

UEFA European Championship (Scotland) Bill

[As Amended at Stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the UEFA European Championship (Scotland) Bill as amended at Stage 2 ("the Bill"). Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

Overview of the Bill

4. The Bill addresses the requirements of the Union of European Football Associations ("UEFA") in order for Glasgow to co-host its European Championship in 2020. It provides the Scottish Ministers and Glasgow City Council with the powers necessary to fulfil these requirements, which relate to commercial rights protection. Glasgow is the sole council area to which the Bill applies.

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5. The main measures of the Bill will:

- prohibit the unauthorised sale of Championship tickets in excess of face value or with a view to making a profit;
- prohibit unauthorised street trading within an event zone when the zone is in operation;
- prohibit unauthorised advertising within an event zone when the zone is in operation;
- create criminal offences for ticket touting, and for unauthorised street trading and advertising. In relation to ticket touting, which will be triable summarily only, the maximum penalty on conviction will be a fine not exceeding level 5 on the standard scale (currently £5,000). In relation to unauthorised street trading and advertising, the maximum penalties will be a fine not exceeding £20,000 on summary conviction, or an unlimited fine on conviction on indictment;
- provide for the designation of enforcement officers empowered to enforce the advertising, street trading and ticket touting offences, and make it a criminal offence to obstruct them in their duties, with penalties on summary conviction of a fine not exceeding level 5 on the standard scale;
- provide that Glasgow City Council must publish guidance on the advertising and trading restrictions, and that Glasgow City Council must work with affected street traders to help them find alternative trading arrangements; and
- automatically repeal the Act from the statute book on 31 December 2020.

6. The Bill is structured in 37 sections under seven italic headings. Commentary on the effect of individual sections follows below.

Commentary on sections

Introductory

Section 1: Meaning of key terms

7. This introductory section sets out the meaning of some key terms in the Bill, including the “event zones” to which the prohibitions in the Bill on

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trading and advertising will apply. These zones will be defined and set out in regulations made by the Scottish Ministers.

Ticket touting

Section 2: Ban on ticket touting

8. This section makes it an offence to tout Championship tickets (the “touting offence”). A Championship ticket is defined in section 1(1) as any ticket, card, electronic device or other thing which entitles an individual to attend an event held as part of the Championship.

9. Subsection (2) sets out what is meant by touting a Championship ticket. A person touts a Championship ticket if that person does any of the acts mentioned in subsection (3) in connection with the selling of a Championship ticket for more than its face value or with a view to making a profit. Note that it is the person disposing of the ticket who must be aiming to make a profit from it, even if the act which constitutes the offence is carried out by someone else. For example, an advertiser may commit an offence by advertising the sale of tickets by a person where that person is making a profit from the ticket sales. Whether or not the advertiser makes a profit from selling advertising space to the ticket seller is irrelevant. Subsection (7) makes this clear.

10. Subsection (3) lists various activities relating to selling or trading tickets or otherwise dealing in ticket sales. These include selling or offering to sell a Championship ticket, exposing a Championship ticket for sale or advertising such a ticket, making a ticket available for sale by another person, or giving away a ticket where that is conditional upon the payment of a booking fee or other charge or the acquisition of some other goods or services. These are all acts that may constitute a touting offence under subsection (2).

11. Subsection (4) gives UEFA the power to sell or deal with tickets in ways which would otherwise be considered touting, provided they do not do so for more than the ticket’s face value.

12. The Bill cannot make touting activity an offence in other jurisdictions but subsection (5) ensures that persons who engage in touting in places outwith Scotland (e.g. by using computer systems located in another country for internet sales) will commit an offence under Scots law.

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13. Subsection (6) makes it clear that a booking fee or other charge is counted as part of the amount paid for a Championship ticket for the purposes of determining whether or not a touting offence has been committed (i.e. in determining whether a sale is for an amount above face value). Similarly, the value of anything acquired along with the ticket will count towards the amount paid for the ticket (for example, if a small item is sold at an inflated price and the buyer gets a free ticket with the item then that sale and the price paid could be treated as a sale of a Championship ticket for that price). Finally, if a ticket is exchanged rather than sold for money the value of the thing exchanged may be counted as the price paid for the ticket.

Section 2A: Exception for charity auctions

14. This section provides an exception from the touting offence where a Championship ticket is sold in an auction either by a charity directly, or by another person who gives the proceeds of the sale to a charity. Such sales may therefore take place for a price that is in excess of the face value of the ticket, or for more than the charity or other person who sells the ticket acquired it for.

15. Subsections (2) and (3) set out which organisations are deemed to be charities for the purposes of the exception. These are bodies registered in the Scottish Charity Register; or bodies which are registered in England and Wales, Northern Ireland, or an EU member state, provided that they are managed outwith Scotland, and that they are registered in their country's charity register (where one exists) and / or have a purpose which would be considered a charitable purpose in Scotland, as set out in the Charities and Trustee Investments (Scotland) Act 2005. In the rest of the UK, the appropriate registers would be the register maintained by the Charity Commission for England and Wales under the Charities Act 2011 or the register maintained by the Charity Commission for Northern Ireland under the Charities Act (Northern Ireland) 2008.

Section 3: Exception for certain advertisers etc.

14.16. This section provides an exception for advertisers from committing a touting offence if the sale of the ticket would be for above the face value of the ticket or with a view to making a profit but the advertiser does not and could not reasonably be expected to know that fact. If, for example, a newspaper advert for Championship tickets displayed a sale

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price that was obviously in vast excess of the normal face value of tickets to comparable sporting events, the publication that carried that advert could not argue that it could not reasonably have known that the sales were for above face value. In which case the advertising publication would be committing a touting offence.

Section 4: Provision of electronic facilities

15.17. This section allows the Scottish Ministers to make regulations to determine circumstances in which provision of the internet or other electronic media may or may not constitute a touting offence. For instance, mere conduit, caching, and hosting constituted exceptions to an equivalent ticket touting offence in the Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (Exceptions for Use of Internet etc.) (Scotland) Regulations 2012 (2012/323).

Street trading etc.

Section 5: Ban on outdoor trading within event zones

16.18. This section makes it an offence to trade within an event zone at particular times during the period of the European Championship in 2020 (the “trading offence”). Indoor trading (i.e. trading in a building) is not covered by the offence. The Scottish Ministers are given a power to make further provision about trading within event zones which can be used to set out further exceptions to the offence. The offence does not apply to any trading by UEFA although the trading regulations may require it to comply with prescribed conditions.

Section 6: Trading activities, places and prohibited times

17.19. This section provides a definition of trading. An illustrative (but not exhaustive) list of activities which will be treated as trading is then set out in subsection (2). This section also allows the trading regulations to define what activities will be treated as trading; to designate areas within the event zones in which the trading offence set out in section 5 would not apply; to prescribe what alternative arrangements are to be offered to existing street traders, as defined in subsection (5); and to define “prohibited times” when the trading offence will apply (which will fall within the Championship period as defined in section 1).

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Section 7: Trading permitted in prescribed circumstances

18.20. This section allows the trading regulations to determine circumstances in which trading which would otherwise constitute a trading offence would be permitted. This could be by reference to the person who is trading, the nature or purpose of the trading or the application of any profits. For example, the regulations could exempt certain news vendors, milk deliveries, or charitable sales from being required to seek authorisation reflecting the fact that certain trading activities do not require a street trading licence under other enactments.

Section 8: Existing trading licences

19.21. This section makes it clear that holding a trading licence, whether granted before or after this section comes into force, is not a defence against a trading offence under the Bill.

Section 9: Alternative arrangements where existing trading banned during Championship

20.22. This section places a duty on Glasgow City Council to offer alternative trading arrangements to existing licensed street traders and market operators when the trading offence applies (i.e. at a “prohibited time” as defined by the trading regulations).

Section 10: Guidance and information about trading

21.23. This section requires Glasgow City Council to issue guidance about trading in event zones. It also allows for the trading regulations to require specified persons to inform others of the likely effect of the ban on outdoor trading within event zones (section 5) and of the trading regulations.

Advertising

Section 11: Ban on advertising within event zones

22.24. This section makes it an offence to advertise within an event zone at particular times during the period of the Euro 2020 Championship (the “advertising offence”). The Scottish Ministers are given a duty to make further provision in regulations about advertising in event zones, including by setting out exceptions to the offence, examples of which are given in subsection (3).

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23.25. This list of examples includes advertising to commemorate events or publicise political campaigns, and advertising to which the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984/467 do not apply (because, for instance, it forms part of the fabric of a building). However, these exceptions are subject to the provision in subsection (4) that nothing in the advertising regulations can allow anyone to knowingly participate in ambush marketing.

24.26. Subsection (5) provides that the offence also does not apply to advertising by UEFA, although the advertising regulations may require it to comply with prescribed conditions.

Section 12: Advertising activities, places and prohibited times

25.27. This section provides a definition of activities that will be treated as advertising. It must be a communication to the public or a section of the public for the purpose of promoting an item, service, trade, business or other concern. An illustrative (but not exhaustive) list of activities which will be treated as advertising if done for that purpose is then set out in subsection (2).

26.28. Subsection (3) allows the advertising regulations to define further activities which will be treated as advertising. It also allows those regulations to designate areas within the event zones in which the advertising offence set out in section 11 would not apply, and to define “prohibited times” for the purposes of the advertising offence. Such prohibited times will fall within the Championship period as defined in section 1.

Section 13: Advertising permitted in prescribed circumstances

27.29. This section allows the advertising regulations to determine circumstances in which advertising which would otherwise constitute an advertising offence would be permitted. This could be by reference to the person who is advertising, the nature or purpose of the advertising, or the circumstances of its display.

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Section 14: Existing advertising licences

28.30. This section makes it clear that holding an advertising licence, whether granted before or after this section comes into force, is not a defence against an advertising offence under the Bill.

Section 15: Guidance and information about advertising

29.31. This section requires Glasgow City Council to issue guidance about advertising within event zones. It also allows for the advertising regulations to require specified persons to inform others of the likely effect of the ban on advertising in event zones (section 11) and of the advertising regulations.

Enforcement

Section 16: Enforcement officers

30.32. This section provides a definition of “enforcement officers” who are individuals designated as such by Glasgow City Council.

31.33. Subsection (2) restricts the power of designation so that only three categories of individual may be designated as an enforcement officer by Glasgow City Council for the purposes of the Bill: inspectors of weights and measures (commonly known as trading standards officers); or other individuals who are authorised by a local authority in Scotland to enforce the provisions of section 92 of the Trade Marks Act 1994 (which is an existing offence concerning the unauthorised use of trade marks); or other individuals employed by a local authority in Scotland and whom Glasgow City Council deems sufficiently experienced in the kind of enforcement action empowered by the Bill. meet criteria specified in regulations may be designated. Designation of an inspector of weights and measures may only be made with the consent of Glasgow City Council.

Section 17: General enforcement powers

32.34. This section sets out the general range of powers that this Bill confers on enforcement officers. Subsection (1) allows enforcement officers to take such steps as they consider appropriate necessary for the purpose of preventing or ending the commission of a Championship offence (defined simply as an offence under this Bill) or in connection with proceedings, or anticipated proceedings, in respect of a Championship offence.

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33.35. Subsection (2) specifies steps that are included within this general range which include seizing, concealing or destroying anything which the officer believes to be an infringing article. This power is subject to restrictions set out in section 18.

34.36. Subsection (3) defines an “infringing article”. This could be an article used in connection with the commission of a Championship offence or receptacle used as a container for such an article, for example a box containing goods being sold by an unauthorised street trader.

37. Subsection (4) enables an enforcement officer to be assisted by another person as may be reasonably required necessary for the purpose of taking action under this section. A third party of this kind may only act under the direction of the enforcement officer.

38. Subsection (5) provides that before requesting third party assistance, an enforcement officer must first notify Police Scotland.

35.39. Subsection (6) clarifies that the powers set out in this section are subject to the restrictions set out in sections 18, 20, 21 and 23.

Section 18: Restrictions on general enforcement powers

36.40. Subsection (1) sets out restrictions on the power of enforcement officers to seize infringing articles. They can only do so for the purpose of ending the commission of a Championship offence, preventing the future commission of such an offence, enabling the article to be used in proceedings for such an offence (as evidence), or to enable the article to be forfeited in accordance with Part 2 of the Proceeds of Crime (Scotland) Act 1995 (which makes provision for property which has been used in crime to be forfeited).

37.41. Subsection (2) requires a seized article to be returned when retention of it is no longer justified for the purposes mentioned in subsection (1); however, this requirement does not apply to perishable articles which no longer have any commercial value (subsection (3)).

38.42. By virtue of subsection (4) an article may be concealed by an enforcement officer for the purpose of ending the commission of an advertising offence or for preventing the further commission of such an

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offence. Concealment must cease when no longer required for either of these purposes (subsection (5)).

39.43. Under subsection (6) an infringing article may be destroyed only if it is appropriate to do so to end or prevent the further commission of an advertising offence and seizure or concealment would not be a reasonable course of action in the circumstances. Destruction is, therefore, only available as a measure of last resort.

Section 19: Power to enter and search

44. Subsection (1) enables an enforcement officer to, without warrant – but only with the permission of the occupier, or of another person with the legal authority to give such permission, for instance an owner or tenant of the property – to enter and search a place (and any vehicle, vessel, container or other thing at that place) where the officer reasonably believes that a Championship offence has been or is being committed or which the officer reasonably believes has been or is being used in connection with the commission of a Championship offence.

40.45. Subsection (1A) clarifies the scope of subsection (1), setting out that it does not give an enforcement officer the power to search an individual, or to access data which is stored electronically (for instance, on a smartphone or laptop).

46. Subsection (2) allows an enforcement officer, when entering a place under subsection (1), to take with them any other person or equipment reasonably required necessary for the purposes of assisting the officer. This could, for example, be a locksmith in order to gain access. A third party of this kind may only act under the direction of the enforcement officer.

41.47. Subsection (2A) provides that before requesting third party assistance, an enforcement officer must first notify Police Scotland.

48. Subsection (3) requires an enforcement officer who enters a place using powers conferred by this section to take reasonable steps to leave the place at least as effectively secured against unauthorised entry as the officer found it.

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42.49. Subsection (4) clarifies that the powers set out in this section are subject to the restrictions set out in sections 20, 21 and 23.

Section 20: Use of reasonable force

43.50. Unless the owner or occupier of a place that an enforcement officer requires to enter consents to such entry, some measure of force will generally be required in order to effect entry (subsection (A1)). Subsection (1) allows empowers a police constable to use reasonable force, or to authorise an enforcement officer or a third party assisting an officer to use, or authorise the use of, reasonable force, when taking enforcement action under section 17 (general enforcement powers) or 19 (entry and search). Force may be used or authorised in this way, however, only where the police constable accompanies the enforcement officer is accompanied by a police constable and if either the use of force has been previously authorised by warrant issued by a sheriff or the police constable reasonably believes that there is a real risk that the delay caused by seeking such a warrant would defeat or prejudice the purpose of taking action. This power could, for example, be used to authorise a locksmith to use reasonable force to gain entry to a place. In addition, tThe enforcement officer cannot, however, use or authorise the use of reasonable force against an individual (subsection (2)).

44.51. Subsection (3) provides that the sheriff may grant a warrant only if satisfied that the use of reasonable force is necessary for the purpose of taking enforcement action.

45.52. By virtue of subsection (4) a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the date specified by the sheriff.

Section 21: Further restrictions on entering houses

46.53. This section places further restrictions on the powers of enforcement officers when the place they wish to enter is a house or can only be entered through a house. Under subsection (1) they can only enter such a place if permitted to do so by someone residing there or if granted a warrant by a sheriff.

47.54. Subsection (2) provides that an enforcement officer may only enter a house at a reasonable time and if accompanied by a police

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constable. This restriction applies where the occupier gives permission for entry but not where a warrant has been granted.

48.55. Subsections (3) and (4) set out the conditions of which a sheriff must be satisfied before issuing a warrant to enter a house. It requires the enforcement officer to demonstrate to the sheriff that the officer has reasonable grounds for taking action under section 17 or 19 and that the officer has been refused entry, that such a refusal is reasonably expected (and, in certain circumstances, that the occupants have been notified), that the house is unoccupied, that the occupier is temporarily absent, that the case is one of urgency, or that notifying the resident of the officer's intentions would defeat the object of the proposed action.

49.56. Subsection (5) provides that a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the day specified by the sheriff.

Section 22: Power to obtain information

50.57. This section allows an enforcement officer to require any person to provide such information as the officer considers appropriate in connection with a Championship offence or conduct which the officer reasonably suspects constitutes a Championship offence. This could be used to gain access to records or receipts. The exception to this requirement is that persons may refuse to provide information if they would be able to refuse to provide that information in or for the purpose of court proceedings. An individual would, for example, not be required to self-incriminate.

Section 23: Requirement to produce authority

51.58. This section provides that while an enforcement officer is taking enforcement action or exercising the power to obtain information under section 22 that officer must produce evidence of that officer's identity and of their authority to act, if requested to do so.

Section 24: Test purchases

52.59. This section allows an enforcement officer to make or authorise another person to make a test purchase to discover whether the Bill is being complied with without committing a Championship offence.

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Section 25: Compensation and recovery of costs

53.60. This section allows a person whose property is damaged as a result of any action taken by enforcement officers exercising their powers under section 17 or 19 to obtain compensation from Glasgow City Council, although this does not apply if that person has committed a Championship offence. It also allows such a person to obtain compensation from Glasgow City Council if a constable accompanying an enforcement officer damages their property as a result of anything done under section 17 or 19. However, if the damage is caused by a constable who is not accompanying an enforcement officer, it is the Scottish Police Authority that is liable to pay compensation.

54.61. Subsection (3) allows Ministers to make regulations making provision about: claiming compensation, determining the compensation due, and determining which court, tribunal or other body would determine any disputed compensation.

55.62. Subsection (4) allows Glasgow City Council to recover the cost of enforcement from the person who committed the Championship offence.

Section 26: Obstructing an enforcement officer

56.63. This section makes it an offence intentionally to prevent or obstruct an enforcement officer from doing anything which the officer may be authorised or entitled to do by virtue of the Bill, or without reasonable cause to fail to provide an enforcement officer or a constable with information requested under section 22.

Section 27: Police powers

57.64. This section allows a constable to do anything an enforcement officer may do under sections 17 to 24. For example, this would allow a constable to seize, conceal or destroy unauthorised advertising within an event zone.

58.65. Subsection (2) extends the restrictions imposed on enforcement officers by sections 18, 20, 21 and 23 to constables. The restrictions only apply to the extent that they do not conflict with a constable's powers under any other enactment or rule of law. Subsection (3) makes it clear that a constable does not require to be accompanied by another constable when using reasonable force or when entering a house.

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Section 28: Action under sections 17 to 24: procedure

59.66. This section allows the Scottish Ministers to make regulations specifying further procedures which an enforcement officer or constable must follow when doing anything under sections 17 to 24.

Offences

Section 29: Penalties

60.67. This section sets out the penalties associated with each of the Championship offences. The level of penalties, apart from that associated with the offence of obstructing an enforcement officer, replicate those for similar offences in the Glasgow Commonwealth Games Act 2008.

61.68. Subsection (1) makes a person convicted of a ticket touting or obstruction offence liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

62.69. Subsection (2) makes a person convicted of a trading offence or an advertising offence liable on conviction on indictment to an unlimited fine or on summary conviction to a fine not exceeding £20,000.

Section 30: Individual culpability where offending by an organisation

63.70. By virtue of subsections (1) and (2) of this section, where an offence is committed under the Bill by a company, partnership or other body, and is proved to have been committed with the consent or the connivance of a “relevant individual” or an individual acting as such, or because of any neglect by the “relevant individual”, that individual, as well as the body corporate, partnership or other unincorporated association, will be guilty of the offence and liable to punishment.

64.71. Subsection (3) defines a “responsible individual” in relation to a company as a director, manager, secretary or other similar officer (i.e. with managerial responsibility for the body under company law), or a member (where the affairs of the body are managed by its members). In relation to a limited liability partnership, it is a member; in relation to other kinds of partnership, a partner; and in relation to any other body or association, it is a person who is concerned with the management or control of that body or association.

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Final provisions

Section 31: Regulation-making powers

65.72. This section makes provision about Ministers' powers to make regulations under the Bill.

66.73. Subsection (1) provides that each power to make regulations in the Bill may be used to make different provision for different purposes and includes power to make any incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

67.74. Subsection (2) provides that the trading regulations, advertising regulations and regulations under section 4 (on provision of electronic facilities) are subject to the affirmative parliamentary procedure.

68.75. Subsection (3) provides that regulations under the following sections are subject to the negative parliamentary procedure: under section 1(1) defining the scope of the event zones; under section 16(2)(b) on criteria for designating enforcement officers; under section 25(3) on compensation, and under section 28 on further due process for officers and constables taking enforcement action.

Section 32: Regulation-making powers: consultation and relevant considerations

69.76. This section requires the Scottish Ministers, before making the first trading and advertising regulations, to consult the Local Organising Committee and any other persons who the Scottish Ministers consider appropriate. Subsection (3) clarifies that such consultation may take place prior to the Bill being passed or this section coming into force.

Section 33: Interpretation

70.77. This section provides definitions, or refers to the relevant provisions containing the definitions, for all the defined terms used throughout the Bill.

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Section 34: Commencement

71.78. This section sets out when provisions of the Bill, once enacted, will come into force. The following “framework” provisions will come into force on the day after Royal Assent: sections 31 and 32 (on regulation-making powers); section 33 (on interpretation); section 34 (commencement); section 35 (on repeal); and section 36 (on the short title).

79. The sections relating to ticket touting come into force on a day to be appointed by the Scottish Ministers in regulations.

72.80. The remainder of the Bill, once enacted, comes into force after a period of two months following the day after Royal Assent.

Section 35: Repeal

73.81. This section provides for the automatic repeal of the Bill, once enacted. It provides that the Bill ceases to have effect on 31 December 2020, by which time the Championship will be finished.

74.82. However it should be noted the operation of section 17 of the Interpretation and Legislative Reform Act (Scotland) Act 2010 means that this repeal would not affect a liability to a penalty for a Championship offence under the Bill which is committed before the repeal. Furthermore the Bill would continue to have effect for the purposes of investigating the offence, bringing proceedings for the offence, and imposing a penalty for the offence.

Section 36: Short title

75.83. This section provides that the Bill, once enacted, will be referred to as the UEFA European Championship (Scotland) Act 2020.

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