



BRIEFING PAPER

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Secondary ticketing

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Summary

The online resale of tickets (the secondary ticketing market) applies to recreational, sporting or cultural events in the UK. Secondary ticketing, especially pricing, is a subject that attracts great public interest. This Commons briefing paper considers recent initiatives to regulate the secondary ticketing market. The Appendix contains detailed information on the background to this issue.

Following the introduction of the [Consumer Rights Act 2015](#) (CRA 2015), the Government commissioned an [independent report](#) by Professor Michael Waterson to explore the effectiveness of consumer protection measures concerning online secondary ticketing facilities. Published in May 2016, Professor Waterson's report made 9 recommendations to make the ticketing market work better for consumers.

In June 2016, the [Competition and Markets Authority](#) (CMA) began a separate compliance review of the secondary ticketing market. This was followed, on 19 December 2016, by the CMA opening an enforcement investigation into suspected breaches of consumer protection law in the online secondary tickets market.

The Culture, Media and Sport (CMS) Committee have also held two one-off evidence sessions into ticket abuse. The first evidence session took place on 15 November 2016, the second on 21 March 2017.

The Government published its [response](#) to Professor Waterson's report on 13 March 2017. As well as accepting the report's recommendations in full, the Government said that it intended to respond with proposals which Parliament would be invited to consider within the context of the [Digital Economy Bill](#).

Both the House of Commons and the House of Lords have debated having a new clause in the Digital Economy Bill to make it an offence to use digital purchasing software (so-called "bots") to harvest large numbers of tickets. The proposed new clause was not progressed in the Commons to allow time for a roundtable meetings. In fact, Karen Bradley, the Secretary of State (Department for Culture, Media and Sport (DCMS)), hosted these roundtable meetings with enforcement bodies and stakeholders in November 2016.

In the Lords, the clause was withdrawn to allow the Government to publish its response to the Waterson report, and for the CMA to conclude its on-going enforcement investigation into suspected breaches of consumer protection law on the online secondary tickets market (see above).

At Report Stage a Government amendment to make it an offence to breach limits on ticket sales (both online and other sales) for events in the UK was [agreed without division](#). Lord Moynihan also moved an amendment to amend the [CRA 2015](#) by inserting a duty on re-sellers to provide the ticket reference or booking number when reselling tickets. This amendment was [agreed on division](#).

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The Bill received Royal Assent on 27 April 2017.¹ In respect of secondary ticketing, the new provisions introduced by the Act will:

- criminalise the use of bots to purchase tickets in excess of a maximum number and puts the ICO's direct marketing code on a statutory footing; and
- require re-sellers to provide "any unique ticket number that may help the buyer to identify the seat or standing area or its location."

¹ Department for Culture, Media and Sport press release, "[Digital Economy Bill receives Royal Assent](#)", 27 April 2017, [online] (accessed 9 May 2017)

1. Introduction

A distinction has to be made between the online secondary ticketing sector and ticket touts.

The online secondary ticketing sector has fundamentally changed over the last 10 years. The internet had significantly enhanced the business of primary ticketing agents, causing sales to boom, and has been partly responsible for unparalleled growth in the industry for live music events over the last 5 years.² At the same time, the rapid growth of the Internet had brought a dramatic rise in the amount of secondary selling.³ In effect, the internet has “made it easier for people to apply for tickets in the first place but [has] also enabled the resale market to thrive.”⁴

It is argued variously that as a consequence of this development the reach of consumer protection measures (which apply to sales by traders) has become uncertain because the distinction between consumers and traders has become blurred.⁵

It is still possible to see ticket touts operating outside sporting stadiums and entertainment venues, buying and selling tickets. There is no generally agreed definition of “touting”, but the term “tout” is commonly understood to refer to someone who deliberately buys tickets to an event in order to resell them at a profit.⁶

In Scotland, ticket touting in a public place is an offence under the [Civic Government \(Scotland\) Act 1982](#).⁷ This offence requires an element of giving reasonable cause for annoyance.

In England and Wales, under section 166 of the [Criminal Justice and Public Order Act 1994](#) (as amended), it is a criminal offence for an unauthorised person⁸ to tout tickets for designated football matches.⁹ These include Premier League, Football League, European (UEFA) and international matches.

For other sporting and cultural events in England, Wales and Northern Ireland (including pop concerts), ticket touting is not in itself an offence. However, ticket touts are subject to existing criminal law in respect of theft, deception, obstruction or threatening behaviour. For example, if forged tickets are sold, the seller could be found guilty of the criminal

² Culture, Media and Sport Committee, [Ticket touting, HC 202 2006-7](#), 10 January 2008, p7

³ Ibid

⁴ [“Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities”](#), Professor Michael Waterson, May 2016, IND/16/7, [online] (accessed 9 May 2017)

⁵ Culture, Media and Sport Committee, [Ticket touting](#), HC 202 2006-7, 10 January 2008, p7

⁶ Culture, Media and Sport Committee, [Ticket touting](#), HC 202 2006-7, 10 January 2008, Ev 58

⁷ section 55

⁸ A person is unauthorised if not approved in writing to sell tickets for a match by the club or by the organisers of the match

⁹ In effect, those designated by orders made under section 1(1) of the [Football Offences Act 1991](#)

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offence of theft or deception. In London and some other areas there are additional controls on street trading.

2. Legal position: online secondary ticketing

Where consumers have been defrauded, enforcement authorities, such as the Trading Standards Services, can take action against offenders where appropriate. Depending on the circumstances, the [Companies Investigations Branch](#) of the Insolvency Service might also take action against companies that trade illegally in the secondary market for tickets.¹⁰

Where tickets are sold at a distance (for example, over the internet or by phone), the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) will also apply. The Regulations came into force on 13 June 2014 and apply to contracts entered into on or after that date. In brief, these Regulations require certain information to be given to the consumer before contract, and they require additional charges like booking fees to be disclosed up front. (In other words, additional charges must not be selected automatically for the buyer by the use of pre-ticked boxes or in any other way). In many cases, however, event tickets are exempt from the cancellation rights that normally apply under the Regulations, as events are usually booked for a specific date or within a specific time period.

Tickets sold at a distance

Consumer protection law was strengthened through the [Consumer Protection from Unfair Trading Regulations 2008](#) (known as the “Unfair Trading Regulations”).¹¹ These prohibit unfair commercial practices and apply to the ticketing market place.¹² These Regulations not only affect the person who resells the ticket, but also the promoter or venue that sells direct to the consumer.

Unfair Trading Regulations

Under the Unfair Trading Regulations, it is illegal to give consumers misleading information. It is also illegal to make a misleading omission, including hiding or omitting material information that the average consumer needs in order to make an informed choice. In addition, consumers must not be misled as to the price, location, terms, or any adverse factors that may affect their enjoyment of the event.

Importantly, new measures contained in the [Consumer Rights Act 2015](#) (CRA 2015) came into force on 27 May 2015. [Sections 90 to 95](#) of the Act introduced certain requirements for the sale of tickets via online secondary platforms, and apply even where the person selling the ticket is a private individual. The requirements mean that:

New requirements of the *Consumer Rights Act 2015*

- anyone (business traders or consumer) offering tickets for resale online must provide clear information about face value; seat location and any usage restrictions; and make clear any link with an event organiser or online platform on which the ticket is being resold;

¹⁰ Department for Culture, Media and Sport, “[Consultation on ticketing and ticket touting](#)”, 2009, p11

¹¹ SI 2008/1277

¹² See Library standard note SN/HA/4678 for an overview of the Regulations

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- vendors are protected from having their tickets cancelled by the organisers purely as a result of the resale (unless this result of re-selling is clear in the original terms of sale and these terms are not deemed to be unfair);
- in order to combat fraud; secondary ticketing platforms have a new legal obligation to report criminal activity they become aware of in relation to tickets to the police and event organisers.

The important point to note is that information must be given to the prospective buyer before a contract is made and the ticket sold. For the purposes of the Act, an “online secondary platform” is a website or app where tickets are offered for resale, rather than where the first sale of the ticket is made by or on behalf of the event organiser.

Importantly, section 94(1) of the [CRA 2015](#) required a review of the online secondary ticketing market to be published within 12 months of the above requirements coming into force. The [Explanatory Notes](#) to the Act give further detail on the requirements.

The new [CRA 2015](#) also contains provisions in respect of unfair contract terms. Event organisers often want to ensure that tickets are sold to genuine fans rather than to individuals who simply want to buy and resell the tickets. Some organisers take steps to prevent speculative buyers reselling tickets, others may cancel tickets that are offered for resale. The difficulty, of course, is that a genuine buyer may have a good reason for wanting to resell a ticket. Generally speaking, it is unlikely that an event organiser could cancel a ticket unless:

- it was a term in the original contract when the ticket was sold, that the organiser could cancel the ticket in these circumstances; and
- the term was not unfair

Although much would depend on the circumstances of the case, it is unlikely that any such term could be effective or fair if it was not properly communicated to the consumer at the time the purchase was made. An assessment of fairness may also take into account any other relevant circumstances.

Finally, in certain circumstances, secondary ticketing may also be subject to the [Price Indications \(Resale of Tickets\) Regulations 1994](#).¹³ The Regulations do not prohibit any method of ticket resale or place any controls on the level of the price which may be charged for a ticket. Their aim is simply to ensure that the consumer is given sufficient information about the price and quality of a ticket before deciding whether to buy it.

In effect, consumers must be given clear and accurate price information before they buy a ticket. Information given to the consumer must be complete, and not mislead. For example, if the consumer is quoted a range of prices, or a ‘from’ price, the trader should make sure that a reasonable number of tickets are available at the lower price. “Bait marketing”, attracting consumers with a low price with low or limited

Unfair contract terms

Clear and accurate pricing information must be given to the consumer

¹³ SI 1994/3248

availability (or other restrictions that are not readily disclosed) is illegal. It is important to note that the 1994 Regulations do not apply to consumer-to-consumer transactions. Accordingly, they do not apply to sales between private individuals on internet auction sites.

3. Reviews: secondary ticketing

Appendix A to this Paper gives details of consultations, summits and debates up to the end of 2014.

Importantly, the issue of secondary ticketing came up during the later stages of the *Consumer Rights Bill* (now the [CRA 2015](#)). Details are provided in the Library briefing paper, [Consumer Rights Bill – Lords’ Amendments](#) (18 December 2014), in particular, pages 6-8.

3.1 Professor Waterson’s review

As outlined above, [Sections 90 to 95](#) of the [CRA 2015](#) came into force on 27 May 2015. Collectively, they introduced certain requirements for the sale of tickets via online secondary platforms. Section 94(1) of the [CRA 2015](#) required a review of the online secondary ticketing market to be published within 12 months of the above requirements coming into force.

A call for evidence closed on 20 November 2015 and Professor Michael Waterson, Economics Professor at Warwick University, was asked to lead an independent review of the online secondary ticketing market. The review was required to consider how well the consumer was protected by:

- existing legislation (including the [CRA 2015](#)),
- voluntary measures, or
- the actions of interested parties such as credit card issuers

Its focus was on tickets for UK sporting, entertainment and cultural events and particularly larger-scale, high-profile, exhibitions, festivals, concerts and major sporting events. The remit document was published [online](#).

On 26 May 2016, Professor Waterson’s [report](#) was published.¹⁴ In brief, he made the following recommendations:

- Secondary ticketing platforms should be set a challenge to ensure sellers on their platforms fully observe the rules set out in the [CRA 2015](#) (where necessary, enforcement action should be undertaken);
- Secondary platforms should be required to play a role in identifying traders and ensuring their details are provided to consumers.
- Primary ticket vendors should be required to guard against the possibility of mass purchase by individuals (who have no intention of attending the event) in breach of contractual terms including by using ‘botnets’ (i.e. computer programmes). This activity deprives ordinary consumers of the chance to acquire tickets at the price originally established by the event organiser.

¹⁴ [“Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities”](#), Professor Michael Waterson, May 2016, IND/16/7, [online] (accessed 9 May 2017)

- Primary market operators need to increase transparency and come together to standardise the way in which information on available ticket outlets and the pricing structure is made available to the public.
- More should be done to inform consumers seeking tickets about how the market operates across both primary and secondary sellers

3.2 Government response to the Waterson report

The Government published its [response](#) to Professor Waterson's report on 13 March 2017. It accepted the report's recommendations in full and said that it now looked to operators in both the primary and secondary ticketing markets to implement the recommendations. The Government also highlighted the consumer enforcement investigation that the CMA launched in December 2016 (see below).

An extract from the Government's response is reproduced below:

3. [...] The government particularly welcomes what Professor Waterson has to say on ticket sellers adopting strategies to prevent automated ticketing purchasing by bots and botnets but recognises that more may need to be done and is considering its options accordingly.

4. The government also welcomes Professor Waterson's comments on the need for routine reporting of suspected ticketing fraud. The government notes his acknowledgement that if prices (for various reasons) are set at a below market clearing level, then the event organiser's ticketing and venue control strategies need to take this into account, as otherwise there is an opportunity for operators in the secondary market to seek to capture the value added that the event organiser has effectively forgone.

5. We welcome that through the Competition and Markets Authority (CMA), the Consumer Protection Partnership (CPP) is acting on the proposal that the ticketing industry and consumer bodies should develop best practice guidance on the practical application of unfair terms legislation to events and primary ticket outlets and progress is being made. The secondary ticketing platforms need to follow this lead from other parts of the industry and the government calls on them to do as Professor Waterson also proposed, and adopt clear principles on ticket speculation and the timing of resales.

6. The government notes that Professor Waterson has not recommended further significant legislation, a ban on the secondary ticketing market, or a cap on resale prices. The government accepts these and the grounds that Professor Waterson sets out as the basis for them, within an overall context of recommendations to improve the lot of the ticket-buying public. However, following roundtables with industry that included Professor Waterson, views in relation to ticketing bots

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have moved forward. The government is responding to this feedback.¹⁵

The Government's overriding conclusion was as follows:

Professor Waterson has highlighted what needs to change to improve the market for tickets in the UK. Reform is needed and the government looks to the industry to respond positively to Professor Waterson's report and deliver actions that result in net benefits to the consumer. Where necessary, such as on bots and enforcement, the government will play its part to support this.¹⁶

Importantly, on the issue of "bots" to harvest tickets online, the Government said that it intended to respond with proposals which Parliament would be invited to consider within the context of the Digital Economy Bill (see below).¹⁷

3.3 CMA review

In June 2016, the [Competition and Markets Authority](#) (CMA) began a separate [compliance review of the secondary ticketing market](#). The CMA published a press notice dated 19 December 2016, in which it said that it had completed its analysis.¹⁸

On 19 December 2016, the CMA opened an enforcement investigation into suspected breaches of consumer protection law in the online secondary tickets market. This followed concerns identified by the CMA during its compliance review that people were not getting the full range of information required by consumer protection law when buying tickets put up for resale.¹⁹ In particular, the CMA said that it would look at whether information is provided on:

- who the seller is
- any connections the seller may have with the platform or event organisers
- whether there are any restrictions on the use of resold tickets which could result in the person being denied access to the event
- where a seat is located in the venue²⁰

On 14 March 2017, the CMA published an [update](#) on this work;²¹ an extract is reproduced below:

The investigation is primarily focused on the following issues which it identified during its compliance review: whether

¹⁵ HM Government, "[Government Response to Professor Waterson's Independent Review: Consumer Protection Measures Concerning Online Secondary Ticketing Facilities](#)", March 2017 [online] (accessed 4 April 2017)

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Competition and Markets Authority (CMA), "[Secondary Ticketing Websites](#)", 19 December 2016, [online] (accessed 16 February 2017)

¹⁹ Ibid

²⁰ Competition and Markets Authority (CMA), "[CMA launches enforcement investigation into online secondary ticketing](#)", 19 December 2016, [online] (accessed 16 February 2017)

²¹ Competition and Markets Authority (CMA), "[Update on Secondary Tickets](#)", 14 March 2017, [online] (accessed 4 April 2017)

information is provided on who the seller is and any connections the seller may have with secondary ticket websites or event organisers; whether information is given about any restrictions on the use of resold tickets which could result in a person being denied access to an event; and whether information about where a seat is located in the venue is provided.

Over the coming months the CMA will continue to use its formal powers to gather and assess evidence about the suspected breaches. If, after it has gathered and assessed the evidence, the CMA considers that the law has been breached, it will take the necessary action to secure compliance. It will update its website at key points during the investigation.

The CMA will also continue to review information about other issues that are brought to its attention, which might breach consumer protection law.

The CMA welcomes the government's commitment to make funding available to National Trading Standards (NTS) which will enable it to pursue enforcement work in this sector as well. The CMA will continue to work closely with NTS – and where appropriate other enforcement partners – to maximise the combined impact on compliance in the market.

CMA unfair terms policy work

The government's statement has also highlighted the work that the CMA has taken forward with representatives of the live events industry on how unfair terms law applies to ticketing terms and conditions – in response to a recommendation from Professor Waterson.

The CMA has already held two sessions with representatives of the music and theatre industries to discuss how unfair terms law applies and plans to hold a similar session with sporting bodies shortly.

Once discussions with the industry are concluded, the CMA will decide whether further work is necessary in order to bring about greater clarity in the law.²²

3.4 Inquiries by the Culture, Media and Sport Committee

The Culture, Media and Sport (CMS) Committee have held two one-off evidence sessions into ticket abuse.

The first evidence session, on 15 November 2016, considered the problem of software being used to harvest tickets from primary sellers' online sites and selling them on at inflated prices to the detriment of fans, artists and organisers of entertainment and sporting events. The Committee heard oral evidence from a number of witnesses, including Professor Waterson; this evidence was subsequently published online.²³ Submitted written evidence from stakeholders was also [published online](#).

The CMS Committee concluded that that the evidence session had revealed "far-ranging and disturbing factors in the market, including

²² Ibid

²³ Culture, Media and Sport Committee, [Oral Evidence: Ticket Abuse](#), HC 823, 15 November 2016 [online] (accessed 4 April 2017)

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clear indications of too close relationships between those selling tickets on the primary market and sellers on the secondary market". In particular, the Committee was concerned that:

Witnesses' failure to give satisfactory answers to the Committee's questions about where companies' main profits are made, the possibility of even Chinese walls between parts of the same company, and the willingness of the ticket selling companies to even try to identify, let alone bar, large-scale ticket touts and fraudulent sellers have led us to conclude that a fuller investigation of the whole area of ticketing is needed.²⁴

The Committee said that it would decide how best to take the issues forward once it knew the outcome of the CMA investigation into whether ticket companies are complying with the law.

However, Damian Collins MP, Chair, wrote a [letter](#) to the Secretary of State on 22 November 2016 urging her to study the submitted evidence regarding the under-reporting of income by known touts and to raise this with HMRC as an area which warrants their investigation. The Minister's [letter](#) in reply, commenting on the Committee's findings, is also published online. The Committee also stated its intention to table an amendment on Report Stage of the Digital Economy Bill to ban the use of bots.

On 21 March 2017, the CMS Committee held a further one-off evidence session on ticket abuse. The Committee picked up some of the issues it had considered earlier. Oral evidence has been published [online](#).²⁵

²⁴ Commons' Select Committees, "[Ticket selling market disturbing factors prompt further investigation](#)", 16 November 2016, [online] (accessed 4 April 2017)

²⁵ Culture, Media and Sport Committee, [Oral Evidence: Ticket Abuse](#), HC 823, 21 November 2016 [online] (accessed 4 April 2017)

4. Digital Economy Bill: Secondary ticketing

The [Digital Economy Act 2017](#) received Royal Assent on 27 April 2017. In respect of secondary ticketing, the Act introduces new provisions to:

- criminalise the use of bots to purchase tickets in excess of a maximum number and puts the ICO's direct marketing code on a statutory footing;
- require re-sellers to provide "any unique ticket number that may help the buyer to identify the seat or standing area or its location".

The debates on secondary ticketing that took place both in the Commons and the Lords are summarised below.

4.1 House of Commons

Nigel Adams MP proposed [new clause 13](#) to the [Digital Economy Bill](#) to criminalise the misuse of so-called "bot" technology to unlawfully harvest event tickets. This new clause was debated during the [eleventh sitting](#) of the Public Bill Committee on 1 November 2016.²⁶ In explaining the need for this new clause, Nigel Adams said:

Our problem is identical to that in America and Canada. I have discussed this proposition with many interested industry parties and found absolute support right across the board, from primary ticketing sites, fans and consumer advocacy groups—most urgently the Fanfair Alliance, which has done a fantastic job campaigning on this issue—to artists themselves.²⁷

Nigel Adams agreed to withdraw his clause after Matt Hancock, the Minister of State for Digital and Culture (Department for Culture, Media and Sport), gave a commitment that the Government would convene a meeting of all interested parties before Christmas to discuss the issue.²⁸

In fact, Karen Bradley, Secretary of State (DCMS), hosted separate roundtables in November 2016 with enforcement bodies and stakeholders. Her aim was to gain further insight into the issue of bots.

The Bill completed its final stages in the Commons on 28 November 2016 and was introduced in the House of Lords on 29 November 2016.

Committee Stage,
House of Commons

Government
roundtable
meetings with
stakeholders

4.2 House of Lords

Second Reading

The Bill had its [Second Reading](#) in the House of Lords on 13 December 2016. On the subject of secondary ticketing, Baroness Jones of Whitchurch (Lab) outlined the position of the Opposition:

[...] our colleagues in the Commons played a significant role in the cross-party initiative to tackle automated ticket touting, or

Second reading in
the House of Lords

²⁶ [HC Deb 1 November 2016 c 429-432PBC](#)

²⁷ [HC Deb 1 November 2016 c 429-432PBC](#)

²⁸ [HC Deb 1 November 2016 c 433PBC](#)

bots. We will be tabling an amendment to end the use of digital ticket purchasing systems which buy event tickets in large numbers through automated systems, thereby blocking access for real fans, whose only choice then is to buy them on the secondary market at inflated prices. As I understand it, the Minister in the Commons raised concerns about the wording of the amendment tabled there but expressed some sympathy for the cause. I very much hope that the noble Lord will agree to work with us on this issue to find the right words to end this rip-off in ticket sales. On that issue, and on many others, we look forward to working with the noble Lord as we follow these changes through the course of the Bill, and we look forward to his response.²⁹

Responding to the issue of ticket bots and the harvesting of tickets for profit, the Minister, Lord Ashton of Hyde, said:

A lot of noble Lords asked about ticket bots. We agree that there is a problem and that the Government should fix it. A series of round tables has been held at enforcement agencies and with the sector. The Government will give full consideration to what was said at those round tables, in Parliament and in the Waterson report on ticket bots and harvesting tickets.³⁰

Committee Stage

The Digital Economy Bill began its Committee Stage in the Lords on 31 January 2017. On the final day of Committee, 8 February 2017, two amendments to tighten the regulation of secondary ticketing were considered. Lord Stevenson of Balmacara spoke to **amendment 230**, and again raised the use of digital purchasing software – so called bots – and consumer detriment.³¹

Committee Stage,
House of Lords

Lord Clement-Jones spoke to **amendment 231**, which would add to the CRA 2015 a provision requiring online secondary ticketing platforms to resell tickets only for events where they were the authorised resale agent.³²

Responding on behalf of the Government, Lord Ashton of Hyde, said that Professor Michael Waterson's report on the online secondary ticketing market had made a number of points relevant to amendment 231:

First, Professor Waterson does not recommend a ban on the secondary ticketing market, recognising instead its benefit to consumers. Amendment 231, in the name of the noble Lord, Lord Clement-Jones, on the unauthorised resale of tickets, could in effect ban the secondary ticketing market. There would be no obligation for organisers to approve a resale platform, or to accept returns. As a result there would be no outlet to recoup money for those who found they could not attend an event.

[...]

Significant market intervention should be carefully considered and consistently applied. Professor Waterson calls for the existing provisions of the Consumer Rights Act to be enforced and tested. We should therefore welcome and await the outcome of the

²⁹ [HL Deb 13 December 2016, c1225](#)

³⁰ [HL Deb 13 December 2016, c1232](#)

³¹ [HL Deb 8 February 2017 c.1827-1828](#)

³² [HL Deb 8 February 2017 c.1832-1833](#)

recently announced enforcement investigation by the Competition and Markets Authority.³³

On Amendment 230, concerning the use of ticketing bots, the Minister said that the offences set out in the [Computer Misuse Act 1990](#) already had broad application.³⁴ However, he said that the Government would continue to consider the issue of bots and whether there was scope for further intervention in this area.³⁵ [Amendment 230 was withdrawn and amendment 231 was not moved.](#)

Report Stage

At Report Stage, a Government amendment (**33ZL**), to prohibit the use of bots to bulk purchase tickets online, was agreed without division.

Report Stage,
House of Lords

In speaking to this amendment, Lord Ashton of Hyde explained that it was a key element of the Government's response to the Waterson review. It would provide the power for Government to introduce a criminal offence in respect of the use of bots to purchase tickets for recreational, sporting or cultural events in excess of the maximum specified. The intended offence would apply only to tickets for events in the UK, although it would cover activity to obtain tickets that occurred outside the UK. The Minister said that the amendment would "clarify the law and put beyond doubt the illegality of this practice and the need to report it."³⁶ He confirmed that the Government would work with industry to enforce the new offence:

"An offence is only worth having if criminal acts are reported. We have industry groups in place that are now willing and able to take action in partnership with our law enforcement agencies."³⁷

Lord Stevenson of Balmacara supported the Government's amendment to "modernise the modern-day ticket touts".³⁸ Lord Clement-Jones also welcomed the Government's amendment, but raised questions about enforcement:

"As the Computer Misuse Act has not been effectively enforced by the police to date, the question is: who will enforce it and what budget will they have to enforce it with?"³⁹

As already stated, Government Amendment 33ZL was [agreed without division](#).

Lord Moynihan also moved amendment **33ZLZA**, to amend the [CRA 2015](#) by inserting a duty on both primary and secondary market ticket sellers to provide unique reference numbers on tickets. This would enable event organisers to track sales of tickets.

Lord Moynihan made the following three points in support of the amendment:

³³ [HL Deb 8 February 2017 c.1834](#)

³⁴ [HL Deb 8 February 2017 c.1835-1836](#)

³⁵ [HL Deb 8 February 2017 c.1835-1836](#)

³⁶ [HL Deb. 29 March 2017, c.659-660](#)

³⁷ [HL Deb. 29 March 2017, c.660](#)

³⁸ [HL Deb. 29 March 2017, c.664-665](#)

³⁹ [HL Deb. 29 March 2017, c.662](#)

- First, he said that his amendment would tidy-up gaps in the CRA 2015 regime.
- Secondly, although the CMA is currently investigating suspected breaches of consumer protection law in the online secondary ticket market, it is only looking at the effectiveness of existing legislation.
- Thirdly, since providing a unique reference number on a ticket is not regulated under the EU Consumer Rights Directive, the practice is not prevented by the Directive.⁴⁰

Responding on behalf of the Government, Lord Ashton of Hyde said that the Waterson Report (page 170) had, for three reasons, rejected an identical proposal:

“The first was cost. The amendment would require a system for the potential buyer to check a reference number, and in a manner that could be done quickly enough to facilitate internet sales. That requires infrastructure changes in both the primary and secondary market. The primary market would be asked to pay for changes to allow customers to authenticate tickets on the secondary market, for which they receive no additional income. Ultimately, the cost will be added to ticket prices.

Secondly, there is practicality. The secondary ticketing industry would need to establish a standard interface to enable cross-checking. There is strong competition between the platforms and no appropriate industry body to help bring such a system about.

[...]

Thirdly, my noble friend has mentioned the legal reasons. The EU consumer rights directive, which is the basis of the secondary ticketing information requirements in the Consumer Rights Act, prohibits member states going further in national law than the directive requires. My noble friend mentioned his telephone conversation with the European Commission. There are differences of opinion on the legal interpretation and clearly, at the very least, there may be litigation ahead if we go down this road.”⁴¹

When put to a vote, amendment 33ZLZA was agreed on division.⁴²

Ping-pong and Royal Assent

The Digital Economy Bill returned to the Commons on 26 April 2017, and received Royal Assent on 27 April 2017.⁴³ The Bill is now an Act of Parliament (law).

The Act introduces provisions criminalising the use of bots to purchase tickets in excess of a maximum number and puts the ICO's direct marketing code on a statutory footing.

During ping-pong, the two Houses had disagreed on the extent of the information requirements on re-sellers. The Houses finally agreed that re-sellers would only need to provide "any unique ticket number that

⁴⁰ [HL Deb. 29 March 2017, c.660-662](#)

⁴¹ [HL Deb. 29 March 2017, c.665-667](#)

⁴² Division 3, (Content: 180, Not Content: 157)

⁴³ Department for Culture, Media and Sport press release, "[Digital Economy Bill receives Royal Assent](#)", 27 April 2017, [online] (accessed 9 May 2017)

may help the buyer to identify the seat or standing area or its location". The requirement to provide information about conditions on re-sale has been omitted, on the basis that it duplicates provisions in the Consumer Rights Act 2015.

5. Parliamentary Question

Diana Johnson asked a PQ on how many (a) investigations were carried out, (b) fines were issued and (c) prosecutions were made by the Companies Investigation Branch in each year since 2009-10; and how many such investigations, fines and prosecutions concerned companies operating in the secondary ticketing industry in each such year. On 14 November 2016, Margot James, Parliamentary Under Secretary of State (BEIS), provided the following written answer:

The Companies Investigation Branch (CIB) became part of the Insolvency Service in 2006 and the work formerly undertaken by CIB is now dealt with by the Insolvency Service Company Investigations Live teams. While company investigations are focused on preventing corporate abuse by placing companies into liquidation rather than identifying criminal misconduct, if any evidence of criminal behaviour is found it may result in a prosecution.

The Insolvency Service does not maintain statistics on the number of prosecutions and fines arising specifically from the work of Company Investigations Live teams, nor are any statistics kept regarding companies operating in the secondary ticketing industry. However, there have been a total of 15 investigations in the relevant period with a reference to 'Ticketing', as detailed below. None of these investigations led to a criminal prosecution or fine.⁴⁴

	Live company investigations completed (ticketing cases)
2009/10	269 (5)
2010/11	267 (5)
2011/12	150 (3)
2012/13	162 (0)
2013/14	151 (0)
2014/15	153 (2)
2015/16	151 (0)
1.4.16 - 31.10.16)	89 (0)

Appendix: past reviews, debates & initiatives

Outlined below is a brief (and not exhaustive) summary of some studies, initiatives and relevant legislation in respect of ticket touting over the past 10 years.

OFT study 2004

On 17 June 2004, the Office of Fair Trading (OFT) announced⁴⁵ a study on the secondary ticketing market. Emerging from this study was an OFT report, published on 26 January 2005, entitled *Ticket agents in the UK*; this is available online. On secondary ticket agents, the OFT came up with the following conclusions:

7.42 Secondary agents can provide a useful function for consumers who need tickets for events and are willing and able to pay premium prices. However, we have found that while some traders are complying with the law there are those who need to do more to meet their obligations to consumers. We have found evidence of a number of secondary agents who deliberately mis-sell or defraud consumers who are unaware of their rights. This activity clearly breaches existing regulations, in particular the Price Indications Regulations.

7.43 We have also found evidence during the course of this study of non-compliance by ticket agents, both primary and secondary, with a range of other consumer protection legislation, most typically the Distance Selling Regulations and the Unfair Terms in Consumer Contracts Regulations.

7.44 We will work closely with enforcement partners to ensure compliance with consumer protection legislation by secondary agents and discuss with other relevant bodies how best to inform overseas tourists, who appear particularly vulnerable to the practices of some secondary agents, of the key issues to consider when buying tickets.

7.45 We also recognise the benefits of highlighting consumer awareness of these activities. We support consumer education campaigns such as Westminster TSD's [Trading Standards Departments] and hope that this report will help raise consumer awareness of the questions they should ask when buying tickets.

So far as more explicit recommendations were concerned, the OFT focused more on price information and unfair contracts. The press release accompanying the report put it like this:

The OFT therefore believes improved industry guidance on price information is needed and, in agreement with the Advertising Standards Authority, recommends:

- the Committee for Advertising Practice amends its guidance so all non-broadcast event advertising is required to include the face value of the ticket, and also indicating that additional fees may apply. These could vary depending on the sales channel and ticket seller used,

⁴⁵ OFT press notice PN 95/04

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- event advertising indicates where tickets can be bought at face value,
- all information relating to price be displayed in a clear and readable form,
- event advertisers follow the amended guidance.

The OFT study found that the contracts provided to some consumers contained potentially unfair terms, for example in relation to refunds. OFT guidance on unfair terms in consumer entertainment contracts was issued to industry in 2003.⁴⁶ Its January 2005 report recommended that the [Society of Ticket Agents and Retailers](#) (STAR) produce model terms for its members. Subsequently, the STAR Council met the OFT Contract Regulation Unit and created a cross-industry working group to draft the terms,⁴⁷ taking the existing STAR Code of Practice as the starting point.

A Code of Practice

A Statement of Principles – Primary and Secondary Ticket Selling in the UK (DCMS, April 2006) holds that:

As a minimum, any firm or individual involved in the selling or reselling of tickets must adhere to current regulations, legislation and guidelines. Any firm deviating from the law will be dealt with by the relevant enforcement agencies to ensure the ticket buying public is protected from exploitative practices.⁴⁸

Background to the statement of principles appeared in the following written answer:

Mr. Don Foster: To ask the Secretary of State for Culture, Media and Sport which event organisers of music festivals in the summer of 2006 have signed up to her Department's code of practice on ticket touting; and if she will make a statement.

Mr. Woodward: DCMS have been working with many of the organisers of summer music festivals including those representing the organisers of T in the Park, the Reading and Leeds festivals and the V festival as well as other representatives covering music, sport and the arts as well as secondary sellers and EBay.

All of these parties were involved in the production of the statement of principles, (copies of which I have now placed in the Libraries of both Houses) which was first presented at a meeting hosted by my right hon. Friend the Secretary of State in April. The statement of principles sets out the broad guidelines which we expected all parties involved in the commercial selling of tickets to follow. Since that meeting DCMS officials have had continued meetings with these representatives to aid their sectors in the production of sector specific codes of practice, which puts the rights of the consumer at the forefront.

Our principle in taking this forward must be to find a solution that protects fans and ensures that our creative, cultural and sporting industries are able to realise legitimate revenue streams.⁴⁹

At a summit on 17 July 2006, the Government pledged, according to a written answer, “to continue working with the industry and OFT to

⁴⁶ OFT press notice 172/03, 18 December 2003

⁴⁷ STAR Annual Report and Financial Statements 2004-05

⁴⁸ Dep 06/1428

⁴⁹ HC Deb 17 July 2006 c106W

draw up an overarching code of practice for both primary and secondary ticket sellers.”⁵⁰ In 2009, STAR (Society of Ticket Agents and Retailers) published model terms and conditions for the sale of entertainment tickets with the intention of establishing an industry standard. An updated Code of Practice was published in January 2011.⁵¹

Westminster Hall debate, March 2007

On 27 March 2007 there was a half-hour Westminster Hall debate on “Ticket Touting” introduced by John Robertson.⁵² He said that fans who buy tickets from touts receive none of the consumer protection that applies when tickets are bought from the original event organiser. Citing the example of the *London Olympic Games and Paralympic Games Act 2006*, Mr Robertson called for similar protections to be extended to all major sporting and cultural events. He also called on the Government to conduct a public consultation into ticket touting.

Replying for the (then) Government, Shaun Woodward said that the message he took from various surveys was that the public did not want “a legislative answer to this problem, but agreement by the industry to act”. A particular challenge, he recognised, came from the Internet. The Minister pointed to the Government’s initiative in convening a series of summits on this issue with a view to drawing up codes of practice. However, he did not rule out legislation:

The Secretary of State and I are aware of hon. Members’ concerns and we are making the industry address the problem. However, the industry should be in no doubt that the Government are prepared to act if its application of technology and available enforcement mechanisms ultimately fail the consumer.

Ticket touting summits

The outcome of the fourth ticket touting summit was reported in a DCMS press notice of 8 February 2007, an extract is reproduced below:

Ms Jowell welcomed action by event organisers, box offices and internet auction sites to protect consumers and improve the ticketing market place. Their new measures include:

- putting in place a new ticket exchange mechanism allowing fans to swap tickets among themselves;
- ensuring information such as the cost price and seat location if a ticket is being sold on internet auction sites;
- finalising terms and conditions for tickets which are fair both to the consumer and the event organiser; and
- putting in place a “shop a tout” hotline
- The Industry will also work with the Government to investigate whether there is a case for a new specialised ticketing system to protect events of national importance – events that affect the UK’s reputation.

⁵⁰ HC Deb 24 July 2006 c966-7W

⁵¹ STAR, “Tickets with confidence: code of practice”, January 2011

⁵² HC Deb 27 March 2007 cc403-10WH

In addition, a DCMS-commissioned consumer survey has found that people who go to sporting and music events do not want the resale of tickets to be banned. They feel that this is not an issue that requires legislation. The Government will, therefore, continue to work with the industry to draw up a very clear framework so that consumers and the industry will together be in a position to beat organised touts.

Select Committee inquiry and Government response

In May 2007 the Culture, Media and Sport Committee announced an inquiry into ticket touting.⁵³ Its report considered (amongst other things) the scale of the secondary market and the potential for consumer detriment.

In a joint memorandum submitted by DCMS and the Department of Trade and Industry (now BEIS) the Government recognised that the Internet had "unbalanced the arrangements around ticket sales because the technology allows people to purchase a ticket at face value as soon as tickets are released to then resell for a mark-up back to fellow consumers minutes later".⁵⁴

Evidence considered by the Committee suggested that the public had an ambivalent and contradictory view of touting. Based on the research available, consumers' views seemed to point in two directions, in that consumers did want a legitimate and unregulated secondary market where they were able to buy and sell to one another but, at the same time, some consumers did not want the markets to be exploited by touts, and considered that legislation was needed to prevent resale of tickets for profit.⁵⁵

In its report the Committee concluded that (further) regulation should be a last resort:

Although unauthorised reselling of tickets has been made a criminal offence in the context of tickets for football matches and for Olympic events, those offences were created as specific responses to particular circumstances, rather than to mark disapproval in principle of secondary selling (whether or not for profit). To extend the ban to other specific events would simply exacerbate the confusion inherent in the existing two-tier system and would do nothing to address the complaints of the organisers of other events. Any attempt to ban the secondary market outright would also be a very serious step in that it would criminalise what has been a perfectly lawful activity, which is evidently valued and freely made use of by many consumers, in order to support the industries' endeavours to target particular audiences. We do not consider that it would be either practicable or right to do so.⁵⁶

⁵³ Culture, Media and Sport Committee, *Ticket touting*, HC 202 2006-7, 10 January 2008, p7

⁵⁴ *Ibid*, pp9-11

⁵⁵ *Ibid*, p19

⁵⁶ *Ibid*, p4

Responding to the report, the Government⁵⁷ broadly agreed with the Committee in preferring voluntary agreements over legislative action.⁵⁸ A DCMS press notice in April 2008 summarised the former Government's intention to:

- push for a voluntary agreement that tickets for certain 'crown jewel' events will not be sold on the secondary market; and
- work with STAR (the Society of Ticket Agents and Retailers) to deliver a new code of principles for the ticketing market that meets consumers' needs.⁵⁹

Westminster Hall debate, April 2008

The Select Committee's report and the former Government response to it were the subject of a Westminster Hall debate on 24 April 2008. The Committee Chairman, John Whittingdale, summarised the report's findings, drawing attention, among other things, to the proposal, first introduced by the Music Managers Forum, for the establishment of a resale rights society. Such a collecting society would ensure that, where a ticket is resold for a large amount in the secondary market, the owner of the original intellectual property right – the performing artist or the sporting body organising the event – should get some benefit.⁶⁰

In his winding-up speech, the Minister, Gerry Sutcliffe, elaborated on the Government's intention to "work with the ticketing industry to establish a new code of principles that the market can sign up to":

What might be in this code of principles? We want the industries to work with each other to improve the systems needed to prevent exploitation of the ticket-buying public. They should counter bad practices, such as misleading information, erroneous and futures selling and preventing access. Such principles might also contain provisions on the exchanges, returns and refunds, and controls on tickets, such as identity requirements—the technology is there to have photos on tickets. Having said that, if someone cannot attend an event, they should be able to sell or pass that ticket on or get a refund from the primary market, particularly for sporting events. We also want greater control at venues, greater use of fan and sports clubs networks to ensure that people are not disadvantaged and innovative ticketing systems to increase access to events. We will discuss those principles with STAR and the industry to ensure that event owners can tell us what they believe will help us to build and sustain a loyal fan base with fairly priced tickets. We want the code to help eliminate some of the problems about which people feel aggrieved.⁶¹

⁵⁷ DCMS, *Government response to the Culture, Media and Sport Select Committee report on Ticket Touting*, Cm 7346, April 2008

⁵⁸ DCMS press notice 037/08, *Put the fans first, Burnham urges ticket sellers*, 21 April 2008

⁵⁹ Ibid

⁶⁰ HC Deb 24 April 2008 c505WH

⁶¹ HC Deb 24 April 2008 cc543-4WH

The 2009 consultation

In February 2009, following further discussions with interested parties, the Government announced a public consultation on the ticketing market, with a closing date of 15 May 2009.⁶² The consultation sought views on various issues including:

- whether the Society of Ticket Agents and Retailers (STAR) is an appropriate body for overseeing a voluntary code of principles to which its members must adhere, ensuring a high level of consumer protection; and
- proposals for a voluntary agreement that tickets for certain “crown jewel” events will not be sold on the secondary market. This will be similar, but not necessarily, identical to the list of sporting events that must be available to free to air television, and could include sporting world cups and other high profile events.

The Government response to the consultation appeared in February 2010.⁶³ The response confirmed that the Government viewed regulation as a “last resort”. It was decided not to go forward with the proposed system of voluntary restraint on the resale of tickets for events of outstanding national significance, which was described in consultation responses as “confusing and unworkable”. They urged as many organisations as possible to sign up to the revised STAR code, perhaps backed up by a “kite mark” demonstrating that the signatory has met appropriate standards.

At the same time DCMS published the results of research commissioned by the Department to investigate the overall scale of the ticket market in the UK and the proportion of tickets sold on the secondary market.⁶⁴ It concluded with a list of “issues meriting further analysis”.

Supreme Court ruling in 2012

In a Supreme Court ruling in November 2012, the Rugby Football Union (RFU) successfully took action against Viagogo, a secondary ticket broker, requiring the company to hand over contact details of people who sold on tickets to England rugby matches via its website. The RFU relied on the terms and conditions printed on its tickets, including a stipulation that tickets should not be resold.⁶⁵

Sale of Tickets (Sporting and Cultural Events) Bill 2010-12

In January 2011, Sharon Hodgson introduced a Private Members’ Bill, the *Sale of Tickets (Sporting and Cultural Events) Bill*. The main aim of the Bill being to tighten the regulation of the secondary ticketing

⁶² Department for Culture, Media and Sport, *Consultation on ticketing and ticket touting*, 2009

⁶³ DCMS, *Consultation on ticketing and ticket touting: summary of responses and Government response*, February 2010

⁶⁴ Europe Economics, *Analysis of the secondary sales market for tickets for sporting, cultural and other events*, September 2009

⁶⁵ “Court ruling raises questions over future of ticket resale websites”, *Guardian* 21 November 2012

market.⁶⁶ The Second Reading debate was adjourned⁶⁷ until 13 May 2011 but was not resumed on that date. The Bill went no further.

London Olympic Games

One of the main measures of the *London Olympic Games and Paralympic Games Act 2006* involved a prohibition of street trading and outdoor advertising in the vicinity of Olympic venues and of ticket touting in connection with Olympic events. It created a criminal offence of touting tickets for the 2012 Olympic Games.⁶⁸

In April 2007, the *Guardian* published an article about a letter of complaint sent to the Secretary of State by five sports governing bodies:

Britain's five biggest sports have signed a letter of complaint to the government demanding they be given the same legal protection against ticket touts that will be enjoyed by the London Olympics in 2012. The governing bodies of football, cricket, tennis, and rugby league and union have asked the culture secretary, Tessa Jowell, to reform the "two-tier" system surrounding ticket sales in British sport. (...)

"The sports community is frustrated that the government has made it an offence for tickets to be touted for the London 2012 Olympics," wrote David Collier, the chief executive of the England and Wales Cricket Board, citing the support of his counterpart chief executives at the Football Association, Lawn Tennis Association, Rugby Football League and Rugby Football Union.

"It is surely an anomaly for the Wimbledon tennis tournament to be staged in late June 2012 will have no ticket-touting protection, while the tennis tournament at the same venue just eight weeks later in the 2012 Olympics will. (...)

"We would urge you to address this anomaly so that there is no two-tier status between the Olympics and other major sporting events held in the UK. Set against the backdrop of reduced funding for sport from the lottery due to the transfer of funds to the 2012 Olympic Games, you will see why we are keen to avert some of this downfall by protecting our sports from the costs of addressing touting."

The comments reflect widespread concern in English sport regarding the huge boost Olympic funding has received over grassroots initiatives. There is further discontent that talks with government have been under way over the issue for more than 18 months without substantive progress. Jowell's Department of Culture, Media and Sport is concerned that legislation would criminalise ordinary fans wishing to resell tickets for events they are unable to attend.⁶⁹

Operation Podium report

Established in June 2010, Operation Podium was a dedicated Metropolitan Police unit created to combat organised crime around the London Olympic Games. Ticket crime was identified early on as a top priority, due to the anticipated high level of demand for tickets for the

⁶⁶ HC Deb 21 January 2011 cc1163-5

⁶⁷ HC Deb 21 January 2011 c1197

⁶⁸ London Olympic Games and Paralympic Games Act 2006 Explanatory Notes

⁶⁹ "Big five sports demand new law to crush the ticket touts", *Guardian*, 3 April 2007

Games.⁷⁰ A report on the Operation, which was made public in February 2013, looked at three types of ticket crime (fraud, counterfeit and unauthorised ticket resellers) and set out a number of recommendations on how this crime could be minimised through raising public awareness and closer collaboration with partners and industry.⁷¹ Among the recommendations were the following:

Consideration must be given to introducing legislation to govern the unauthorised sale of event tickets. The lack of legislation in this area enables fraud and places the public at risk of economic crime.

The primary and secondary ticket market require regulation to ensure transparency, allowing consumers to understand who they are buying from and affording them better protection from ticket

More recent events (2014)

There have been the following debates:

- A [Westminster Hall debate](#) on ticket touts, on 21 January 2014.
- A [motion](#) for leave to bring in the *Sale of Tickets (Sporting and Cultural Events) Bill*, dated 4 March 2014.

The above is only a brief summary of some studies, initiatives and relevant legislation in respect of ticket touting.

⁷⁰ Metropolitan Police press notice, Ticket crime report published, 19 February 2013

⁷¹ Metropolitan Police, *Ticket crime: problem profile*, February 2013, p3

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