

UEFA European Championship (Scotland) Bill

[As Amended at Stage 2]

Revised Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the UEFA European Championship (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The UEFA European Championship (Scotland) Bill makes provision in relation to the requirements of the Union of European Football Associations ("UEFA") in order to co-host its European Championship in 2020'. It provides Scottish Ministers and Glasgow City Council with the powers necessary to fulfil these requirements, which relate to commercial rights protection. This will help to ensure successful delivery of the event.

4. The main provisions of the Bill are those relating to: banning ticket touting for profit; restricting street trading and advertising; and enforcement of offences.

Ticket touting

5. Sections 2 to 4 make it an offence to tout a games ticket, which can include selling, offering to sell or making a games ticket available for sale

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by another person. The exceptions to this general prohibition include situations such as re-sale of a Championship ticket at face value or less. Provision will be made by regulations concerning the application of the offence in relation to internet service providers.

Street trading

6. Sections 5 to 10 of the Bill set out the substance of a new trading offence, namely restrictions on outdoor trading within a designated Championship event zone within the prohibited period. They also give the Scottish Ministers the power to make regulations which will, for example, set out conditions for permitted street trading which does not require authorisation.

Advertising

7. Sections 11 to 15 of the Bill set out the substance of the new advertising offence, namely that advertising, as it is defined in section 12, within an event zone within the prohibited period will be prohibited. They also give the Scottish Ministers power to make regulations which will, for example, set out the conditions for permissible advertising which does not require authorisation.

Enforcement

8. Sections 16 to 28 of the Bill enable persons who are designated as enforcement officers, in accordance with the Bill, to take certain enforcement action. These provisions give power to the Scottish Ministers to make regulations which will specify the criteria which individuals must meet in order to be designated as enforcement officers. They set out the general powers of enforcement and the specific restrictions on these powers. Provision is also made relating to powers of search and entry, with further restrictions relating specifically to entering houses.

9. There are also provisions relating to the use of reasonable force, the power to obtain information, the requirement to produce authority, test purchases, compensation in relation to enforcement action, obstruction of an enforcement officer and police powers. In relation to compensation, the Scottish Ministers may make provision relating to claiming compensation and the amount awarded, and conferring jurisdiction in relation to disputes.

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Offences

10. Sections 29 to 30 of the Bill set out the applicable penalties for Championship offences and make provision for offences committed by bodies corporate.

Rationale for subordinate legislation

11. The Bill contains a number of delegated powers. The Scottish Government has had regard, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill, to the need to:

- strike the right balance between the importance of the issue and providing flexibility to set out details;
- make proper use of valuable parliamentary time; and
- allow administrative arrangements to be as up to date as possible and tailored to the circumstances of the event, within the basic structures and principles set out in the primary legislation.

12. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power was taken in the Bill and, where relevant, why the selected form of parliamentary procedure has been considered appropriate.

Delegated powers

Section 1 – Meaning of key terms

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

13. Section 1 defines key terms used throughout the Bill including “Championship”, “Championship period”, “Championship ticket” and “event zone”. “Event zone” means the areas named in section 1 as defined in regulations.

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Reason for taking power

14. There are three event zones in Glasgow where there will be restrictions on street trading and advertising. Although they are described by name in section 1, the extent of the zones will be set out in maps which will form part of the regulations. This would not be possible in primary legislation because it must contain text rather than images.

Choice of procedure

15. Regulations made under this section will be subject to negative procedure. Given that such regulations will be administrative in nature, it is considered that negative procedure is appropriate.

Section 4 – Provision of electronic facilities

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

16. Section 4 enables Scottish Ministers to make regulations which will specify the circumstances in which a touting offence is or is not committed by a person who makes facilities available in connection with electronic communications or storage of data, essentially the internet. Section 2 will prohibit advertising that a Games ticket is available and exposing such a ticket for sale and, therefore, that offence would have application in relation to internet service providers who provide advertising and sales services.

Reason for taking power

17. Directive 2000/3 EC of the European Parliament on electronic commerce sets out certain requirements which must be implemented in national law in relation to the liability of information society services (which include internet providers) in relation to the services that they provide. Different requirements apply to different types of information society services. These require detailed provision the effect of which will be to exclude providers of such services from liability in relation to the touting

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offence to the extent required by the Directive. The detail is of such a level that it is not appropriate to be included on the face of the Bill.

Choice of procedure

18. The regulations will make detailed provisions in compliance with the Directive which will act as an exception to the offence. In the circumstances, given the potential effect on criminal liability, we consider that it is appropriate for the regulations to be subject to the affirmative procedure.

Section 5(3) – Ban on outdoor trading within event zones

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

19. Section 5(1) makes it an offence to trade within an event zone at a prohibited time. Section 5(3) enables the Scottish Ministers to make regulations to exempt types of trading from the trading offence and other appropriate provision. Later sections of the Bill then refer to these “trading regulations”. Section 6 provides that the trading regulations may prescribe, or provide specific criteria for determining, which activities are to be treated as trading, the places that are to be treated as being within an event zone, alternative arrangements for existing street traders during the times when the trading offence applies and at what times trading will be prohibited for the purpose of the trading offence. Section 7 provides that the trading regulations may prescribe circumstances when trading is permitted by reference to the person who is trading, the nature or purpose of it and the application of any profits.

Reason for taking power

20. Regulations made under section 5 will make detailed provision in relation to aspects of the offence and permitted trading. In relation to the trading offence the regulations will set out the times and places in which an offence may be committed. This will, in turn, be determined by the nature and location of the particular zone and is very much a matter of detail which

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is not appropriate for primary legislation. Discussions are currently taking place involving UEFA, Glasgow City Council and the affected traders in relation to the extent of the zones and prohibited times. In addition, it may be necessary to set out alternative trading arrangements for those street traders who are affected by the ban on trading. It is therefore appropriate for these matters to be addressed in regulations.

Choice of procedure

21. In deciding the appropriate procedure to be adopted in relation to the trading regulations made under section 5, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily. Considering that the regulations will provide the detail of activities that constitute trading in the event zones, any exemptions that may apply and prohibited times to make it clear when the offence provision applies, the affirmative procedure is considered to be the appropriate level of parliamentary scrutiny.

Section 11(2) – Ban on advertising within event zones

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

22. Section 11 sets out the scope of the ban on advertising and requires the Scottish Ministers to make the regulations about advertising and sets out a non-exhaustive list of types of advertising which may be exempted. Section 11(4) ensures that those exemptions cannot be used to permit ambush marketing. Later sections of the Bill then refer to these as the advertising regulations. Section 12 sets out activities that are to be treated as advertising for the purposes of section 11. Section 12(4) provides that the advertising regulations may prescribe or provide specific criteria for determining places or areas within the event zones where the advertising offence will not apply and at what times advertising will be prohibited for the purposes of the advertising offence. Section 13 provides that the advertising regulations may prescribe circumstances when advertising is

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permitted by reference to the person who is advertising, the nature or purpose of it and the circumstances of its display.

Reason for taking power

23. Regulations made under section 11 will make detailed provision in relation to aspects of the offence and in particular about permitted advertising which is exempt. In relation to the advertising offence the regulations will set out the times and places in which an offence may be committed. This will, in turn, be determined by the nature and location of the particular event zone and is very much a matter of detail which is not appropriate for primary legislation. It is therefore appropriate for these matters to be addressed in regulations.

Choice of procedure

24. In deciding the appropriate procedure to be adopted in relation to the advertising regulations made under section 11, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily. Considering that the regulations will provide the detail of what restrictions on advertising will apply in the event zones and prohibited times, which makes it clear when the offence provision applies, the affirmative procedure is considered to be the appropriate level of parliamentary scrutiny.

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Section 25(3) – compensation and recovery of costs

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Section 28 – Action under sections 17 to 24: procedure

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

25. Sections 16 to 28 set out the provisions relating to the enforcement of Championship offences. The powers of enforcement officers, including the restriction of their powers, procedures for search and entry, the use of force, the power to obtain information, the power to make test purchases, provisions dealing with obstruction of enforcement officers and provisions relating to compensation are all covered in these sections. The intention of section 28 is to create a power which will allow Ministers to supplement current provisions within sections 20 to 32 with additional provisions which may be considered necessary or appropriate at a later date. The substance of the enforcement provisions is, however, set out on the face of the Bill.

26. Section 25 makes provision relating to compensation for damage caused to property by any act done by an enforcement officer in the exercise of their powers under sections 17 or 19. Subsection (2) places an obligation upon Ministers to include within the enforcement regulations provisions relating to the criteria for determining the amount of compensation due and conferring jurisdiction for determining disputed compensation on to a court. The regulations will therefore provide detail regarding the procedure for claiming compensation and the systems which are put in place to calculate the appropriate awards for compensation.

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Reason for taking power

27. The enforcement regulations will concern matters of detail the level of which is not suitable to be included on the face of primary legislation. In relation to compensation issues, this is a matter of particular detail as the regulations will include many procedural issues concerning applications for compensation. For these reasons, it is considered that this issue should be dealt with through subordinate legislation.

Choice of procedure

28. The enforcement regulations will provide detail relating to the operational aspects of the compensation scheme. Details of the compensation scheme are considered to be predominantly administrative in nature. It is therefore considered that negative procedure is appropriate.

Section 34(2) – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: Laid – no further procedure

Provision

29. Section 34 provides that the technical provisions of the Bill come into force on the day after Royal Assent, sections 2 to 4 come into force on the day the Scottish Ministers appoint by regulations and the remainder of the provisions come into force 2 months after Royal Assent.

Reason for taking power

30. The regulation-making power in section 34(2) is required to ensure that the ticket touting offence may be brought into force as quickly as possible. Tickets for the Championship are already on sale so it is possible that ticket touting may already be occurring.

Choice of procedure

31. The regulations will be laid subject to no further procedure aside from laying in Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, which is typical for powers to bring

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into force provisions whose underlying policy has already been considered by the Parliament during the passage of the Bill.

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