. Such activity would make you a “*trader*” regardless of whether you have alternative full time employment.

A “*secondary ticketing facility*” means an internet-based facility for the re-sale of tickets for recreational, sporting or cultural events;

“*enforcement authority*” has the meaning given by section 93(3)

“*parent undertaking*” has the meaning given by section 1162 of the Companies Act 2006;

“*subsidiary undertaking*” has the meaning given by section 1162 of the Companies Act 2006;

“*undertaking*” has the meaning given by section 1161(1) of the Companies Act 2006.

7 Information to Be Provided

Section 90 of the Act sets out information about tickets offered for sale that must be provided to buyers. This does not preclude additional information being required under other legislation such as the CPRs and CCRs) and traders should consult this legislation to ensure they comply with all relevant information requirements.

As regards a ticket offered for sale on a secondary ticketing facility, four specific pieces of information must be given by both the seller of the ticket and the operator of the relevant secondary ticketing facility:

- i. that which is necessary to identify the location to which the ticket provides access – such as the particular seat or standing area of the venue. In most cases this will mean the block in which the seat or relevant area is located, and the row and number of the seat but it could include the name of the relevant area of the venue (e.g. “stalls”), or other identifier if used.
- ii. any restrictions that apply to the category of person who can use the ticket. For example, the ticket might be for a specific area reserved for wheelchair users and their helpers, or it might only be able to be used by those within a certain age range.
- iii. the face value of the ticket. This is the price printed on the ticket itself. This will likely be the price at which ticket was originally bought, but in some case the price will vary according to the time of purchase (e.g. because a discount is available for a limited period). In such cases where the ticket is held by the seller they should refer to the price where printed on it and failing that quote the price paid by the original purchaser.
- iv. details of certain connections the seller has with either the online facility on which they are selling, or the organiser of the event for which the ticket is being sold. For example, if the seller is an employee or operator of the facility being used to sell the tickets, they must give the buyer that information. Similarly where the seller is an organiser of the event, such as the promoter or producer, this information must be given.

In each case, the seller only has to provide this information where it is applicable to them or the ticket they are selling. For example, where a ticket is for a standing section of a venue, the seller does not have to give a seat number. Where the ticket is for a seat, but the seller has not yet been told what that seat is, (e.g. because the venue lay out has not yet been finalised) they cannot give a seat number, but should that information subsequently become available before they have resold the ticket it should be provided to the buyer.

The information must be provided in a clear and comprehensible manner and before the buyer purchases the ticket. For example, the information would be clearly displayed in a legible font before the buyer clicks on a button marked “confirm purchase”. However, the

seller should take care not to provide the information in such a manner that it makes the ticket open to fraud. For example publishing a picture of the ticket complete with barcode may make it easy for a fraudster to duplicate the ticket which would be counter to the intent of the legislation.

8 Obligations on Secondary Ticketing Facilities¹

Information

The seller's duty to provide information falls equally on the operator of the platform through which the ticket is offered for sale. They should put in place the necessary mechanisms for this information to be gathered and shared with prospective buyers in such a way that it is clear and readily comprehensible. In the particular instance where the facility, one of its parent or subsidiary undertakings (e.g. a controlling company) or one of its employees (or someone acting on their behalf) are offering a ticket for sale, they must ensure that the information requirement set out in Section 90(6) is complied with. Sellers and operators may wish to consider how they retain evidence that this information has been provided.

Secondary ticket platforms may also be subject to requirements under other consumer protection legislation.

Reporting Criminal Activity

The operator has a duty to report criminal activity where they become aware of it. See also Paragraphs 6 and 11 of this guidance.

9 Prohibitions on Cancelling and Blacklisting

In general, the Government believes it is important for fans to be able to resell tickets that they purchased and do not want to use. By the nature of online secondary ticket platforms information contained within a sales listing is publicly available. Potentially, therefore, information provided for the benefit of prospective buyers under Section 90 of the Act could be used by an event organiser to "cancel" a ticket or "blacklist" a seller (see definitions in paragraph 6). A requirement to provide detailed information that may increase the likelihood of the seller and/or purchaser suffering immediate or future detriment would go against the consumer protection objectives of the Act. Section 91 of the Act therefore provides that an event organiser cannot cancel a ticket merely because it is re-sold or offered for re-sale nor may an organiser blacklist a person who re-sells or offers to re-sell a ticket.

¹ Readers may wish to be aware that in March 2015 the CMA, acting under the CPRs, announced that it has secured commitments from the major secondary ticketing facilities to further protect consumers <http://bit.ly/1J2solG>.

This restriction (on cancellation and blacklisting) will always apply unless the event organiser has met two conditions:

- i. It must have been clearly set out as a term of the contract under which the original buyer purchased the ticket from the event organiser that cancellation of the ticket and/or blacklisting of the seller may occur as a consequence of that ticket being resold or offered for resale.
- ii. (The term of the contract under which the original buyer purchased the ticket from the event organiser must not be unfair – see also Para 15. This is a significant requirement. Contract law ordinarily allows a purchaser to transfer to someone else what they have bought. Terms that prohibit resale are considered to be open to scrutiny for fairness and therefore must meet the principles of fair and open dealing, ensuring that their substance, expression and use respects consumers' legitimate interests. Those terms which are not fair cannot be enforced against a consumer.

The fairness of terms in contracts between traders and consumers is assessable under Part 2 of the Act (or the UTCCRs prior to that part of the Act coming into force). The Competition Markets Authority (CMA) has produced draft guidance on these rules. (<http://bit.ly/1DXBsdk>). That guidance will be finalised by the summer of 2015. Unfair terms used by traders in contracts with consumers are not legally binding on consumers and, in general, a term that seeks to prohibit a consumer's ability to resell a ticket is considered to be potentially unfair.

This prohibition applies to actions taken by event organisers after Section 91 of the Act comes into force (on 27th May 2015). The ticket in question may have, however, been resold or offered for re-sale before that time.

Local authority trading standards services, the Competition and Markets Authority and other enforcers have powers to stop traders from using unfair terms.

The prohibitions set out in the Act do not preclude an event organiser from seeking to cancel a ticket or blacklist a seller for reasons other than re-sale e.g. because they have information or evidence of theft or fraud. Such action may, however, remain open to assessment under Part 2 of the Act (or the UTCCRs prior to the coming into force of this part of the Act).

Where an event organiser cancels a ticket they should consider advising the original purchaser of the fact and of the grounds upon which cancellation has occurred.

10 FAQ

Where can I get more advice on what is “unfair”?

The gov.uk website provides information on unfair terms:

<http://bit.ly/1IMEoiW>

Alternatively consumers may wish to contact the Citizens Advice consumer helpline on 03454 04 05 06. (www.adviceguide.org.uk).

What should I do if I think I have been blacklisted?

It will not always be obvious that blacklisting has taken place but ticket there might be things that happen which suggest it is possible – e.g. a ticket agent suddenly informs you that tickets are no longer available when you are in the process of purchasing or your computer appears to be blocked from accessing certain primary ticket sale sites.

If you think you have been blacklisted illegally contact trading standards via Citizens Advice (see contact details above).

When Things Go Wrong

11 Reporting Criminal Activity

Where the operator of a secondary ticketing facility is aware of “criminal activity” (see definitions in para 6) in relation to the re-sale of tickets that has or is taking place on that facility, a relevant report must be made to the police and to the event organiser. The report must be made to a police force in the UK, however the operator should consider whether there is a particular force to whom it would be most appropriate to address the report. Where the issue is one of fraud or e-crime, operators should consider reporting the matter to Action Fraud the UK’s national fraud and internet crime reporting centre, (http://www.actionfraud.police.uk/report_fraud). The report made to the police should include details of the offence and the offender (where the latter is known to the operator).

Where reporting “criminal activity”, operators should be mindful of the need not to prejudice the investigation of an offence. This might mean that where an operator has reason to believe that information about the reported criminal activity may pass to the alleged perpetrator if a certain organiser is informed, a report is first made to the police and advice sought as to whether to inform some or all of the organisers. An operator is only obliged to report criminal activity it becomes aware of after these provisions come into force on 27th May 2015, though this would include activity which is ongoing and continues on or after that date.

12 Enforcement

Local weights and measures authorities (known as Trading Standards Services) in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland enforce these provisions of the Act.

Trading Standards Services are also responsible for enforcing other relevant consumer protection legislation, including Part 2 of the CRA/the UTCCRs, the CCRs and the CPRs.

Other bodies, such as the CMA also have enforcement powers under consumer protection legislation.

13 Penalties

Each person contravening these provisions is liable to face a fine of up to £5000 for each breach².

An enforcer may not impose a fine if they are satisfied that the breach was the result of circumstances beyond a person's control, for example a mistake or accident, and the person had taken reasonable precautions and undertaken due diligence. For example, where an online ticket marketplace had been supplied with false information by a seller, and had taken reasonable steps to ensure that that information was correct or a breach avoided, they would not be liable for a fine.

14 FAQ

What might constitute reasonable steps?

Reasonable steps might include:

- drawing the attention of sellers to their legal obligations;
- cross checking ticket sellers against available lists of those known to have previously committed fraud;
- confirming that date and location for the event to which tickets are offered is in line with the official details advertised;
- confirming that details such as the stadium block number provided actually exists; or
- checking for duplicate tickets (e.g. those with identical details) being sold.

Can an operator be fined for not informing an event organiser?

Yes they can if the enforcer is satisfied it is appropriate but it will depend on the circumstances. It would not, for example, be appropriate where the police have advised the operator not to inform an organiser.

² The enforcer will assess on a case by case basis what constitutes a breach (e.g. failure to provide information on each ticket or a single listing) and the appropriate size of any fine.

Other Issues

15 Unfair Terms

Part 2 of the Consumer Rights Act updates the rules pertaining to contract terms that can be considered “unfair”. These are terms that put the consumer at a disadvantage by tilting the rights, obligations and responsibilities between the consumer and the trader too much in favour of the trader. Prior to the entry into force of this Part of the Act the UTCCRs apply. In particular, these latter terms and the “fairness test” or assessment it contains will apply to contracts that were entered into before Part 2 of the CRA comes into force on 1st October 2015.

16 Review

Section 94 sets out a requirement for the Secretary of State to either undertake a review or arrange for a review to be carried, out that considers the consumer protection measures applying to the re-sale of tickets, including those newly introduced by the Act. More details of the review including final Terms of Reference, timeframe and who is to lead it will be provided in due course, but the review is to be completed and report published by 26th May 2016.

17 Schedule

Schedule 10 sets out the procedures that enforcers must follow before a financial penalty for breaching the ticketing provisions can be imposed. It also sets out the procedures for appealing a financial penalty as well as enforcing a penalty notice.



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