



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 3 October 2019

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
23rd Meeting 2019, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Donald Cameron (Highlands and Islands) (Con)

*Annabelle Ewing (Cowdenbeath) (SNP)

Kenneth Gibson (Cunninghame North) (SNP)

*Ross Greer (West Scotland) (Green)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Derek Bearhop (Scottish Government)

Lucy Carmichael (Scottish Government)

Emma Harper (South Scotland) (SNP) (Committee Substitute)

David Henderson (Advertising Association)

Kirsten Simonnet-Lefevre (Scottish Government)

Calum Steele (Scottish Police Federation)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 3 October 2019

[The Convener opened the meeting at 09:05]

UEFA European Championship (Scotland) Bill: Stage 1

The Convener (Joan McAlpine): Good morning, and welcome to the committee's 23rd meeting in 2019. I remind members and the public to turn off mobile phones; any electronic devices that are being used to access committee papers should please be turned to silent.

We have received apologies from Kenneth Gibson and I again welcome Emma Harper, who is attending as a substitute member.

Members will be aware that we had been due to take evidence on Brexit this morning from the United Kingdom Government minister James Duddridge MP. Unfortunately, yesterday morning, Mr Duddridge withdrew from appearing before the committee. I regard it as discourteous to the committee and to the Scottish Parliament that we have not heard from a UK Brexit minister at this critical juncture in the Brexit process. We have not heard from a UK Brexit minister this year. It is imperative that the committee hears from a UK Government Brexit minister before the deadline of 31 October.

Agenda item 1 is consideration of the UEFA European Championship (Scotland) Bill at stage 1. I welcome to the committee the Scottish Government's bill team: Lucy Carmichael, bill team leader, Derek Bearhop, head of events strategy and delivery, and Kirsten Simonnet-Lefevre, principal legal officer.

I invite Lucy Carmichael to make a brief opening statement of one to two minutes.

Derek Bearhop (Scottish Government): If I may, I will make that statement.

The Convener: That is fine.

Derek Bearhop: The Scottish Government is proud that Glasgow has been selected as one of the 12 cities to co-host the UEFA European football championships next summer—one of the largest sporting events in the world. Glasgow and Scotland have a strong record of successfully delivering major global sporting events, which bring significant benefits for our economy and international reputation.

Since Glasgow's bid to be part of Euro 2020 was successful, a local organising committee has been created to aid delivery of the championship as a whole. It includes the Scottish Football Association, the Scottish Government, Glasgow City Council, Hampden Park Ltd, VisitScotland and Police Scotland. The organisers have been making good progress, and the Union of European Football Associations has confirmed that it is satisfied that planning is well on track.

The Scottish Government did not initially expect that additional legislation would be required in order to deliver the event. However, as UEFA's requirements became clearer, it was evident that primary legislation would be necessary to provide the level of protection that UEFA sought, and to ensure that our arrangements were consistent with those for the other venues around Europe. Formal confirmation that additional legislation would be required was received from UEFA in April 2019. Since then, the Scottish Government has been working swiftly to develop the UEFA European Championship (Scotland) Bill. UEFA indicated that many of the provisions in the Glasgow Commonwealth Games Act 2008 are appropriate and, in preparing the new bill, we have sought to learn from the 2008 act, which is the most recent piece of legislation for a major event in Scotland.

The bill was introduced on 24 September. It aims to help ensure the successful delivery of the event by putting in place protections for commercial rights in relation to ticket touting, street trading and advertising. The bill also contains measures on enforcement. Subject to parliamentary approval, the Scottish Government proposes that the bill completes its parliamentary process more quickly than usual, so that the secondary legislation can be laid early in 2020, in order to give affected businesses as much time as possible to prepare.

Because the requirement for the bill was confirmed only recently, there has not been time for a formal public consultation on it, so the Scottish Government has undertaken targeted engagement with businesses and other bodies with an interest, so that they understand what is being proposed and can provide their views.

The Scottish Government, in liaison with Glasgow City Council, in order to raise awareness among businesses and the public, intends to continue to publicise the restrictions on advertising, street trading and ticket touting in the run-up to the event.

The bill provides for three event zones in Glasgow and, earlier this week, the Minister for Europe, Migration and International Development shared draft maps of the proposed Hampden park and George Square zones with this committee, along with proposed dates of operation for the

zones. The Scottish Government expects to share the map and dates of the third proposed zone, in Glasgow's merchant city, soon.

The preparation of illustrative regulations is also under way, so that the Scottish Government can indicate to Parliament how it expects to use the powers that are included in the bill.

In light of the expedited timescale, the Scottish Government is grateful to the committee for undertaking consideration of the bill swiftly, and we are happy to answer any questions that the committee has about the bill.

The Convener: I think that everyone in the committee understands the importance of the championships in general, and their importance to Glasgow and Scotland in terms of the economic benefits that they will bring. It is important that we get the approach right not only for these championships but for future events. However, I am a little perplexed about why it has taken this length of time to bring the legislation to Parliament. Page 5 of the policy memorandum says that

"Scots law restricts ticket touting through section 55 of the Civic Government (Scotland) Act 1982",

but it also says that that does not specifically criminalise the touting of tickets. Clearly, there is a gap in Scots law when it comes to ticket touting, which is why the bill has been introduced. The Glasgow Commonwealth Games Act 2008 dealt with similar issues, but I note that it was passed within a year of us winning the bid for the games, which was well ahead of the event. I understand that we knew in 2014 that Glasgow would be hosting these championships. Why has it taken us until now to introduce legislation to cover a failing in Scots law that we presumably always knew existed?

Lucy Carmichael (Scottish Government): Since we found out that the bid was successful, there have been detailed discussions with UEFA and other partners organising the event. Those discussions have covered a range of areas.

You are correct in saying that we have been aware of the issue with ticket touting for some time and that we took action on it for the Commonwealth games. I am not sure that a single-issue bill would be considered to be the best use of parliamentary time, so we were working with UEFA and other partners to see what we could do with our existing powers on ticket touting, along with the measures that you have mentioned already. We have also been doing work on the other commercial rights protection that UEFA was looking to put in place around street trading and advertising, and we have been going through the existing provisions in detail to see what they permit us to do at present.

We viewed the introduction of primary legislation as a last resort, because of our desire to make best use of parliamentary time. As Derek Bearhop said, it did not become clear until 1 April that a bill would definitely be required. Since then, we have been working as swiftly as possible to undertake engagement with people who we think will be affected and to prepare the bill. As Derek Bearhop said, we are sorry that the bill has come forward so late and we are grateful to the committee for agreeing to work with us to a swifter timescale than usual.

The Convener: Thank you. How many of the countries that are hosting these matches are required to pass primary legislation?

Lucy Carmichael: UEFA provided me with an update on that issue yesterday. Scotland, Russia, Italy, Azerbaijan and Ireland have introduced primary legislation, and other countries, including England, will introduce secondary legislation. The remaining six hosts will reach the required levels of protection via other means. There is a range of activity across the 12 host cities.

Donald Cameron (Highlands and Islands) (Con): On the point about primary legislation, can you ever foresee a major sporting event not requiring primary legislation?

Lucy Carmichael: I think that there have been previous events that have not required primary legislation. I suppose that it depends on what you class as a major event. No additional protections were required in relation to the UEFA cup final in 2007, and I do not believe that we had any legislation in relation to the European championships that took place in Glasgow last year.

09:15

Derek Bearhop: That is right. There are only a handful of rights holders that tend to insist on the sort of rights protection that UEFA has asked for. As Lucy Carmichael said, we had the European championships in Glasgow last year, which did not require legislation. We have just had the Solheim cup, for which the Ladies Professional Golf Association did not require rights protection. It tends to be the International Olympic Committee, FIFA, the Commonwealth Games Federation and UEFA that require such protection. In my experience, it does not go much beyond that.

Donald Cameron: So you are slightly at the mercy of the organisations that run the events, and it is unpredictable—you do not really know whether primary or secondary legislation will be needed.

Derek Bearhop: I would not use the term "at the mercy". We actively bid for the events, and we

do so in the knowledge of what might be expected of us. In this instance, it was not totally clear whether primary legislation was necessarily the solution or whether we could have secondary legislation or another adaptive solution. Ultimately, as the convener said at the outset, major events are beneficial, so we are competitive in seeking to host them in Scotland.

Donald Cameron: I do not dispute that at all—that is clearly the case.

Stuart McMillan (Greenock and Inverclyde) (SNP): For clarification, when Hampden hosted the champions league final a few years ago, there was no primary legislation for the event, but was any secondary legislation required for it?

Lucy Carmichael: No, not that I am aware of, but I can double-check and come back to you if that is not the case. I am certainly not aware of any such legislation.

Claire Baker (Mid Scotland and Fife) (Lab): The bill is similar to the legislation for the 2014 Commonwealth games in relation to ticket touting offences and fan zones. Have you evaluated the operation of that legislation and, if so, has that influenced the bill in any way?

Lucy Carmichael: There was no formal evaluation of how that legislation operated in practice. Since the requirement for the bill has been confirmed, we have been working with partners—in particular, Glasgow City Council and its enforcement officers who were in place at the time—to see whether there was any learning from that event that would require changes to be made to the bill. In engaging with other stakeholders who had experience of the provisions that were in place for the Commonwealth games, we have asked about their experience and learning from that.

Claire Baker: Is that process of engaging with traders and the council with experience of the previous legislation happening at the pace that we are having to deal with the bill? Are the timescales quite short?

Lucy Carmichael: They are shorter than usual. We are trying to do as much consultation and engagement as possible, but the timescales for that are limited.

Claire Baker: Have any issues been identified as problematic with that previous legislation, or does everybody seem content with how it operated?

Lucy Carmichael: The people we have spoken to so far have broadly been content with how that legislation operated.

Claire Baker: As the convener said, there appears to be a gap in Scottish legislation around

ticket touting. That is obviously a concern in relation to not just sporting events but music and other events. I have previously asked the Government why the provisions on ticket touting that were put in place for the Commonwealth games could not be extended and made a permanent feature in Scotland. Why has that not happened, and what are the challenges with that?

Lucy Carmichael: The bill will create a specific criminal offence of ticket touting for the UEFA event only. There are differences in how tickets are sold for events. For this particular event, UEFA is the only authorised seller of tickets and it controls the secondary ticketing market. UEFA is the only body that sells the tickets, so there is no effect on other businesses that might be involved in ticketing. The bill therefore does not affect the rights or obligations of people buying or selling tickets or the existing law relating to secondary ticketing, and it therefore does not fall under consumer protection legislation, which is generally reserved to Westminster.

Kirsten Simonnet-Lefevre may want to add something on the legal position.

Kirsten Simonnet-Lefevre (Scottish Government): No, I think that that has covered all the points. Consumer protection is reserved. The Consumer Rights Act 2015 has specific provisions that apply to the whole of the United Kingdom in relation to secondary ticketing.

Claire Baker: Why does what is in the bill not come under consumer protection? Is it because it is linked to a major event?

Lucy Carmichael: The bill creates a criminal offence that is linked to rights protection, and UEFA is the only authorised seller of the tickets.

Kirsten Simonnet-Lefevre: The ban is to stop the offence of touting. The bill makes no provision in relation to the contractual relationship between the purchaser and the seller of the tickets. It will protect the branding and integrity of the championship, because the tickets are sold only by UEFA and not by any other ticketing agents. UEFA also resells tickets that people are not able to use, because the tickets are not transferable; they are only for the person who purchases them.

Claire Baker: Mike Rumbles has raised questions about UEFA's position on ticket touting, so I will hand over to him.

Mike Rumbles (North East Scotland) (LD): I am very pleased that the bill includes provisions on ticket touting. I understand that there is a reserve of tickets for UEFA to sell and that you want to protect the branding, but I am puzzled why section 2(4) says:

“The touting offence does not apply in relation to acts done by UEFA.”

UEFA can get involved in ticket touting, but it will be banned for everybody else. That is very odd.

Lucy Carmichael: That is not the intent of the provision.

Mike Rumbles: That is what it says.

Lucy Carmichael: The intent is to be clear that UEFA is not capable of committing a ticket touting offence, because it is the rights holder. I think that the bill has similar provisions in relation to advertising and trading offences.

Mike Rumbles: Hang on. Nobody else can ticket tout, but you are allowing UEFA to sell tickets to people above the original price.

Lucy Carmichael: UEFA sets the price at which the tickets are sold.

Mike Rumbles: It sets the original price. Forgive me if I am misunderstanding this, but ticket touting is ticket touting. If the price of a ticket has been published, and if the bill bans ticket touting, why does the bill say that the ban does not apply to UEFA?

Lucy Carmichael: UEFA will operate a secondary resale site. I am not aware that there would be any difference—

Mike Rumbles: It could increase the prices.

Lucy Carmichael: It could, but that would not be considered touting. I am not aware that UEFA has any intention of increasing the prices, but it is the rights holder and can set the price of a ticket.

Mike Rumbles: The bill allows UEFA to do that. If the provision relating to UEFA was not included, you would be banning ticket touting.

Lucy Carmichael: I might be misunderstanding the point, but UEFA is able to set the price of tickets.

The Convener: You said that UEFA is the rights holder. My understanding from reading the bill is that, if a member of the public has bought tickets for a match but his companion does not turn up, he is able to sell the ticket without committing an offence as long as he does not make a profit. Is that correct?

Lucy Carmichael: It is certainly correct that face-value exchanges are not captured by the criminal offence. Such exchanges would not be in line with UEFA's terms and conditions of the ticket sale, but that is a separate matter. If the person who had bought the ticket was not present, people might be refused entry to the stadium, but we certainly did not want to criminalise someone who might not be able to attend.

The Convener: Thanks very much.

Mike Rumbles: Section 16 is on enforcement officers. When I read the bill, I was alarmed by the powers that seem to be given to individuals. That was before I read the submission that I received last night from the Scottish Police Federation. I have no problem with Glasgow City Council designating weights and measures officers as enforcement officers; that seems perfectly logical. However, section 16(2)(b) says that someone may also be designated if they meet

“such other criteria as may be specified by the Scottish Ministers in regulations.”

When I read that, I thought that the provision will give carte blanche to ministers to apply any, or no, qualifications to the people who are appointed. As you know, our job is to make sure that we have decent legislation going through Parliament. We can amend the bill, but we cannot amend regulations when they are introduced. Could you therefore please address the point that the Scottish Police Federation made to us? It said:

“The SPF is strongly of the view that in order to safeguard the rights of the public ... Ministers ought to be obligated to set specific criteria for the appointment of Enforcement Officers (including qualifying and limiting provisions)”.

I would say that such a provision needs to be on the face of the bill. Do you have any comments on that?

Lucy Carmichael: I will place on record that we welcome feedback on the provisions from the Scottish Police Federation, so we are grateful for its submission and we are happy to consider it in more detail.

The enforcement provisions in the bill very closely replicate what was put in place for the Commonwealth games and I understand that there was a lot of discussion of the issue when the Glasgow Commonwealth Games Bill was passing through Parliament. On the question of what we expect to be included in the regulations, we have been preparing illustrative regulations and we are happy to share them with Parliament as soon as we can.

Mike Rumbles: That would be helpful. If the committee at least knows what the Government is going to put in the regulations, I will be happy with that.

Lucy Carmichael: The illustrative regulations could then inform further discussion on the issue.

Mike Rumbles: We should see them before the bill goes through.

Lucy Carmichael: Yes, absolutely.

Mike Rumbles: Section 17(4) says:

“An enforcement officer may be assisted by any other person as may be reasonably required for the purposes of taking action under this section.”

I have written on my copy of the bill, “Can anybody do this?” The Scottish Police Federation says:

“This creates the possibility of Enforcement Officers (appointed potentially by as simple an act as an ad-hoc designation)”.

In other words, they could be appointed by you. The SPF continues:

“whose activities in seeking assistance in safeguarding”—

I will cut to the chase. The SPF says:

“We have grave reservations about both principle and practice on this issue. If it is envisaged that 17(4) could see persons other than police officers being relied upon to assist, this creates a potential for a free for all with random citizens (subjected to potentially zero validation) able to exercise powers of entry and search, and seizure and destruction.”

Lucy Carmichael: I will try to clarify. That is absolutely not the intention of the provisions.

Mike Rumbles: Oh, good.

Lucy Carmichael: The Scottish Government agrees that enforcement officers should have appropriate skills and experience to carry out the role and, in the first instance, we would expect those officers to be drawn from Glasgow City Council. Our financial memorandum sets out a little bit more detail about the experience of the officers in Glasgow City Council. For instance, most of the officers in the trading standards section worked on the Olympics and the Commonwealth games, for which similar legislation was in place. The council also intends to provide training on the bill.

We are not expecting that enforcement officers would be recruited from private companies. My recollection is that the example that was discussed previously of when an enforcement officer might require assistance was of a locksmith, if the issue was gaining access to a building. The provision is not intended to be so broad that anyone can get involved.

Mike Rumbles: That is great, and I am really pleased that that is the case, but the intention is not stated in the bill. If the Government could think about amending the bill to make that position clear, I am sure that we would be happy to see that—I certainly would.

Section 19(2) contains the following provision:

“An enforcement officer may take to a place entered by virtue of this section any other person, or any equipment”.

When I read the committee papers last night, I saw that the Scottish Police Federation also commented on section 19(2). It said:

“The SPF also finds the provisions of section 19(2) to be extraordinary.”

The SPF is basically saying that the bill would give to individuals powers that the police do not have. The police can enter premises without a warrant only in specific circumstances. The provision in section 19(2) gives a very wide-ranging power to individuals, and we do not know who those individuals will be.

Lucy Carmichael: My answer would be the same as my answer to the previous question: we can certainly look at that.

Mike Rumbles: It would be great if the Government could look at it and lodge some amendments—I would be happy with that. If I may say so, I think that the problem has arisen due to there not having been time to properly consult across the board. We can leave it there.

09:30

Annabelle Ewing (Cowdenbeath) (SNP): Staying on the issue of enforcement, I am not sure whether you have had an opportunity to reflect on the Scottish Police Federation’s submission to the committee, dated yesterday, which raises a number of points. When the federation’s representative is before us later today I intend to ask him about the position that it took on the arrangements for the Commonwealth games in 2014. Could you confirm my understanding, which is that, by and large, the enforcement arrangements are effectively the same as they were in 2014, except for the addition of the power of entry that Mike Rumbles talked about? Were the other offences, in relation to ticket touting, street trading and advertising, created at the time of the 2014 games?

Lucy Carmichael: Yes. I thought that the powers in relation to enforcement were almost identical to those for the 2014 games, but I can certainly double-check that.

Kirsten Simonnet-Lefevre: We can check that and come back to the committee.

Annabelle Ewing: Okay. It seems to me that obstructing an enforcement officer is the new offence, and that that is the difference from the position in 2014. If that is the key substantive difference, I am wondering what view the SPF took on obstruction in 2014.

Lucy Carmichael: I will double-check that, because I thought that there was an offence of obstruction previously.

Annabelle Ewing: It is an important point to check. In the fifth paragraph of its submission, the SPF talks about its concerns and says:

“This is particularly evident with proposed powers on the use of force, entry and search, and seizure and destruction.”

That use of the word “particularly” is important. If there are other differences, we would want to have clarity on those.

I have a further general question, which might be seen as coming from the left field. Why should you have an arrangement whereby you use trading standards officers and not the police?

Lucy Carmichael: Trading standards officers already have a role in enforcing restrictions on counterfeit goods and exercising similar powers. It makes sense to extend that to cover trading and advertising offences, as that is akin to the role that they are already performing. From a practical perspective, it should also reduce additional resourcing requirements on Police Scotland during the period of the championships. We looked at whether it would make sense to give the powers solely to Police Scotland, which would be different from what happened for the Commonwealth games. However, that would have created an additional burden for Police Scotland, and we thought that it would be possible for trading standards officers to carry out that role in an appropriate way.

Annabelle Ewing: It appears that one of the reasons for taking that approach, rather than simply giving the police responsibility for enforcement without reference to trading standards officers, was concern about the potential impact on the police. The information that we have had thus far about Glasgow City Council’s manpower is that it has a trading standards team consisting of 22 members of staff, most of whom were designated enforcement officers for the 2012 Olympics and the 2014 Commonwealth games. However, the council feels that it might require additional manpower, which it might seek from other local authorities. What is the total number of officers that we are talking about here—22 plus what?

Lucy Carmichael: We are planning for a range of scenarios. Glasgow City Council’s latest position is that it will aim to operate within its existing trading standards team. However, the draw for the championships will have an impact on that. We are not yet sure which matches will be played at Hampden. That will become slightly clearer later this year, but it will not be fully clear until after the UEFA nations league competition takes place next year. Because we are planning for a range of options, a range of costs is included in the financial memorandum.

Annabelle Ewing: If Scotland were to qualify—as we all hope that it will—that would be the biggest draw, so what would be the top end of the scale? I just want to have an idea of that. If the

argument is that we have to go down that route in order not to overburden the police at a busy time, among other things, what is the total manpower that we would be talking about?

Lucy Carmichael: I would want to double-check with Glasgow City Council what its upper estimate would be in those circumstances. It would certainly be at the upper end of the potential costs that are set out in the financial memorandum.

Annabelle Ewing: We will obviously ask the SPF to give us further clarity on its position. Are the police suggesting that they should do enforcement, rather than trading standards?

Lucy Carmichael: I would not want to speak for the Scottish Police Federation.

Annabelle Ewing: Has the issue been considered in the on-going discussions of the committee that has been set up, or has the concern suddenly come out of nowhere?

Lucy Carmichael: Police Scotland is a member of the local organising committee and it has not indicated that it has any concerns about the way in which things are set out in the bill. It is content with what we have got in it.

Annabelle Ewing: I have further questions on a slightly different area. Would you like me to hold fire, convener?

The Convener: Yes, I will try to come back to you later. Ross Greer has questions about enforcement.

Ross Greer (West Scotland) (Green): My question follows on directly from Annabelle Ewing’s point about the enforcement power to search. I understand the argument that extending the power to enforcement officers would reduce the burden on the police, but I believe that such searches can take place only in the presence of a police officer. If so, how is that a significant reduction in the burden on the police?

Lucy Carmichael: Enforcement officers will undertake a range of enforcement activities, including patrolling around the event zones and speaking to people. If someone was breaching one of the restrictions, the officers’ first step would be to explain what the offence is and ask that person to move on if they were not supposed to be in the zone. There are other powers in relation to being able to search and confiscate property.

Ross Greer: To be clear, if a search of someone’s property is to take place, it can only take place in the presence of a police officer. Why give that power to enforcement officers at all? Why not leave that power with the police officer, who needs to be present anyway? There is provision for searching without a warrant in certain

circumstances, but a police officer would need to be present for that. Would it not be better for the search power to remain with police officers, who, in limited circumstances, already have the power to search without a warrant?

Derek Bearhop: Our starting point was the provisions in the Glasgow Commonwealth Games Act 2008—that is what is replicated in the bill. Our understanding was that, after dialogue, the police were comfortable with what eventually ended up in the 2008 act.

Ross Greer: I understand that. I was not here in 2008, but I am here scrutinising this piece of legislation, now. I need to know—as does the committee—why it is felt appropriate, in these circumstances, to give search powers to enforcement officers when they can search only in the presence of a police officer and police officers already have the ability to search. Why not just keep that power with the police?

There is an accountability issue here. The accountability for police officers is very clear. It is the subject of substantial scrutiny in the Parliament. There may be issues with it, but people understand the line of accountability if, for example, they wish to make a complaint about a police officer. I am confused as to why it is necessary to give the power to someone else, when a police officer has to be present anyway. If you would like to write to the committee with an answer on that, that would be fine.

I have one more question, if that is okay, convener.

The Convener: We are supposed to finish by 10 o'clock to be ready for the next panel, so please be succinct.

Ross Greer: I will be brief. Sticking with the enforcement powers, are the requirements set out by UEFA, or are they the Scottish Government's understanding of the best way in which to meet the UEFA requirements? Would UEFA object if enforcement officers did not have the powers to search and destroy?

Lucy Carmichael: Our starting point for the enforcement provision was what was in the Glasgow Commonwealth Games Act 2008, and ensuring that the bill was closely aligned to that, because we understood that that had worked reasonably well in practice. Having spoken to stakeholders about the 2008 act, we have not had any feedback saying that its provisions had not worked in practice. I have not discussed whether the particular powers that Mr Greer refers to are acceptable to UEFA.

Ross Greer: So, UEFA did not ask for them. I want to be clear. Are you saying that UEFA did not come to the Scottish Government and say, "As a

requirement of hosting this tournament, we require that enforcement officers are given the ability to X, Y and Z."?

Lucy Carmichael: The discussions that we have had have not been at that level of detail. We want to take time to look carefully at the Scottish Police Federation's response, and we would like to meet the SPF to discuss the points that it has raised in more detail. It has identified a number of detailed points, which is why I am flicking back and forth to find the appropriate bits of the bill.

Emma Harper (South Scotland) (SNP): To pick up on Ross Greer's question, if such searches can take place only in the presence of a police officer, we need to know what that means. Does it mean that the police officer must be in the same room, in the same place or 20 feet away? Does it mean that two people will be able to inspect somebody's bag while a police officer is observing?

Lucy Carmichael: I think that it was section 20 that was being referred to, which is on "Use of reasonable force". It talks about the officer being "accompanied by a constable", so I assume that those two people would have to be together.

Stuart McMillan: Were similar concerns raised about enforcement officers when the Glasgow Commonwealth Games Bill was going through the parliamentary process? How were the enforcement officers deployed during the Commonwealth games? Were any issues relating to their conduct raised during the period of the games?

Lucy Carmichael: I will address your second point first. We are certainly not aware of any concerns about specific incidents relating to the operation of the enforcement provisions during the Commonwealth games. We would like to discuss with the SPF any specific examples that it is aware of that we in the bill team are unaware of relating to things that happened during the Commonwealth games. We want to find out about any such incidents, but we are not aware of any at the moment.

Stuart McMillan: How were the enforcement officers selected? Were they mainly employees of Glasgow City Council, or were employees of other local authorities brought in for specific purposes?

Lucy Carmichael: A broader range of local authorities would have been involved in the Commonwealth games, because it spanned a number of different local authority areas.

Donald Cameron: According to the policy memorandum, you are content that the bill is compliant with the European convention on human rights, but the Scottish Police Federation has questioned whether section 19(2)—which Mike

Rumbles mentioned—is compliant with article 6 of the ECHR. Could you look at that again to make sure that you are content that it is compliant with the convention? In my view, many of the issues around enforcement officers in general and the provisions of section 19(2) specifically raise questions to do with the convention. You might want to reflect on that, or you might want to comment now.

Lucy Carmichael: We are confident that the bill is compliant with the ECHR. The bill will allow enforcement officers to gain entry to search a house or other property, but we think that those powers are subject to safeguards. For example, the power to enter a house can be exercised only with the permission of the occupier “at reasonable times” or when a warrant has been granted. The granting of a warrant would provide an oversight process.

Mike Rumbles: But section 19(1) says:

“An enforcement officer may, without warrant, enter any place and may search any place”.

That contradicts what you have just said. The SPF says that that power is “extraordinary”.

Lucy Carmichael: I am sorry. I will come back to you in writing on that. There are further restrictions on entering houses later in the bill. Section 21 says:

“An enforcement officer may take action under section 17 or 19 ... only if—

(a) an individual who habitually resides in the house permits the enforcement officer to do so, or

(b) the sheriff grants a warrant for such an action.”

Mike Rumbles: So section 21(1)(b) says that an enforcement officer can enter a house if the sheriff grants a warrant, but section 19 says that they may enter without a warrant. Which is it? The two provisions are completely contradictory.

Lucy Carmichael: We can certainly look at whether there is an inconsistency there.

09:45

Alexander Stewart (Mid Scotland and Fife) (Con): I want to go back to the offences in the bill, which include unauthorised advertising, ticket touting and street trading. Those are all broadly similar to what was in the legislation when Scotland hosted the Commonwealth games in 2014. Are you aware of any such offences that were committed in 2014? We could then compare them with what we might anticipate as a result of the bill.

Lucy Carmichael: We have spoken to our partners about that, and our understanding is that there were no prosecutions for any of the offences in the 2008 act.

Alexander Stewart: There were no prosecutions.

Lucy Carmichael: Enforcement officers engaged with people who had breached the restrictions, but no prosecutions were taken forward as a result of the 2008 act. That is certainly my understanding.

Alexander Stewart: Did that engagement entail contacting a small number or a reasonably large number of individuals? Do we have any statistics on that?

Lucy Carmichael: Not that I am aware of, but I can certainly check with partner organisations.

Alexander Stewart: So nothing was registered or kept on record—they were only given a slap on the wrist.

Lucy Carmichael: I can provide you with more details in writing around the enforcement action that might have been taken—for example, whether any property was confiscated or anything like that.

Alexander Stewart: Okay. Without having that information, it is quite difficult for us to ascertain what is expected under the bill. We could see something similar, or the numbers might be much larger or more inflated depending on the location. The zones that you are proposing are quite extensive.

Lucy Carmichael: The Hampden park zone is the same size as it was in 2014. The George Square zone is slightly larger and includes some additional approach routes. In 2014, there were a range of other zones because there were a number of different locations for games taking place at different times across a range of cities. Overall, the zones are probably less extensive because the focus is on only three locations in the centre of Glasgow rather than a broader range.

As our engagement so far has indicated, we expect that most businesses would want to comply with the restrictions. As I mentioned, our first step would be to ensure that people who are affected are aware of the new offences. There is a provision in the bill that requires Glasgow City Council to publish guidance on the trading and advertising restrictions to try to help with that process.

Alexander Stewart: How extensive has the consultation with all these different individuals been? You will provide some kind of structure, and rules and regulations that they will have to adhere to. How have you consulted the trading organisations, the Federation of Small Businesses, the Glasgow Chamber of Commerce and whoever else may be affected by the process?

Lucy Carmichael: We held two drop-in sessions for affected businesses. In addition, Glasgow City Council invited along all street traders with licences in the Hampden park zone, as well as all businesses in the proposed zones and some from outwith the zones whom we thought would want to be aware.

The Scottish Government contacted the FSB—it was definitely invited, and its representatives came along to one of the sessions, so a conversation has taken place with the FSB. The Glasgow Chamber of Commerce was also invited along.

Alexander Stewart: How well attended were those sessions?

Lucy Carmichael: Only two street traders attended. For comparison, I think that only one street trader attended a similar event in 2007. My team has had a number of telephone calls with street traders and other businesses that could not attend on those two particular days to try to broaden out the consultation. I also went to Hampden park before one of the Scotland matches last month to walk around and speak to traders in the general area to try to raise awareness.

As Derek Bearhop set out in our statement, we are conscious that there has been limited time for engagement and that we have not carried out a formal public consultation. We are trying to do as much as we can to address the issues and speak to people whom we think will be affected, but I am sure that there are always other things that we could do to try to help.

The Convener: Presumably Glasgow City Council licenses street traders, so it will have the names and addresses of all those traders and can inform them.

Lucy Carmichael: It does—it wrote to all the traders whom it thought would be affected.

The Convener: Stuart McMillan has a supplementary question.

Stuart McMillan: When do you anticipate that the final regulations will be produced and issued to all the traders?

Lucy Carmichael: As I said, in the next couple of weeks we hope to share illustrative regulations with the committee. Assuming that the bill completes its parliamentary process early in the new year, we are looking at how soon we can lay regulations. We need to balance getting them into force with allowing time to raise awareness of new criminal offences, which is also important. We are working as swiftly as we can.

Stuart McMillan: You are perhaps looking at the end of January to get that information out there.

Lucy Carmichael: I do not want to commit to that date now, but we are looking to do it as quickly as we can.

Stuart McMillan: Thank you.

Annabelle Ewing: I have a brief point in relation to our previous conversation on entering and searching, with regard to the power to

“enter any place and ... search any place”.

Lucy Carmichael subsequently referred to restrictions that relate to

“a house or a place that can be entered only through a house”.

Therefore, the applicable restrictions are not erga omnes but apply only to a subset of possibilities. Obviously, you will write to the committee with further information on that.

In relation to advertising and the cohort of people that might be impacted, I was puzzled by the information that we have. Restrictions on advertising in the fan zones would be on things such as billboards or the handing out of free T-shirts, which everybody can understand. However, it also appears that the restrictions would affect businesses that have external advertising, such as restaurants and bars. Can you provide clarification on the extent of that?

Lucy Carmichael: Yes. In the merchant city, for example, bars and restaurants have external seating. They have temporary windshields around them, which are often branded with products, for which there might be a competing UEFA sponsor. In preparing the illustrative advertising and trading regulations, we are looking at the exceptions that we can make to the restrictions, so that they are proportionate and fewer businesses are affected. We have looked at the restrictions that were put in place for the Commonwealth games and we will incorporate those where we can.

Annabelle Ewing: The championships will be held at a time of year when people in Glasgow could be sitting outside, which is not always the case. If a restaurant has an outside seating area and, in order to separate the outside area of the restaurant from the edge of the pavement, it has a windshield, on which there is branding for a product that is in the same generic group as a sponsor of the UEFA championships but is not the product that is sponsoring UEFA, what will that restaurant do? Presumably, it must have a windshield for licensing purposes.

Lucy Carmichael: It has to delineate the external seating area.

Annabelle Ewing: What would the restaurant have to do? If it would have to make an alternative arrangement, what thought has been given to the cost of that and the impact on running the business?

Lucy Carmichael: It depends on the form of barrier. On some barriers, one can unhook the branded bit of advertising and still have the external part of the barrier. On other barriers, the branded bit is etched in, so that might require to be covered. We are working with UEFA and sponsors to see whether it would be possible to provide alternative branding merchandise, such as something to do with the championships, which the businesses could use instead. We are looking at giving them a replacement.

Annabelle Ewing: I presume that you will not force them to have the brand that UEFA is being sponsored by.

Lucy Carmichael: No. If we can provide something consistent with championship branding for the event, that will be on offer. Whether they want to do that will be a decision for the businesses.

Annabelle Ewing: That is helpful. Thank you for that clarification.

The Convener: Would the restrictions cover advertising the pizzas on a restaurant menu?

Lucy Carmichael: No. Anything internal and things like a list of pizzas—

The Convener: If there was a hoarding outside saying what people can eat inside, would that be covered by the restrictions?

Lucy Carmichael: No, I do not think that it would be.

The Convener: Another couple of groups will be covered. One is charities, and you say that there might be some exceptions for them. Will that be covered in the illustrative regulations?

Lucy Carmichael: Yes.

The Convener: Obviously, a charity might have its big day of action and collecting during the period, so I assume that you anticipate that some charities will be given exceptions.

Lucy Carmichael: Yes.

The Convener: The legislation will be in force until the end of the year, so it would cover poppy day, for example.

Lucy Carmichael: The act will not be repealed until 31 December, but it sets out that the championships period, during which time the zones can be in operation, is between—

The Convener: So, it is only the championships period that is covered—that is fine. However, charities could be affected during that period.

Section 6(2)(d) says that people

“providing public entertainment for gain or reward”

are covered. You might or might not know that Glasgow has a lively busking scene—I note that Emeli Sandé, the pop star, is currently presenting a programme called “Street Symphony” in which she is looking for Scotland’s best buskers. I assume that some of those young people would be covered by the provisions.

Lucy Carmichael: Certainly, that would be classed as trading. We are discussing with UEFA the issue of what exceptions it might be possible to make for that.

The Convener: Have you reached out to some of those young people? You mentioned that you had gone out and pounded the pavements. It is quite a lively scene.

Lucy Carmichael: We have not done that specifically, but we plan to do further engagement in the zones. We can look at doing what you suggest—we would be happy to do that.

The Convener: If there are no further questions, we will wrap things up there. The committee would appreciate it if we could receive the illustrative regulations before we consider our stage 1 report on 31 October. That would be extremely helpful. Will that be possible?

Lucy Carmichael: Yes.

The Convener: Thank you. I suspend the meeting to allow a changeover of witnesses.

09:57

Meeting suspended.

10:02

On resuming—

The Convener: We move on to our evidence session with the second panel of witnesses on the UEFA European Championship (Scotland) Bill. I welcome David Henderson, who is the public affairs manager of the Advertising Association, and Calum Steele, who is the general secretary of the Scottish Police Federation.

I thank Calum Steele for his letter to the committee, which was extensive. For the benefit of anyone who has not had the opportunity to read the letter, will you summarise the concerns that you have laid out?

Calum Steele (Scottish Police Federation): I would be astonished if people had not read letters

from the Scottish Police Federation, which are usually very informative.

The SPF thinks that it is very important to maintain the distinction between police officers and others who might be afforded a distinct form of police-like powers—not least because of the unique role that police officers hold in society and the standards to which they are held to account.

We recognise that our submission is somewhat blind, in that we do not know specifically what the subsequent regulations will contain. We have some concerns that fairly extensive powers will be afforded to non-warranted individuals—powers that, in effect, demand the support and assistance of police officers. If the bill is passed, enforcement officers could carry out actions to a different set of accountability standards from those to which police officers who perform exactly the same actions are held. Police officers are, of course, answerable to the courts.

It is important to say that we have no objection to safeguarding of commercial imagery, but we wonder whether it is desirable to impose criminal sanctions on what are, in effect, civil disputes, although we recognise that that has happened in the past in relation to the Commonwealth games and the Olympics.

The Convener: The organising committee for the championship includes representatives from Police Scotland. We asked the Government bill team whether Police Scotland had raised similar concerns to those of the SPF during the organising committee's discussions, but it said that Police Scotland had not. How do you respond to that?

Calum Steele: It is not unusual for the Police Service of Scotland and the Scottish Police Federation to look at the same issue from completely different ends of the spectrum. I suspect that when the service has had time to review our submission, it will have fairly similar concerns. I see no reason why, unless the police service had been specifically pointed to the issues that the SPF raised, it would necessarily have come to the same conclusions off its own bat.

This has not been the case exclusively, but my experience of the police service is that it tends to look at new legislation through the prisms of costs to the service and demands on officer time and often does not go far beyond those. We must be sanguine and accept that the bill has been subjected to only a very short period of consultation. I am sure that organisations, including the SPF, will take longer to deliberate prior to subsequent stages, and will make more detailed submissions. Our concerns might have passed Police Scotland by in its initial scan of the bill in the time that was available. The issues that

the SPF has highlighted are not wholly different from those that were highlighted at the time of the Commonwealth games.

The Convener: The bill's policy memorandum says that the police cannot do the work, because they will be pretty busy policing football games and ensuring that the public are safe during the tournament.

The SPF's letter states that

"The SPF has a longstanding opposition to the extending of pseudo police powers to non-police officers, as this risks delegitimising the clear and distinct role society expects its police officers to perform".

That is fair enough and clear. Should police officers have the enforcement role, in this case?

Calum Steele: If I may be so bold, I will say that we should go back one step. Ultimately, it comes down to the fundamental question whether it is appropriate to introduce specific legislation to criminalise what are, in effect, civil disputes. If Parliament desires that, there is a real question about who should enforce the criminal law. In general, it is police officers who enforce criminal law.

The Convener: That is very clear.

Claire Baker: Calum Steele said that the bill is similar to the Glasgow Commonwealth Games Act 2008. I understand that the role of enforcement officers is similar in it and the bill—unless you have identified differences. Did any issues arise from the 2014 Commonwealth games in terms of how the relationship between the police and enforcement officers worked?

Calum Steele: They were not insurmountable, but there were issues. Again, I give the heavy caveat that I have not had an awful lot of time to undertake research with officers who were heavily involved in activities in 2014 or in the Olympics, when broadly comparable restrictions were in place. However, even in the short time that I had, we identified instances of conflict, particularly in relation to enforcement officers' expectations of what police officers should do.

For example, it was highlighted to me that there was some kind of guerrilla or ambush advertising by a gambling company. I would need to check the veracity of the example to see whether it went to this extent, but I was told that the police service was expected, and asked, to pull together specialist assets to remove banners from high buildings. That was one element that caused the police to reprioritise its expectations and demands in order to service the asks from enforcement officers.

There were points of conflict even on practical and mundane matters such as feeding police officers who were working at events. The police

service provided officers with food and refreshments from a well-known high street bakery that was not part of the advertising and sponsorship of the Commonwealth games, which led to significant conflict in trying to get police officers fed and refreshed. We can all safely assume that a fairly hefty diplomatic incident was avoided—without being too unkind, it was probably achieved through brute force and powers of persuasion—but that shows that there can be points of conflict at levels that would not necessarily be thought about in considering enforcement of legislation.

Claire Baker: The bill team have said that they are only now speaking to partners who were involved in the 2014 Commonwealth games. Perhaps it was not anticipated that we would need such legislation again, but there seems to have been little investigation of how such legislation operated previously.

I have a question for Mr Henderson about the experience from the 2014 Commonwealth games. Can lessons be learned from what happened in 2014 in relation to advertising?

David Henderson (Advertising Association): I was not involved then, so I am looking at the issue retrospectively. However, the Advertising Association had no objections. We had good engagement with the Scottish Government throughout the process leading up to the 2014 Commonwealth games, and we were happy with the protections that were put in place.

We are still engaging with stakeholders on whether the same framework should be used for what is a slightly different type of championship competition. We are considering whether the framework for an Olympic or Commonwealth games model of event—based in a specific country over a longer period—can be applied to something in which maybe only four matches are happening as part of a Europe-wide championship. However, to answer your question, there were no specific issues at the time of the Commonwealth games.

Claire Baker: You suggest that there is a difference between events such as the Commonwealth games and the Olympics and the UEFA championships. The bill team explained to us that, within the zones there will be restrictions so that only the sponsors can be highlighted or promoted, and we have heard that that will present challenges for some businesses. Has UEFA announced who the sponsors are yet?

David Henderson: As far as I know, the sponsors have been appointed. I cannot say with certainty who they are, but they will obviously be massive multinational corporations. A balance needs to be struck between supporting investment

by the sponsors and supporting smaller businesses in specific locations. In theory, those businesses should be able to take advantage of the good will and celebratory nature of the competition. Perhaps “take advantage of” is not the right expression but, particularly in Glasgow, I am sure that there are lots of businesses that will want to get into the spirit of the games and achieve the commercial benefit that can come from being a smaller enterprise in that situation. It is about striking the correct balance between protecting the sponsors and letting everyone else get into the feel of things.

Ross Greer: I have questions for the Scottish Police Federation on enforcement and on some of the useful points that Calum Steele raised in his letter. My understanding of the bill is that enforcement officers will have the power to carry out a search of a person’s home and a search that requires force to gain entry, but only in the presence of a police officer. That was the substantial point on which we engaged with the bill team in the earlier evidence session. A second set of searches including of vehicles and containers do not require police presence. Will you comment on the distinction between the two sets of criteria for conduct of searches by enforcement officers?

Calum Steele: There is also a third set of search criteria relating to premises that are not a home. As I read the bill, the requirement for a police officer presence relates only to the search of a home. The argument is going to return time and again to the point that I made early on about the significant power to effect a search of people’s belongings—whether that is a vehicle, a vessel, a commercial premises, or another form of premises that are owned by an individual but do not amount to a home.

Ultimately, the ludicrousness of the situation—if I may be so bold—is that it appears that although enforcement officers will have the power to secure a warrant, they will be able to act on it only in the presence of a police officer. Unless there is to be a wholesale change, it would be the actions of the police officer that might be subject to complaint and scrutiny, even though the officer might not have been wholly privy to the basis on which the warrant was secured.

It is not impossible to foresee a search being undertaken of domestic premises, with the sheriff having been satisfied with the testimony of the enforcement officer that that was required, but the actions of the police officer becoming the subject of complaint and, potentially, a civil action against the chief constable. That is something that the Scottish Police Federation is not very comfortable with.

10:15

The use of police powers and police actions are heavily instilled in the individual. We instinctively recoil against the notion that we should go along to hold someone's hand and to be their witness, unless they have a reporting authority—attendance with the Scottish SPCA, for example, although Scottish SPCA officers have different powers available to them.

Ross Greer: Is the Scottish Police Federation's position that, in circumstances that currently require the presence of a police officer to execute a search, the power to execute such searches should simply be held by police officers, rather than by enforcement officers? Are you saying that there is no need for enforcement officers to have that particular search power?

Calum Steele: As the bill is drafted, when it comes to domestic premises, there is certainly no need—unless someone can persuade me otherwise—for enforcement officers to have those powers. Beyond the issue about domestic premises, there are inherent risks for enforcement officers in undertaking searches of commercial or other premises. When we are talking about outbuildings, sheds, garages, empty shops or whatever, the risk is not least from the potential hostility that enforcement officers could face from the owners of such premises.

Ross Greer: I have one brief operational question to finish with. It appears that use of a locksmith to gain entry to premises does not qualify as use of force to gain entry, which means that an enforcement officer would not require the presence of a police officer if they were using a locksmith to gain entry, whereas if they had to use brute force to gain entry that would require the presence of a police officer. How does that match the current mode of operation for the police? What is your position on the idea that use of a locksmith is not comparable to use of brute force and so would not require police presence?

Calum Steele: That exposes one of the other areas of concern in the bill: it provides enforcement officers with the unfettered ability to call upon assistance from any other person. In each case, who would determine whether the locksmith is a bona fide locksmith or just someone who happens to have a drill and is good at getting through doors? There are fairly significant weaknesses and vulnerabilities in the bill. To me, having to overcome security to effect entry is the same as forcing entry.

Ross Greer: Thank you.

Annabelle Ewing: I have a few questions for Calum Steele on the issue that was raised by Ross Greer, then I have a question for David Henderson. Did the SPF make a submission on

the legislation for the Glasgow 2014 Commonwealth games arrangements? I ask not least because my understanding is that, as far as enforcement is concerned, the new bit is the power to enter and search—the other offences are substantially the same as for the 2014 games. I am just trying to understand how we arrived at this point.

Calum Steele: The short answer to your question is yes. The submission was made in the name of my predecessor. If my memory—which is not that bad—serves me right, it was made in 2007, so there was a much longer lead-in period for the legislation on the Commonwealth games than for the legislation that we are discussing today. Although my search of the SPF archive in the time that was available was able to identify only one submission that was made, it is clear that there were earlier submissions. The subsequent submission contains many of the substantive points that are contained in the SPF's written response in my name today, and it is clear that additional concerns were raised in relation to an earlier draft of the bill.

Annabelle Ewing: Presumably, we could find the submissions through the parliamentary archives—I would have thought that that would be a possible route. Basically, however, it seems that you are saying that the SPF had concerns about the 2014 arrangements that were similar to the ones that you express in your letter that the committee received yesterday.

We all want the championships to happen in Glasgow, so we must find solutions to the issues. Should we suggest that the provisions around the power to enter and search be redrafted in a way that meets the concerns that have been raised, or are you advocating that we do not have the trading standards officers involved in any aspect of this, assuming that we proceed to establish the criminal offences as a deterrent?

Calum Steele: That is a broad question, if I may be so bold—

Annabelle Ewing: Well, we have to find a solution. I am being practical.

Calum Steele: As I say in the SPF submission, we recognise the strength of large brands such as UEFA, FIFA, the Olympics and the Commonwealth games, but it seems a peculiar approach to consider that our legislation to protect day-to-day image rights is not sufficiently robust to do the job when the big boys come to town. If we have weaknesses, we should address them in a substantive way rather than in a way that involves periodically coming up with sticking plasters—if that is an appropriate descriptor—when large-scale events come around.

Speaking personally, and being mindful of the fact that we are short of time, I do not think that anyone out there—a police officer or a member of the public—objects to the principle of safeguarding the investment that certain brands and entities make in supporting large-scale sporting events. I believe that my members and members of society abhor ticket touting, and we are in general wholly supportive of any civil enforcement that makes it more unlikely than likely that that activity will be pursued.

With regard to what might be an appropriate response, I would like to take more time to consider that. However, freewheeling somewhat, I would say that it should not be beyond the wit of all of us to come up with a simple piece of legislation that states that overt advertising of the specific brands that will be contained in a schedule relative to those that are sponsoring the championships will be permitted to be displayed in certain areas. To some extent, the bill hints at that.

Thereafter, we get to the issue of enforcement. To me, anything that involves something that looks like police powers has to remain with police officers. So far, no one has mentioned section 17 powers in relation to the use of force, but I think that there is a potential vulnerability there.

Let us hypothesise that someone is carrying a branded cup of a type that does not bear the logo of the sponsor that is paying a lot of money to have a presence at the event, and the individual objects to surrendering that item to an enforcement officer. At the point of trying to remove it, force is used. That is entirely contradictory to the further provisions in the bill that say that force shall not be used against a person. We seem to be creating potential for lots of Mexican stand-offs, in effect, along the lines of someone saying, “Give me the cup”, the person saying, “No”, and the police being called and getting involved in trying to seize a cup. I am not sure that that is necessarily the kind of consequence that we are looking to create through the bill.

Annabelle Ewing: As you rightly say, the devil is in the detail. It would be helpful to have your further reflections on that, on behalf of the SPF. We have limited time in which to scrutinise the bill.

I have a few questions for David Henderson. I do not know whether you heard it, but we had a discussion with the bill team about the advertising restrictions, which would affect billboard space. I presume that, in advance of the restrictions, there would have to be a different set of arrangements for who could pay to advertise on large hoardings. What will happen in that regard, in practical terms? Do you have concerns that there might be undue restrictions on the freedom to advertise one’s business?

David Henderson: On the first point, we fully appreciate the time constraint for getting the legislation through. That picks up on the point that Calum Steele made about the run-up to the Glasgow Commonwealth Games Bill. We put in a submission on that in 2007 or 2008, and we had years of engagement in which to thrash out the final detail.

At the outset, we have no objections to what is in the bill with regard to ticket touting. That is fundamental to the licensing conditions with UEFA, and it has to be sorted.

The advertising issues—again, I will pick up on some points that Calum Steele made—include whether we need to have additional specific criminal offences for things that are already protected under the civil law, such as on the passing off of copyright or trademarks, and issues related to the Committee of Advertising Practice codes, which are enforced by the Advertising Standards Authority. We are not 100 per cent sure whether the additional layer of protection is necessary and we cannot say with certainty whether the bill needs to go that far.

It is key that we get additional guidance and have sight of the secondary legislation as soon as possible, and that we have on-going consultation with the industry. Advertising, particularly in out-of-home spaces, is run months in advance, so we need certainty now as to what we will be doing next summer, when the games will take place.

Annabelle Ewing: On the point about a criminal offence with regard to advertising restrictions, that was in place for the 2014 Commonwealth games, so it is not a new thing. It will be interesting to see the submission that the Advertising Standards Authority made on the Glasgow Commonwealth Games Bill.

We agree that the secondary legislation will be key. Do you have a notion at this stage about what exemptions from the offence your membership wants to see?

David Henderson: The main exemption that we would vigorously press for would be for newspapers and news publications or magazines. It comes down to the definition of the term “ambush marketing” and whether it takes a narrow or a broad approach. In our view, ambush marketing should be defined as marketing that targets people in the vicinity of an event location. There will be situations where there is advertising in a newspaper that someone happens to be reading in an event location, having purchased it elsewhere and brought it with them. We would like the scope of the provisions to be narrowed down so that there is a broad exception for all news media in that regard.

On wider exceptions, there are concerns about out-of-home advertising, including on transport. In particular, there are concerns that buses and taxis that contain advertisements are likely to come into the event zones. I apologise that I have not yet had a chance to look at the location map so I cannot say with certainty what the chances are of that happening, but that is an additional concern.

I am sure that more concerns will be raised as we consult our members but, given the tight time constraints, we have not yet had a chance to get full feedback. We will look for initial thoughts on what the exceptions should be, and then we hope to engage further in consultation with the Government to define the exceptions and ensure that they are fit for purpose from the industry's perspective.

The Convener: You mentioned newspapers. In the centre of Glasgow there are a number of free-standing vendors of local newspapers such as the *Herald* and the *Evening Times*—I used to work for that newspaper, so I declare an interest. Will those vendors be able to trade as normal?

10:30

David Henderson: We hope that they will be able to trade as normal. I suppose that it is a slightly different issue if someone commits ambush marketing by having a front-and-centre advert appear, as opposed to an advert for a non-affiliated brand that is inside a newspaper along with the content. Do you see what I mean? If no exemption is in place for news media, it will broaden the scope of what is prohibited under the provisions in the bill.

There are also potential concerns about advertorials. Content in the newspapers will refer to things that happen in the games. The question is whether advertising that appears alongside that content while not necessarily being associated with the editorial piece will be brought under the scope of the bill. We are looking for clarity on that with regard to exemptions.

The Convener: The committee will be looking for clarity on that as well.

Mike Rumbles: My question is for Calum Steele in particular. As I said to the previous panel, when I saw the bill, I thought that the real problem would be with enforcement, and the SPF's letter to the committee reflects that concern.

I want to look at section 17(4). In the letter, you state:

"We have grave reservations about both principle and practice on this issue. If it is envisaged that 17(4) could see persons other than police officers being relied upon to assist, this creates a potential for a free for all with random citizens (subjected to potentially zero validation) able to exercise powers of entry and search, and seizure and

destruction. The inherent risks in this approach ought to be self-evident."

That would be "If it is envisaged" by the bill team, the minister and the Government. It seemed to me on reading section 17(4) that that is exactly their intention. If they wanted only police officers to do those things, the bill would specify that enforcement officers may be assisted by police officers. As far as I can see, the intention in the bill is not to have police officers assisting enforcement officers, but to give legal protection to anybody who does so.

The example of a locksmith has been given. However, the provision in section 17(4) could mean that, if an enforcement officer says, "Hey, Mr Smith—I want you to help me to do this", Mr Smith will be given legal protection whatever he does. Is my interpretation correct?

Calum Steele: I fear that it might be. The issue of accountability and complaint is one of the underpinning concerns that the SPF often asks about. Where would the public validation or approval be of individuals who would be performing what are fairly intrusive tasks? Enforcement, whether it extends to search, seizure, destruction or whatever, involves intrusive acts. At present, the powers are vested in a very limited number of individuals and they are, in their own right, subject to rigorous scrutiny and validation by bodies that, in effect, act on behalf of the general public.

First, there is no indication in the bill that ministers would set any standards for those who are qualified as enforcement officers. Secondly, there is no indication of a minimum period of training or the types of person who may be barred from undertaking those activities. The "any other person" element further dilutes section 17(4). The person in question would potentially have available to them a specific pernicious power under section 19(2) such that a random person could turn up with a random piece of equipment and go into premises to assist the enforcement officer based on the officer's view that that was necessary. There would be no further test if the premises was not a domestic dwelling.

An obvious area that we would look at is electronic communications. Electronic equipment could be taken in by a random person, who may well have the skills and experience to undertake forensic examinations of computers, hard drives and devices. It is a quagmire.

Mike Rumbles: I raised with our previous witnesses, who were from the bill team, an area where I consider that there is some confusion. Section 19(1)(b), which covers the power to enter and search, says:

“An enforcement officer may, without warrant, enter any place and may search any place (and any vehicle, vessel, container or other thing at that place) ... which the officer reasonably believes has been or is being used in connection with a Championship offence.”

The past tense is used there. Section 21 then covers further restrictions on entering houses. Apart from the exception in relation to houses, which applies when, as section 21(1)(b) says,

“the sheriff grants a warrant for such an action”,

does the bill not give much greater powers to enforcement officers than it gives to police officers?

Calum Steele: It does indeed.

Mike Rumbles: Gosh. Thank you.

The Convener: Stuart McMillan has a supplementary question.

Stuart McMillan: Calum Steele’s earlier example of a cup seems to be covered by the exemption in section 11(3)(d), which relates to

“the display of an advertisement on an individual’s body, clothing or personal property”.

A coffee cup might be either a single-use cup or a plastic, multi-use one.

Calum Steele: Yes. However, the issue is that the decision comes down to the judgment of the enforcement officer, which is mentioned throughout the bill. I cannot remember whether it says “in the opinion of”—I think that it is slightly more qualified than that—but the decision, in effect, comes down to the sole judgment of the enforcement officer. They might well take the view that a cup of a certain size is fine but a bigger one is not, which would then raise the issue of removal of the supposedly offending item.

The bill says that force is not to be used against a person, but it is impossible to see how the removal of such an item without the individual’s consent could involve anything else. Police powers are vested in police officers and other individuals cannot be instructed to use them, but a police officer’s judgment and considered course of action might conflict with those of an enforcement officer. It seems that the bill gives the enforcement officer’s view greater significance than the police officer’s.

Stuart McMillan: Convener, I would like to raise a separate issue.

The Convener: You can raise it if you are brief.

Stuart McMillan: Pop-up shops are a lot more common than they were at the time of the Commonwealth games. I have noticed that they are not covered by the bill, but they might be an issue, especially in the zones that have been identified, such as at the approach to Hampden

and in Glasgow city centre. Do you have any recommendations on how to deal with them? Someone who opens such a shop might rent a space for just a week, so five different traders could operate from a single location in the time when the championships will take place.

Calum Steele: With the convener’s good grace, I will defer that question to those with more expertise than I have.

Stuart McMillan: Okay—thank you.

Alexander Stewart: Mr Steele, we have touched on your concerns about the enforcement issues, but we have not discussed the potential costs. The financial memorandum that accompanies the bill contains estimates of what Glasgow City Council might have to deal with in relation to enforcement, and it mentions that the cost could vary between £50,000 and £94,000 depending on which countries take part. Once those have been established, if the cost is at the higher end of what Glasgow City Council might be expected to manage, that would surely have implications for Police Scotland. What are your views on that?

Calum Steele: It is rare for a piece of legislation that is passed by the Parliament not to have a cost for the police service in some shape or form. It looks as though most of the costs under the bill will fall to the council. However, if we get to a stage where police officers are routinely called upon—or are expected to be called upon—to enforce the powers of search and entry or the use of force on individuals, the consequential cost of that would have to be understood.

In my experience, the forecasts of costs that accompany draft pieces of legislation tend to be grossly underestimated rather than anywhere close to reflective of reality. It will be difficult to get a fair assessment of the costs until such time as we see what the regulations look like. If Parliament determines that it does not want to specify any qualifying criteria, training standards or debarred elements for enforcement officers, that will have a beneficial impact on the costs to the police service in that they are likely to be very little. If the Parliament takes a contrary view, I imagine that the expectation will be that police officers will provide the training and awareness of how to make sure that the enforcement officers stay on the right side of the law.

It depends on how far Parliament wishes to go. For example, this is not explicitly stated in the SPF’s submission, but if Parliament wished to extend oversight of enforcement officers’ activities to the likes of the Police Investigations and Review Commissioner, further costs would be involved in that, should a member of the public wish to

complain about the manner in which they had been treated.

Alexander Stewart: You have rightly identified what could happen depending on the situation and circumstances. It is important that we are aware of that, because there could be implications that have not been foreseen, and Police Scotland would have to utilise and implement way to manage the situations. Does Police Scotland have scenarios for how that might work, perhaps based on what has happened in the past when events of this nature have come along?

Calum Steele: I am afraid that you would have to ask Police Scotland about that.

Alexander Stewart: Okay—thank you.

Donald Cameron: I share the concerns that you have expressed both in the letter and today about the quagmire that we could enter by creating the hybrid of an enforcement officer, who is more than a local authority officer but not quite a police officer. However, such officers have been used before. Given that there are resource issues and practical issues in using police officers, what safeguards could you propose that might assist in resolving the problem? You mentioned greater oversight of enforcement officers. Could anything else be done to bolster the safeguards?

Calum Steele: I wonder whether we may be swapping pay packets. It sounds as though we are being asked to find the legislative fix. I am not sure that the issue is particularly easy. It may be that the concerns about the principles will not be played out in practice, but we would be foolish to rush in and legislate in ignorance of the potential for risks and hazards.

My sense is that, through lots of early advertising about the restrictions that will be in place, most of the areas of conflict—particularly for personal conflict—will be minimised. However, we have to recognise that, although targeting means that advertising in Scotland, particularly in Glasgow, is likely to be seen by Scottish citizens, it is not guaranteed that there would be as much awareness of those limitations among people from other nations who have come to support their national teams.

With regard to public footprint and local authorities' expectations as to how events will be policed—if I may use the word loosely—we need to be mindful that, although we have recent experience of the Commonwealth games and, to a lesser extent, the Olympics, it is unclear to me that citizens of other countries would necessarily perceive that random people who call themselves enforcement officers would have powers to ask them to conform to particular directions.

A lot can be done with early advertising, particularly for the Scottish element of the event. Once the draw has been made and we know the make-up of the teams that will come to Scotland, it will be appropriate for the city council to engage with the Governments of the visiting nations to make sure that they are similarly aware. It may well be that some literature could accompany the tickets or flight information.

However, I cannot get away from the fact that anything that introduces the use of force by a non-police officer is inherently problematic and would create potential for conflict. Although the measure is intended to take the need for time and effort away from police officers, it is difficult to see that it will do so.

10:45

The Convener: The tournament will start in June 2020. When does the advertising industry need all the regulations to be in place, to allow it to prepare?

David Henderson: In an ideal world, we would like the exemptions to be in the bill so that we have a heads-up now about what to expect and we can make preparations. From a macro point of view, it is not that difficult, but once we drill down, smaller businesses need to be aware of the restrictions that will be in place, and communication might be more of an issue there.

As a network of trade associations, we have great links with the breadth of the industry, but we need time to get the message out in adequate time for people to have appropriate advertising in place. If the exemptions are not in the bill, we will need to know what they are as soon as possible in the new year.

The Convener: Have you put in writing the exemptions that you would like to be in place?

David Henderson: Not yet, but we can provide that as supplementary evidence to the committee.

The Convener: It would be really helpful if you could provide that as soon as possible, given the timescales that are involved.

I want to go back to ticket touting. It is clear from our earlier exchanges with Scottish Government officials and the bill's policy memorandum that the law on touting in Scotland is not adequate, and that view is backed up by the Association of Tartan Army Clubs, which has submitted written evidence. It says that, although touting is

“not common place at matches involving the Scottish national team”,

it is a big problem. Scotland is, I think, one of four or five of the 12 countries that will be hosting games that have been asked to introduce

temporary legislation. That shows that ticket touting is a problem that we might need to tackle through wider legislation in future.

Mr Steele, you said that you have a problem with the bill in relation to the enforcement of touting legislation, because it relates not just to Scotland but to overseas and online touting. Will you expand on that? If we were to introduce legislation at some point to deal with what is clearly understood to be a problem, would the police service be able to deal with that?

Calum Steele: The concern is not about the practice, but about enforceability. Whether someone is touting outside a stadium or from a bedroom in the Ukraine, the net effect is that somebody somewhere is paying over the odds for a ticket and someone else is being deprived of the opportunity to get one at face value. The nature of online crime means that tackling it is resource intensive and the return is minimal. Putting provisions on touting in the bill is laudable, but I add a health warning that we should not necessarily expect miracles to be performed, either by enforcement officers or by the Police Service of Scotland, in bringing to heel ticket touts that operate online.

The Convener: Right. Does the Police Service of Scotland have the capacity to deal with such online crime?

Calum Steele: That is my favourite type of question, convener. [*Laughter.*] I am sure that you had no sooner asked it than you realised that my answer was going to be “No, we don’t.” It is true of the police service in many areas that we could always do more if we had more.

I think that it is highly unlikely that ticket touting, regardless of its pernicious effect on events and on individuals who lose out, would be considered a high-priority crime for the police service to investigate.

The Convener: Okay. In your letter, you raise concerns about the effect that the section of the bill that deals with trading might have on charities. Earlier this morning, I asked the bill team about the young people in Glasgow who are buskers. It is quite a lively scene, and I mentioned Emeli Sandé’s current television programme that is showcasing their talents. From an enforcement point of view, we certainly do not want to criminalise charities or young people with guitars. How do you see that panning out on the ground? How can we avoid criminalising them?

Calum Steele: There is that element, which I will return to shortly. However, we must not lose sight of the fact that the nature of charitable giving has changed significantly over the past number of years. For example, it is not unusual for benefactors to bequeath tickets for events such as

cup finals as part of charitable fundraising for a completely unrelated entity. That would appear to be touting, in that it seeks to make a profit for the charity, albeit not for material gain for an individual. That has to be looked at and understood. It would be peculiar if a generous individual was to offer two tickets to, say, a UEFA championship match in Glasgow in order to support a local hospice, and they were bought by an individual in support of the hospice only for a question to be raised about whether the profit that was made amounted to a ticketing offence.

In addition, we need to consider types of charitable giving that take place, particularly around football, that are generally welcomed. For example, there are lots of drives to gather supplies for food banks, and they are very much club led. I appreciate that there is a world of difference between individual football clubs and national sporting teams, but in general, football fans are becoming increasingly generous in their support of charitable activities.

My concern and, I think, the SPF’s concern is that it would look bad for UEFA, Scotland as a nation, the police service and enforcement officers if we were seen to be taking away—and destroying, potentially—items that had been bequeathed for the purpose of charitable giving. That is probably one of those unintended elements that could become a feature of the proposed legislation if it was not subject to the helpful scrutiny that the committee is providing.

Stuart McMillan: On the point about buskers, when the Commonwealth games were held in Glasgow, were you aware of any youths—particularly kids from the age of eight to 14 or 15—who turned up and started to play their instruments to make some pocket money? Do you know how they were dealt with? With such a big event taking place next year, young people in particular will want to take part and have that opportunity, and I would not want them to be criminalised or treated with a heavy hand. I do not imagine that they will be, but I hope that they will be dealt with sensitivity, with no possibility of negative treatment.

Calum Steele: If there is to be more detailed evidence before stage 2, which I suggest will be required, I will be able to address the question about the Commonwealth games. I did not ask about it specifically before I came here today. We also cannot ignore the enterprising abilities of young people in providing vehicle security during football matches—that seems to be a fairly common activity in and around Glasgow.

In general, it would be unfortunate if we were to seek to create barriers between instruments of the state and those who are trying to take advantage of an opportunity. Let us be honest: someone

raising a couple of hundred pounds by playing the bagpipes badly is not going to break UEFA. [Laughter.]

Stuart McMillan: When there is an international match at Hampden, there are plenty of young kids in the streets doing a bit of piping just because they want to take part, and that will also be the case next year.

Calum Steele: Indeed. It would seem peculiar for a country that is as proud of its cultural heritage as Scotland is to seek to put any limitation on that. However, that is my personal view rather than the view of my organisation.

The Convener: Thank you. Do members have any other questions?

Mike Rumbles: I go back to a question that I asked the previous panel. In section 2, which criminalises ticket touting, subsection (4) says:

“The touting offence does not apply in relation to acts done by UEFA.”

The bill bans ticket touting—the selling of tickets above their face value—but not ticket touting by UEFA. Does that cause any concern?

Calum Steele: I might request to take the fifth amendment on that question. I think that that would be the expression. [Laughter.]

Mike Rumbles: Okay.

The Convener: Perhaps that is a question for UEFA to answer when it appears before the committee.

Mike Rumbles: Indeed.

The Convener: I thank both witnesses for coming to give evidence to the committee today.

10:55

Meeting continued in private until 11:07.

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