

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

UEFA European Championship (Scotland) Bill

SUBMISSION FROM LAW SOCIETY OF SCOTLAND

Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee and our Consumer Law sub-committee welcome the opportunity to consider and respond to the Scottish Parliament's Call for Evidence on the UEFA European Championship (Scotland) Bill¹(the Bill).

General Comments

The background to the Bill is the 60th anniversary of the European Football Championship in 2020 where twelve European cities are hosting the event. The only Scottish involvement is in Glasgow. That involvement of Scotland in so far as the Bill's provisions are concerned are relevant primarily during the period that the actual matches are to be played in Scotland. These matches are due to take place from 12 to 30 June 2020.

The Bill has a limited effect during the period of the championships in order to support the event though the Bill will itself be repealed on 31 December 2020.² Its provisions should no longer be relevant as that timescale should provide enough time for all potential offences arising to be fully investigated and prosecutions initiated, if and when appropriate.

The main objectives of the Bill³ include:

¹ https://www.parliament.scot/S5_Bills/UEFA%20European%20Championship%20Bill/SPBill54S052019.pdf

² Section 35 of the Bill

³ Paragraph 8 of the Policy Memorandum

https://www.parliament.scot/S5_Bills/UEFA%20European%20Championship%20Bill/SPBill54PMS052019.pdf

- Prohibiting the unauthorised sale of championship tickets in excess of face value with a view to making a profit- in effect, this involves a prohibition against “ticket-touting”
- Prohibiting unauthorised street trading within the event zone when the event zone is in operation where regulations are to be made to set out the time periods once known
- Prohibiting unauthorised advertising within the event zones when the event zone is in operation

The Bill also creates relevant criminal offences for contraventions of the above as well as providing for enforcement officers who will enforce the measures outlined above. Trading Standards officers will carry out that enforcement. It will be important that they receive relevant training so that they can understand the effect of the provisions, the time limits in the legislation and the geographic restrictions that apply.

Glasgow City Council must publish guidance on the relevant advertising and trading restrictions as well as offering street traders affected by the restrictions alternative trading arrangements during the time when the offences will apply. There are apparently 113 licences for street traders who will be affected by these measures.⁴ Exactly what is being offered to the street traders is not known and we stress that effective communication with them about the management of their businesses is essential. This is a dialogue which seems to have started already.⁵

The committees have the following comments to put forward for consideration.

UEFA requirements

The Bill has been required, according to paragraph 9 of the Policy Memorandum,⁶ on account of UEFA’s commitments in relation to protection of commercial rights for event sponsors during the period of the championship and in prohibiting ticket touting. Given the acknowledged lack of time for any public consultation which paragraph 17 of the Policy Memorandum recognises, it would be useful to have included details as to any similar measures being required in England and Wales on account of their hosting of the championship or specific reference to the UEFA requirements. Alternatively, England and Wales may have adequate protections in place, but that would have been useful to include. Similarly, information from all the other EU countries who are also hosting these games would have provided some comparative information.

What is important though is that the measures in the Bill are commensurate, transparent and appropriate. They should seek to balance the economic interests for Scotland in

⁴ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/9/30/UEFA-European-Championship--Scotland--Bill---Stage-One>

⁵ Paragraphs 19 and 20 of the Bill

⁶ https://www.parliament.scot/S5_Bills/UEFA%20European%20Championship%20Bill/SPBill54PMS052019.pdf

hosting the championship and in complying with the general UEFA requirements and the interests of the individuals such as street traders who have licences to trade that will be affected albeit over a short period of time. They are the ones who may be most affected by the Bill as recognised above by the need to ensure continued consultation.

What would seem more appropriate would be to consider providing for general laws to prevent ticket touting rather than enact these in a piecemeal fashion as and when major events require?

Clarity of the Law

We support the introduction of the Bill by way of legislation to achieve the objectives as set out by UEFA. Though the Policy Memorandum focuses on the need for legislation, we welcome the Bill on account of its clarity of the law. The Bill allows for the prohibitions on ticket touting, unauthorised street trading and advertising to be clearly stated. That ensures that those affected are aware of the restrictions that apply over the relevant period and importantly, that any noncompliance with the Bill's provisions may result in prosecution and subsequent conviction.

Public safety- Ticket touting

What is relevant to note that this is not the first time that ticket touting has been criminalised.

The Commonwealth Games required similar measures regarding ticket touting which were enacted in the Glasgow Commonwealth Games Act 2008 (2008 Act).⁷ It is not known how successful these measures proved to be as there is no record of the number of reports to COPFS, prosecutions or convictions that took place under that 2008 Act. However, it may be that the 2008 Act's provisions ensured that those that may have been tempted to offend did not do so.

The measures in the Bill appear substantially like those in the 2008 Act except for the inclusion of electronic methods which recognises the increased move to online transactions and the use of private groups such as "What's App" to sell tickets since the Commonwealth Games in 2014. Traditionally, measures taken to prevent ticket touting by the police were concerned with individuals selling, or offering for sale, tickets outside football grounds. Now much of that trade is online. The customer base now is much wider as it can reach those in the UK and the wider world.

Exactly what may be required to prove (i) Scottish jurisdiction such as the connection (nexus) being in Scotland and (ii) the commission of such an offence electronically may be

⁷ <http://www.legislation.gov.uk/asp/2008/4/contents>

challenging. However, the actual creation of an offence by electronic means is in line with the objectives in preventing ticket touting on the street or elsewhere. Highlighting that this is required by UEFA would also be helpful.

It should be noted that the Bill does not stand alone as there are a raft of other common law and legislative provisions that can still apply to mount criminal prosecutions as outlined in paragraph 15 of the Bill's Policy Memorandum.

What the Policy Memorandum⁸ does not mention specifically are the public safety ramifications that arise as a result of potential ticket touting. There is a need to ensure that those who are not authorised to sell tickets to events do not do so as otherwise, the organisers of the event such as UEFA cannot regulate the sale of tickets. This compromises their commercial interests and their effective means to control the numbers attending the event. Unauthorised ticket sales permit those wanting to attend from being taken advantage of too when no tickets arrive through Internet sales. The Bill recognises that the criminal law should seek to prevent such conduct in the public interest.

The effect of ticket touting has already been seen in Scotland in 2004⁹ at the time of the UEFA cup final involving Celtic where a contravention by counterfeiting of tickets was caught under the trademarks legislation. This resulted in a major security operation mounted by the Scottish police in Spain to avoid potential violence and danger to public safety where fans without legitimate tickets travelled from Scotland to Spain. The Bill should help regulate this and prevent such contraventions.

The creation of offences replicates too the offences provisions in the 2008 Act. The intention is for such offences where they arise to be prosecuted by means of summary proceedings which seems to be appropriate as do the level of penalties.

Resale of tickets

From a consumer perspective, the resale of tickets may be just as great an issue as ticket touting. As far as the resales of tickets are concerned, it may be useful to ascertain if UEFA are intending to setup secondary ticket sale zones for any tickets which require to be sold on because those attending can no longer attend. That might avoid any unintentional contraventions of the Bill.

It should be appreciated too that the imposition of handling fees for the sale of tickets will render the face value of tickets higher than the original price where those wishing to sell might also seek to recoup. This may be relevant when considering the reference to the ticket's face value in section 2(2)(a) of the Bill and the commission of an offence.

⁸ https://www.parliament.scot/S5_Bills/UEFA%20European%20Championship%20Bill/SPBill54PMS052019.pdf

⁹ <http://news.bbc.co.uk/1/hi/scotland/3743525.stm>

Publicity

The need for making regulations is recognised in order to set out more detail on several of the Bill's provisions including street trading and advertising. Under section 32 of the Bill, there is a requirement for "the first" trading or "the first" advertising regulations to be made only following relevant consultation. Clarification as to why there is a reference to "the first" would be helpful. What happens if there are more sets of regulations to be made?

The consultation is welcomed as it should include those most directly affected by the Bill.

Some of the regulations can only be made using affirmative parliamentary proceedings which should provide that necessary transparency and opportunity if required for debate.

As well as undertaking that relevant consultation, it is essential to ensure that those who hold street licences that are affected are fully aware of all the regulations and their import with regard to their businesses, given that section 8 of the Bill specifically states that holding a licence is not a defence.

Publicity will be important to achieve widespread knowledge and to ensure best compliance with the Bill's provisions.

Under section 9 of the Bill, Glasgow City Council must offer alternative trading arrangements to those street traders who are affected. Exactly what requires to be proposed is unclear. But will it replicate what these street traders have at present? What powers would the street traders have to reject any proposals that are made may be useful as otherwise it is hard to reflect what their potential loss of business may be or disruption to their business and how to achieve that necessary compensation. This is not stated in the Bill and if more details could be provided once the Bill progresses, this may be advantageous to ensure that this level of detail is provided on how these provisions are going to work.

Consultation

Paragraph 62 of the Policy Memorandum refers to the consultation with Glasgow City Council as far as prosecution of any offences. One would envisage the need to include COPFS in such ongoing and future discussions. Exactly what the scale of any likely offending is not known.