



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Culture, Tourism, Europe and External Affairs Committee

**Thursday 28 November 2019**

**Session 5**



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**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE  
29<sup>th</sup> 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:**

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

Ben Macpherson (Minister for Europe, Migration and International Development)

**CLERK TO THE COMMITTEE**

Stephen Herbert

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Culture, Tourism, Europe and External Affairs Committee

Thursday 28 November 2019

[The Convener opened the meeting at 09:08]

### UEFA European Championship (Scotland) Bill: Stage 2

**The Convener (Joan McAlpine):** Good morning, and welcome to the 29th meeting in 2019 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off mobile phones, and I ask members who use electronic devices to access committee papers to ensure that those devices are turned to silent. We have received apologies from Kenneth Gibson; Emma Harper is attending the meeting as a substitute for him.

The first item on the agenda is stage 2 consideration of the UEFA European Championship (Scotland) Bill. I welcome the Minister for Europe, Migration and International Development, Ben Macpherson, who is accompanied by Lucy Carmichael, the bill team leader; Kirsten Simonnet-Lefevre, principal legal officer; and Gavin Sellar, parliamentary counsel.

#### Section 1—Meaning of key terms

*Section 1 agreed to.*

#### Section 2—Ban on ticket touting

**The Convener:** Amendment 1, in the name of Mike Rumbles, is grouped with amendments 35, 5, 6 and 32. I point out that if amendment 1 is agreed to, I will not be able to call amendments 35 and 5 because of pre-emption. Furthermore, if amendment 35 is agreed to, I will not be able to call amendment 5 because of pre-emption.

**Mike Rumbles (North East Scotland) (LD):** I will speak to all the amendments in the group. Essentially, amendments 1, 35 and 5 are three different ways of approaching the issue of preventing ticket touting. I think that everybody agrees that we want to end the business of ticket touting; the issue is what the best way of achieving that is.

I lodged amendment 1 to remove from the bill the exemption for UEFA. Amendment 1 seeks to leave out the provision whereby

“The touting offence does not apply ... to ... UEFA.”

Following discussions with the minister, which I found extremely constructive and helpful, I do not intend to press amendment 1 to a vote, but I urge members to accept amendment 35. Amendment 35 seeks to do something that the minister's amendment 5 would not do. Amendment 5 would retain the exemption for UEFA, whereas my amendment 35 is generic. It seeks to leave out

“in relation to acts done by UEFA”

and to replace it with

“any act falling within subsection (3) done by the person responsible for operating the official sale platform for Championship tickets”.

We heard in evidence that UEFA has no intention of engaging in ticket touting. Therefore, it always seemed bizarre to me to exempt it from the ticket touting offence in the bill. That seemed daft. More important, it sent out the wrong message. With all these amendments, the minister and I are trying to achieve an agreed position that will make sure that UEFA will not be hurt by any of the ticket touting provisions, if I can put it that way.

**Annabelle Ewing (Cowdenbeath) (SNP):** Can you explain the key difference between your amendment 35 and the minister's amendment 5?

**Mike Rumbles:** The key difference relates to the naming of UEFA. I think that we all agree that, in the future, we want the minister to introduce a bill that will remove ticket touting. I hope that, when that bill is eventually introduced, it will not have any exemptions in it for named organisations. It is good practice in legislation to make sure that the law applies across the board to everybody, without exception. There should be no named exceptions. That is the key. This committee and the Parliament are in the business of producing good legislation. There is no side to what I am proposing; I am interested only in making sure that we produce good legislation that applies across the board. If I may say so, it is an easy option to give UEFA an opt-out. Let us get it right.

Without going into detail, I can tell the committee that the wording of amendment 35 has been checked by officials, and they are happy that it takes a generic approach to the whole issue. That is the real difference between my amendment 35 and the Government's amendment 5, which takes an individual approach.

I hope that the minister will accept amendment 35. He will listen to what other members have to say, of course, but I hope that he will not move amendment 5. Amendment 35 is superior, but not because it is in my name; in fact, I would have preferred it if the minister had lodged it. I thought that we had an agreement on the matter, but it turns out that there was a misunderstanding.

I move amendment 1.

**The Convener:** I invite the minister to speak to amendment 5 and the other amendments in the group.

**The Minister for Europe, Migration and International Development (Ben Macpherson):** Thank you, convener, and good morning, everyone. I start by thanking Mike Rumbles for that explanation of his amendments, for the constructive discussions we have had since stage 1 and for proposing not to press amendment 1. I take this opportunity to thank members again for their scrutiny of the bill to date and for the recent discussions I have had with a number of members about the Scottish Government's proposed amendments. I know that everyone around the table supports the successful delivery of Euro 2020 in Glasgow. Following the draw for the UEFA nations league play-offs, we know what Scotland has to do to reach the finals. Coverage of those games next March will, no doubt, increase the profile of, and heighten enthusiasm for, the championship.

09:15

As we get nearer the championship, I want to work with everyone to reach consensus on the bill, as far as possible, and the stage 2 amendments I have lodged address most of the committee's concerns. Where I have not been able to directly address a recommendation, I have been clear why. Of course, there were also recommendations in the stage 1 report that do not require amendment. For example, Claire Baker highlighted the need to ensure a more systematic review of how the legislation operates in practice than was the case for the Glasgow Commonwealth Act 2008. I agree and have committed to ensuring that we evaluate and learn from the bill.

Turning to this group of amendments, much of the discussion at stage 1 focused on the detrimental effect of ticket touting, which often results in people paying highly inflated prices for tickets that may not even be valid for entry. I am determined that that will not happen for Euro 2020 in Scotland, and I think the provisions in the bill that ban touting will help to protect commercial rights in this area. Most important, they will ensure that as many football fans as possible are able to attend matches during the championship. The provisions banning touting of championship tickets for profit have been broadly supported by Parliament and more generally. However, although the principles behind the provisions are supported, there is room for the detail to be improved, so I very much welcome the feedback from the committee at stage 1. My amendments 5 and 6 respond to that feedback.

Amendment 5 makes it clear that UEFA's exemption from ticket touting offences does not allow it to sell tickets above face value, which was a concern for some. I hope that that restriction allows us to reach a compromise in this area, making it clear that nobody, including UEFA, is permitted to sell a ticket above face value for commercial gain. UEFA has already provided public assurances that it will not sell tickets above face value and has confirmed that amendment 5 will not create any issues for its ticket sales for the event.

I understand that, in lodging amendment 35, Mike Rumbles is trying—in good faith—to avoid specifically singling out and naming UEFA for an exemption, for presentational reasons, as he has argued. However, the policy intent of the amendment is, in essence, the same as the current drafting of the bill, which ensures that the authorised seller of tickets can conduct initial sales and resales without being caught by the offence.

Since UEFA is responsible for authorising all primary and secondary ticket sales, the most straightforward and transparent drafting acknowledges that fact by setting out a clear exemption for UEFA by name, albeit with the restriction proposed in amendment 5, as I said. I can see that amendment 35 could be made to work, but if the committee were to support it I would want to do further analysis to make sure that that was the case—for example, in relation to hospitality packages, which are a potential issue that has been identified only in the past few days. My preference is therefore to avoid any doubt by sticking with the specific mention of UEFA in the bill.

For those reasons, I do not support making any further changes to section 2 beyond my amendment 5.

**Mike Rumbles:** The minister has just confirmed to the committee that there is no policy difference between amendments 35 and 5. The issue is simple: it is whether to specifically identify UEFA as an exemption or to draft legislation that applies to all, without mentioning UEFA. The advantage of amendment 35 is clear: there cannot be a misunderstanding or misconception that we are somehow advertising that we are making UEFA special.

Amendment 35 is generic, and, as the minister has just pointed out, there is no policy difference. I take on board what he said about hospitality packages. The time to address those, if there is an issue—although I cannot see it, I take the minister's word that there might be one—is at stage 3, which is what that stage is for. Stage 2 is for getting the principles of the legislation right. If any tweaking were needed at stage 3 in order to be absolutely certain that everyone was happy

with the bill, I would be supportive of that and would agree that it should be done, but we should really focus on the nature of the issue at stage 2.

**Ben Macpherson:** May I continue, convener?

**The Convener:** Of course.

**Ben Macpherson:** As I have stated, we think that it is more transparent and clearer to name UEFA, but amendment 35 also does not make it clear that the official platform cannot sell tickets above face value. That would be another problem were amendment 35 to be passed.

We have had a constructive debate on the issue, but my preference would be for the inclusion of amendment 5 and the rejection of amendment 35. I thank Mr Rumbles for engaging constructively.

Amendment 6 responds to the committee's stage 1 report and creates an exemption from the touting offence when a ticket is auctioned by a charity or the proceeds of its sale are given to one. Given that the touting offence in the bill will apply within and outwith Scotland, the amendment exempts charities that are

"registered in the Scottish Charity Register"

and charities established under the law of the rest of the United Kingdom or the European Union that are

"managed or controlled wholly or mainly outwith Scotland".

The exemption applies to such non-Scottish charities, provided that they are

"registered in a register corresponding to the Scottish Charity Register"

and that

"the body's purposes consist only of one or more of the charitable purposes set out in section 7(2) of the Charities and Trustee Investments (Scotland) Act 2005."

The amendment is designed to ensure that the bill includes a protection that any charity that might benefit from an auction has a purpose that would be considered to be charitable in Scotland.

The Scottish Government has informed the Office of the Scottish Charity Regulator about amendment 6, and we understand that it will be important to raise awareness of the exemption—if the amendment is supported today—among charities and others who may hold an auction, such as through OSCR's newsletter for charities.

The committee also recommended that local organising committee members should raise awareness of the need for organisations that hold a charity auction to contact UEFA to ensure that the ticket is valid for entry to the match. I can confirm that the Scottish Government and its partners will seek to do that when raising

awareness of the bill more generally, and they will also look for specific opportunities related to charities.

Amendment 32 adds provision for Scottish Government ministers to specify, through regulations, the date on which

"Sections 2, 3 and 4 come into force".

Those are the sections that relate to ticket touting. The purpose of the amendment is to ensure that the offence can come into force as soon as possible, in order to deter ticket touting in advance of the championship beginning and to allow action to be taken if that occurs.

I ask the committee to support amendments 5, 6 and 32. I thank Mike Rumbles for saying that he will not press amendment 1, and I ask him to reconsider moving amendment 35. If he does, I ask the committee to reject it.

**Donald Cameron (Highlands and Islands) (Con):** I return to the issue of amendment 35, in the name of Mike Rumbles, versus amendment 5, in the minister's name. I support what Mike Rumbles says. The issue is quite a curious one. It was I who asked the UEFA witnesses, when they gave evidence, whether UEFA ever sold a ticket above face value, and they said that UEFA did not do that.

Mike Rumbles is right: his amendment 35 is a neat and simple way of changing the original provisions of the bill. It is important for the wording to be generic. I find it very strange to see an individual named organisation being exempted from a criminal offence, which should be of general applicability. I support what Mike Rumbles said in that regard.

In defence of his amendment 5, the minister said that it contains the wording

"amount exceeding the ticket's face value".

However, we already have a definition of touting in section 2(2), in which we learn that

"A person touts a Championship ticket if the person does any act falling within subsection (3) ... in relation to the sale, or proposed sale, of a Championship ticket for an amount exceeding the ticket's face value".

In my view, the minister's amendment 5 repeats a definition that we already have.

For those reasons, I support Mike Rumbles's amendment 35.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** Minister, you mentioned hospitality packages—an issue that arose recently. Can you provide some further information on why hospitality packages have become an issue?

**Ben Macpherson:** I had constructive engagement with Mike Rumbles on his

amendment 35. The issue around hospitality packages, which emerged in recent days, is that they are not sold through the official platform that UEFA uses, which would create an additional consideration at stage 3 if amendment 35 were to be passed at stage 2. That issue emerged through analysis of amendment 35 in preparation for today's meeting. My understanding is that UEFA has expressed the point to us in recent correspondence.

**Annabelle Ewing:** I return to Mr Rumbles's amendment 35 and pose to the minister the question that I posed to Mr Rumbles. I am a lawyer by trade, but I am struggling a wee bit here. From your perspective, minister, what is the key difference between your amendment 5 and Mike Rumbles's amendment 35? I thought I heard you say that, if the committee were to pass amendment 35, you would be keen to work on any drafting issues that presented a problem from a legal perspective. I am not sure whether I am traducing what you said, but I thought that that is what you said.

**Ben Macpherson:** On the latter point, if amendment 35 were to be passed by the committee today, I and the Scottish Government would, of course, work to ensure that the amendment was refined as may be necessary at stage 3.

As I stated, the preference for having amendment 5 instead of amendment 35 is based on the fact that removing UEFA as a named exemption would be purely presentational, whereas UEFA should be exempted because it is the organisation that will be the only seller of tickets. Mike Rumbles's amendment 35 would exempt UEFA not in name but as the authorised seller. In the interests of clarity of drafting and clarity of law, it is better to stick with amendment 5, because it names UEFA and seeks to address some of the points that the committee raised at stage 1. It will amend the bill to an extent, but it will continue the naming of UEFA as the authorised seller of tickets, both initially and through its official resale platform.

09:30

**Claire Baker (Mid Scotland and Fife) (Lab):** I agree with Annabelle Ewing that the two amendments would basically do the same thing. What is the desire not to name UEFA about? Are there concerns about setting a precedent for future legislation? The bill is a time-limited piece of legislation called the UEFA European Championship (Scotland) Bill, so it is obviously about UEFA. I ask Mike Rumbles to address that question.

I understand the answer that the minister gave to Annabelle Ewing, but would there be any problems with not mentioning UEFA, further to what he has already said?

**Mike Rumbles:** Can I—

**The Convener:** Hold on. I ask members to speak through the chair. Have you finished, Claire?

**Claire Baker:** Yes.

**The Convener:** Do any other members wish to contribute to the debate before I ask Mike Rumbles to sum up? It seems not. I call Mike Rumbles.

**Mike Rumbles:** It has been a very interesting debate. It is really refreshing to be able to debate something that is not political, given that we are in the world of politics.

My concern—and the committee's job—is purely to make sure that we get the bill right. The minister's job was to produce the bill, and our job as a committee is to scrutinise it. That is what we are doing, and I think that we are doing a good job. One purpose of our scrutinising the bill is for us to lodge amendments to improve it, and, in my humble view, my amendment 35 would do that. Unfortunately, amendment 5 would not actually change the bill. Technically, it is an amendment, but it would leave the bill the same, because the bill identifies UEFA—the minister is quite clear about that.

There are two issues, which are linked. The first is about naming an organisation when we produce law that is to apply across the board, to everybody. As a matter of principle, we should not exempt organisations in that way when we know that we are going to come back to the subject. The minister said that the Scottish Government wants to return to the issue and ban ticket touting across the board. If we start by passing a law that exempts people from ticket touting, that is not, in my view, good law.

Secondly, the minister mentioned the aim of ensuring that there is "clarity of law". I could not agree more with him about the importance of that. I am trying to make it absolutely clear that the law will apply to everybody.

**Ben Macpherson:** Will you take an intervention on that point?

**The Convener:** Will members speak through the chair, please?

**Ben Macpherson:** Convener, may I—

**The Convener:** Yes, you may intervene, minister.



**Ben Macpherson:** I want to clarify a point that I made in my opening remarks. The most straightforward and transparent way of drafting the provision is to acknowledge that UEFA is responsible for authorising all primary and secondary ticket sales, and setting out a clear exemption for UEFA by name—albeit with the restriction that is proposed in amendment 5—is the most transparent way to do that.

Amendment 5 presents a partial exemption for UEFA that is carved out from the “selling for profit” part of the touting offence, but the wording of the amendment makes it clear that UEFA may not sell tickets at above face value. That is the differentiation from the original drafting that amendment 5 will deliver if it is agreed to.

**Mike Rumbles:** Thank you for that clarification. I repeat the point—in case it is not clear to members—that amendment 5 would actually do nothing. Although it is technically an amendment, it would not change the bill; the bill mentions UEFA and so does the amendment. It would change only a few words in the bill.

To answer Claire Baker’s point, the bill is time limited—that is absolutely right. What would be the effect of accepting amendment 5 and not accepting amendment 35? There would be no real effect. Amendment 35 is about presentation—it is about saying to the world that we want to ban ticket touting and we are not going to make exceptions. As Donald Cameron said, there are people who sell tickets but who—as was made clear in evidence to the committee—have no intention at all of ticket touting, so why name them?

We would make good law by accepting amendment 35, which we could take forward in a bill to be introduced—I hope—by the minister in the future. I am sure that he would use the same words if we passed amendment 35 today.

**The Convener:** Mr Rumbles, do you intend to press amendment 1?

**Mike Rumbles:** I do not intend to press amendment 1.

*Amendment 1, by agreement, withdrawn.*

*Amendment 35 moved—[Mike Rumbles].*

**The Convener:** I remind members that, if amendment 35 is agreed to, I cannot call amendment 5, on the ground of pre-emption. The question is, that amendment 35 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Cameron, Donald (Highlands and Islands) (Con)  
Greer, Ross (West Scotland) (Green)  
Rumbles, Mike (North East Scotland) (LD)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

#### **Against**

Baker, Claire (Mid Scotland and Fife) (Lab)  
Ewing, Annabelle (Cowdenbeath) (SNP)  
Harper, Emma (South Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McMillan, Stuart (Greenock and Inverclyde) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 35 disagreed to.*

*Amendment 5 moved—[Ben Macpherson].*

**The Convener:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Baker, Claire (Mid Scotland and Fife) (Lab)  
Ewing, Annabelle (Cowdenbeath) (SNP)  
Harper, Emma (South Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McMillan, Stuart (Greenock and Inverclyde) (SNP)

#### **Against**

Cameron, Donald (Highlands and Islands) (Con)  
Rumbles, Mike (North East Scotland) (LD)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

#### **Abstentions**

Greer, Ross (West Scotland) (Green)

**The Convener:** The result of the division is: For 5, Against 3, Abstentions 1.

*Amendment 5 agreed to.*

*Section 2, as amended, agreed to.*

#### **After section 2**

*Amendment 6 moved—[Ben Macpherson]—and agreed to.*

*Sections 3 to 5 agreed to.*

#### **Section 6—Trading activities, places and prohibited times**

**The Convener:** Amendment 7, in the name of the minister, is grouped with amendments 8, 9 and 31.

**Ben Macpherson:** The amendments in this group make minor changes to improve consistency and clarity in the definitions of the terms “trading licence” and “existing street trader” in the bill. Amendment 7 would make it absolutely clear that the definition of “existing street trader” at section 6(5) is intended to apply throughout the bill and not only to section 6(3)(c).

Amendment 8 replaces the current reference in the definition of “existing street trader” at section 6(5)(a) to specific types of licence with a reference to the defined term “trading licence”. It also clarifies that Police Scotland, in addition to Glasgow City Council, can issue a trading licence. Licences issued by Police Scotland under the Pedlars Act 1871 are already included in the definition of “trading licence” in section 33, and amendment 8 will make those sections consistent.

Amendment 9 makes it clearer that “existing street traders” are only those who have a licence to trade in an event zone specified by the bill.

Amendment 31 adds

“a market operator’s licence granted by Glasgow City Council under section 40 of the Civic Government (Scotland) Act 1982”

to the definition of “trading licence” at section 33. That type of licence is required for things such as car boot sales. The amendment is intended to make the definition of “trading licence” at section 33 consistent with the reference to “a trading licence” that will apply in section 6, once it is modified by amendment 8, and to ensure that all affected street traders benefit from the protections that the bill offers.

I ask members to support these amendments.

I move amendment 7.

**The Convener:** I invite other members to contribute, if they wish to do so. I remind members that this is not a question-and-answer session but a debate at stage 2. If members make points, those points can be addressed when I bring in the minister to wind up.

As no members wish to contribute, I invite the minister to wind up.

**Ben Macpherson:** I encourage members to support the amendments in this group, which make minor changes to improve the consistency and clarity of the definitions of “trading licence” and “existing street trader” in the bill.

*Amendment 7 agreed to.*

*Amendments 8 and 9 moved—[Ben Macpherson]—and agreed to.*

*Section 6, as amended, agreed to.*

*Sections 7 to 10 agreed to.*

### **Section 11—Ban on advertising within event zones**

*Amendment 2 not moved.*

*Sections 11 to 15 agreed to.*

### **Section 16—Enforcement officers**

**The Convener:** Amendment 10, in the name of the minister, is grouped with amendment 29.

**Ben Macpherson:** During stage 1, concerns were raised about who could be an enforcement officer for the purposes of the bill, and it was thought that the scope might be defined too broadly in regulations, which would mean that people with insufficient skills, experience or training could be appointed. There were also concerns about the use of private companies to provide enforcement officers, although that was never the Government’s intention.

In its stage 1 report, the committee welcomed the Government’s offer to lodge amendments at stage 2 to make that position explicit in the bill. I am glad to be able to do so through this group of amendments.

Amendment 10 removes from section 16(2)(b) the power for the Scottish ministers to specify in regulations “other criteria” that need to be met in order for an individual to be designated as an enforcement officer by Glasgow City Council. It replaces the power with a set of alternative criteria, which will provide that someone can be designated as an enforcement officer if they are

“authorised by a local authority to enforce the provisions of section 92 of the Trade Marks Act 1994”,

which relates to an existing offence concerning unauthorised use of trademarks, or if they are employed by a local authority and are

“sufficiently experienced in exercising functions of the kind conferred on enforcement officers by”

the bill. The judgment about whether someone has specific experience would be made by Glasgow City Council.

The existing alternative criterion at section 16(2)(a), which provides that someone can be designated as an enforcement officer if they are an

“inspector of weights and measures”

will remain unchanged.

Amendment 10 will ensure that all enforcement officers are employed by a local authority and that they have the appropriate experience to enable them to carry out the role.

09:45

As a consequence of amendment 10, all the criteria that would allow someone to be appointed as an enforcement officer are now included in the bill. That means that the provision in section 31(3), which states that the previous regulation-making power is to be

“subject to the negative procedure”,

is no longer required, and amendment 29 will remove it.

We are working closely with Glasgow City Council and other partners to ensure that we develop legislation that is workable on the ground. These amendments have been shared with the council, which has confirmed that they provide sufficient scope for the appointment of appropriately qualified staff to enforce the bill's provisions.

Neil Coltart, who is group manager for trading standards at the council, provided assurances to the committee at stage 1 that training on the bill's provisions will be provided to enforcement officers in order to ensure that they are able to carry out their role effectively and within the boundaries set in law.

I ask members to support the amendments.

I move amendment 10.

*Amendment 10 agreed to.*

*Section 16, as amended, agreed to.*

### **Section 17—General enforcement powers**

**The Convener:** Amendment 11, in the name of the minister, is grouped with amendments 14, 15, 3, 4, 16, 19, 25 and 26.

**Ben Macpherson:** This group includes a number of amendments to the sections of the bill that deal with general enforcement powers and the powers of entry and search. The enforcement powers and associated safeguards in that area of the bill generally achieve the policy intent, but I acknowledge that those provisions could be clarified or improved in some areas. The amendments that I have lodged attempt to do that.

From my discussions with a number of committee members over the past few days, I believe that these amendments, and those in groups 6 and 7, provide reassurance that the provisions in the bill on enforcement will be proportionate, clear and include appropriate safeguards.

Amendment 11 strengthens the test for an enforcement officer to take action using the general powers under section 17 by changing it from "appropriate" to "necessary". That applies

"for the purpose of preventing or ending the commission of ... a 'Championship offence' ... or ... in connection with proceedings, or anticipated proceedings, in respect of a Championship offence."

The strengthening of that test mirrors the strengthening of the test for when an enforcement officer may seek assistance from another person, which is proposed in an amendment in group 6.

Amendment 15 adds a new provision to section 19 to make it explicit that search and entry by an enforcement officer may take place without a warrant

"Where permission is given by the occupier (or another person with the authority to do so)",

such as an owner or tenant. That was previously implicit in the bill's provisions.

An equivalent amendment in group 7 makes it explicit that the use of reasonable force under section 20 can take place only when no permission is granted.

Amendment 16 makes it clear that an enforcement officer's powers of entry and search under section 19 do not extend to authorising that officer to

"search an individual, or ... access data stored electronically",

such as on a smartphone or a laptop. That was already the policy intent, but Ross Greer raised concerns about those matters. I hope that the amendment provides the reassurances that he was seeking with regard to those important limits on an enforcement officer's powers.

Amendment 26 adds to section 23 a requirement for an enforcement officer to provide evidence of their identity, in addition to evidence of their authority, when they are requested to do so. That is intended to ensure that businesses and members of the public understand by whom enforcement action is being taken and the powers under which officers are acting. That type of provision can be found in other legislation, including the Consumer Rights Act 2015, and it is expected that many enforcement officers will be used to enforcing that act's provisions.

Amendments 14, 19 and 25 provide additional signposting across the enforcement sections of the bill to make it clearer that those sections should be read together to fully understand the scope of and restrictions on those powers.

I understand that amendments 3 and 4, in the name of Mike Rumbles, seek to address some points that were raised during stage 1 about the scope of enforcement officers' powers. They do that by limiting the powers of entry and search to when an enforcement offence is being committed.

Since the stage 1 debate, I have met Mike Rumbles to discuss the bill and, following that conversation and the amendments that I have lodged, I hope that he no longer intends to move his amendments, as my amendments in this group and the other groups that deal with enforcement powers address his concerns. I thank Mike Rumbles for his engagement on these matters, and I would welcome confirmation from him that he does not intend to move amendments 3 and 4.

In conclusion, the range of amendments on enforcement powers in this group and others that we will discuss later in today's proceedings address the points that committee members raised during stage 1. I believe that, in doing so, they improve the substance and clarity of the enforcement provisions.

I move amendment 11.

**Mike Rumbles:** I thank the minister for his constructive engagement on the issue. It was evident during the minister's stage 1 evidence session that the bill as drafted gave greater power to enforcement officers than those that the police have, because the police cannot enter premises without a warrant, unless they believe that a crime is about to be or is being committed.

When we asked the minister at stage 1 about the issue, he said that the sections had to be read together, because the provisions were about entering a property only when permission had been given. However, it did not actually say that in the bill. I am therefore delighted that the minister has lodged amendment 15, which is absolutely clear that, when permission is given by the occupier, the enforcement officer may enter. The minister's amendments remove the need for my amendments, so I do not intend to move them.

**Ross Greer (West Scotland) (Green):** I thank the minister for his engagement on this section. None of us was in any doubt about the need for enforcement officers to have appropriate powers, and we certainly realised that the legislation was not intended to empower enforcement officers to search individuals or search data that is stored on a laptop, for example. Nonetheless, to have that stated explicitly in the bill gives a valuable civil liberties safeguard. As Mr Rumbles said, making sure that the principle of consent when searches are being conducted is in the bill is an important safeguard that clarifies the substantial sections that follow.

**Ben Macpherson:** I thank Mike Rumbles for confirming that he will not move amendments 3 and 4, and I thank him and Ross Greer for their remarks.

I urge members to support my amendments in this group. They make it clearer that the provisions on enforcement should be read together, they strengthen the test for enforcement action to be taken and they ensure that enforcement officers need to provide evidence of their identity when exercising their powers.

*Amendment 11 agreed to.*

**The Convener:** Amendment 12, in the name of the minister, is grouped with amendments 13, 33, 17, 18 and 34.

**Ben Macpherson:** During stage 1, there was a significant amount of discussion about the powers of an enforcement officer to call on the assistance of another person as provided for under sections 17(4) and 19(2) of the bill.

The types of person that might be called on for assistance include locksmiths, tow truck businesses and hydraulic crane operators. Those people have specialist skills or equipment that might be required to take action when the restrictions in the bill are breached.

The Government does not expect that enforcement officers would call on assistance from other people as a matter of routine, but it is important that enforcement officers have those powers if they are to take prompt, effective and safe enforcement action.

The powers are already available to enforcement officers under other legislation, and they were available to them at the 2014 Commonwealth games. However, I have listened to the concerns that have been raised about the powers being too wide ranging, and have lodged a package of amendments in this group and a later group to address those concerns.

I will address my four amendments in this group in turn.

Amendment 12 increases the legal threshold for when an enforcement officer can be assisted by any other person under section 17, so that the test changes from being "reasonably required" to being one of necessity. My aim is to provide the committee with further assurance that an enforcement officer will carefully consider whether assistance from another person is absolutely necessary prior to them requesting such assistance.

We heard from Glasgow City Council that enforcement officers would already be expected to do that and to discuss it with more senior officers in the council if required. However, in strengthening the test in the bill, I want to ensure that it is clear that that should happen in all cases.

Amendment 17 makes an equivalent change to section 19.

Amendment 13 makes it clear that a person assisting an enforcement officer under section 17 must act under the direction of the enforcement officer at all times, making the control explicit rather than implicit. That should reassure the committee that someone who assists an enforcement officer is not afforded the same powers as an enforcement officer.

Amendment 18 makes an equivalent change to section 19.

From discussions that I have had with Ross Greer following stage 1, I understand that he has the same aim as I do in seeking to ensure that appropriate safeguards are in place so that effective and proportionate enforcement action will be taken under the bill generally.

Amendments 33 and 34, in Ross Greer's name, take a different approach to respond to considerations about an enforcement officer being assisted by another person by requiring that the police are notified before any requests for such assistance take place under section 17 or section 19. My view is that a requirement to notify the police, whether that be done face to face or by phone, email or another method, has scope to add confusion with regard to who is responsible for taking the decision about seeking assistance, and it would be likely to add unnecessary delay to the process.

From a practical perspective, a notification would not be expected to have an effect on the outcome of the process to decide whether to seek assistance from another person; it would simply be used to record that a request for assistance had been made. As such, that is best left as an operational process for Glasgow City Council and Police Scotland.

For those reasons, I do not support the two amendments lodged by Ross Greer. In contrast, the four amendments that I have lodged in this group, along with amendment 21 in group 7, provide that a police constable must authorise the use of reasonable force by a third party, strengthen the objective assessment that has to be made before assistance can be sought and make clear who is responsible for directing the person providing the assistance. They will have a practical impact on how the enforcement powers are used, and I urge the committee members to support them.

I move amendment 12.

**Ross Greer:** I thank the minister for his constructive engagement. His amendments will provide the necessary strengthening of the provisions. The amendment that refers specifically to a change to a test of necessity is helpful, and the clarity that is given that third parties will be operating under the direction of an enforcement officer and will not be afforded the same powers as enforcement officers is also useful.

However, the minister's amendments and mine are not mutually exclusive; my amendments are quite complementary. Amendments 33 and 34 do exactly the same thing, so I will refer to them together. They address the concerns that the committee raised in the conclusion following section 45 of our stage 1 report

10:00

Amendments 33 and 34 ensure that the police will be aware when a third party is brought in. The intent is to give them the opportunity to be present or to raise concerns if they believe that that is necessary. At present, the requirement is for the police to be present only if force is being used, but there are other scenarios that they may feel warrant their presence. For example, the use of large vehicles in the scenarios that Glasgow City Council gave us in stage 1 evidence where a cherry picker may be used. One can imagine a scenario in which one might be used in proximity to a crowded area with a significant number of people, and the police may feel that their presence would be warranted.

The intent of this amendment is only to give the police notice. The operational decisions about what they do, are up to them. Such decisions should be for the police and should not be in primary legislation. These amendments are proportionate. They would not stop the enforcement officers from going about their duties and they should not delay them for more than the few seconds that it would take to make a phone call. The amendments do not prescribe a system for notification because, again, that should be an operational decision between the enforcement officers and their employer, Glasgow City Council, and the police.

The amendments strike the right balance between appropriate oversight and the opportunity for the police to be involved, as they believe appropriate, and the ability of enforcement officers to complete their tasks in a timely manner. The amendments are exactly in line with the committee's unanimous conclusion at stage 1, and I hope that members will feel able to support them.

**Mike Rumbles:** I will be supporting all these amendments, because they are complementary. I particularly like amendment 13, in the name of the minister, which makes it clear that the individual must

"act under the officer's direction at all times",

so that they are not given carte blanche or separate immunity. That is fine. They cannot act alone.

Ross Greer's amendments reiterate the unanimous position of the committee members. In our stage 1 report, we unanimously wanted to ensure that we took any problems away. During the stage 1 debate, the minister misunderstood the intention of the committee in our report. We did not envisage enforcement officers having to lodge a notification with Police Scotland. That was not our intention, which is that this would be an operational matter and that there would be good practice. Maybe it could be dealt with in briefings

with people, but we felt that it would be useful to put the need to notify the police about an offence in the bill. It would be a matter of good practice to inform the police on the ground that an offence was happening so that they could, if they wished, react to it. At the moment, they can just do it anyway. What is proposed would be helpful.

I have a plea: if the committee suddenly decides—remarkably—to change its mind on its unanimous decision and amendment 33 does not pass, would the minister consider looking at this issue again at stage 3?

**Stuart McMillan:** I am looking at amendments 13 and 33. In amendment 13, in the name of the minister, the words

“to act under the officer’s direction at all times”

suggest to me that it is doing what the committee was looking for in its stage 1 report. The police will be contacted. I genuinely think that amendment 13 is doing what we suggested.

**Alexander Stewart (Mid Scotland and Fife) (Con):** We have heard about the merits of this process already this morning, and the minister has made some valid points about that. I am also sympathetic to the points that Ross Greer makes with regard to amendments 33 and 34. The issue is about striking a balance and ensuring that the necessary transparency is in place. For those reasons, I would be happy to support amendments 33 and 34.

**Annabelle Ewing:** Paragraph 45 of the committee’s report says:

“whenever an enforcement officer seeks external expert assistance, the police should be notified in advance.”

Can the minister therefore clarify when he winds up—because it was not clear to me from his initial comments on the section—how he considers that the amendments in his name meet the spirit of what the committee recommended that he do?

**Claire Baker:** My question follows on from Annabelle Ewing’s question and relates to section 17. Amendment 13 refers to “the officer’s direction”. I assume that that means an enforcement officer, rather than a police officer. Is that correct?

I have some sympathy with what has been said about delay, but I am not convinced that what is proposed would cause delay. The requirement is for the police to be notified, not for approval to be given by the police. In the circumstances that have been referred to—the minister referred to a tow truck and Ross Greer referred to a cherry picker—you would expect a certain amount of disruption on the street, and it would seem reasonable for the police to be aware that that was about to take place. The minister talked about the need for

action to be prompt, effective and safe, and I think that it is probably sensible to notify the police of such things, so that they can do whatever is necessary to ensure that there is a safe environment. It would be helpful if the minister could discuss that when he winds up.

**Ross Greer:** In response to the interesting points that Stuart McMillan made about whether amendment 13 does essentially what I intend amendment 33 to do, I inform him that it does in part, but not entirely. I gave the example of an enforcement officer requiring the assistance of a cherry picker operator in proximity to a crowded area. Amendment 13 clarifies that anyone who is acting with the enforcement officer is acting under their direction. Of course, it does not clarify that the members of the public are acting under the direction of the enforcement officer. In that circumstance, if action involving large vehicles were to take place in a crowded area, the police could quite reasonably believe that the presence of police officers would be useful. My amendment is about ensuring that the police have the opportunity to make a decision about that, because they will have been made aware of the action. It does not require them to send police officers there, because that is an operational decision, but it ensures that they have the opportunity to do that. We should leave such issues as matters of judgment for police officers, who are trained to make such decisions.

**Ben Macpherson:** I thank all members for their comments. In response to the point that Claire Baker raised, I reiterate that amendments 13 and 18 are about clarifying and emphasising that any party that is used to assist an enforcement officer will be under the direction of an enforcement officer.

On Ross Greer’s amendments 33 and 34, I remain of the view that my amendments better address the concerns that were raised by the committee, because they create a consistent requirement for an objective test of necessity to be carried out by an enforcement officer on any occasion on which they are considering seeking assistance. My amendments also explicitly state the original policy intention that someone who is assisting an enforcement officer is under their direction.

I thank Ross Greer for his explanation of why he lodged amendments 33 and 34, and I thank other members for their comments on those amendments. However, I am not persuaded that they would improve the bill, and I believe that they could introduce delay in practice. I think that judgments about notification are best left as operational matters for Glasgow City Council and Police Scotland because, for example, the police will sometimes not need to know about the

assistance that is being undertaken by a third party under the direction of an enforcement officer. Depending on the form of notification that is made, someone in the police might follow up with an enforcement officer to question the decision, while other notifications may not be read until after the assistance has already taken place. That has the potential to create inconsistent treatment, which might be detrimental and would certainly not be beneficial.

**Claire Baker:** I appreciate that a range of different assistance might be required, and that some of it might be minor while some of it might be more significant. Do you have any examples from the Commonwealth games, given that we are discussing the same sort of legislation? Was it common for assistance to be required?

**Ben Macpherson:** Do you mean examples of where assistance was required?

**Claire Baker:** The legislation for the Commonwealth games was pretty much the same as the legislation that we are discussing today. During the Commonwealth games, was it common for enforcement officers to have to call in additional support, and do we have any feedback on whether police were required to be present or whether there was any large-scale disruption?

In your opening statement, you mentioned that there was little analysis done of how the legislation worked previously. Is it just that we do not have any understanding of how things would work in practice?

**Ben Macpherson:** I do not have to hand the number of incidents that there were, but I am aware of abseilers being used to remove something that infringed the advertising provisions in the 2014 legislation.

**Claire Baker:** That is a helpful example. Do you know whether the police were contacted about that or how arrangements worked on the ground?

**Ben Macpherson:** I cannot speak with authority on that right now. I would have to check that after the meeting.

There is another consideration around notification. What if police on the ground were not present or were otherwise engaged? That could lead to delay, or to the police being distracted from other safety and security matters that they might be dealing with.

For all the reasons that I have set out, I still think that amendments 33 and 34—

**Mike Rumbles:** If I may make a brief intervention, do you think that it would be useful for the police to know what is going on?

**Ben Macpherson:** I think that that would be a question for Police Scotland. My understanding is

that there is already dialogue between Glasgow City Council and Police Scotland on these matters. That process is already well formed and well understood by both parties.

In conclusion, for the reasons that I have stated, I ask the committee to reject amendment 33 and 34 and support amendments 12, 13, 17 and 18.

*Amendment 12 agreed to.*

*Amendment 13 moved—[Ben Macpherson]—and agreed to.*

10:15

*Amendment 33 moved—[Ross Greer].*

**The Convener:** The question is, that amendment 33 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)  
Cameron, Donald (Highlands and Islands) (Con)  
Greer, Ross (West Scotland) (Green)  
Rumbles, Mike (North East Scotland) (LD)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

Ewing, Annabelle (Cowdenbeath) (SNP)  
Harper, Emma (South Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McMillan, Stuart (Greenock and Inverclyde) (SNP)

**The Convener:** The result of the division is: For 5, Against 4, Abstentions 0.

*Amendment 33 agreed to.*

*Amendment 14 moved—[Ben Macpherson]—and agreed to.*

*Section 17, as amended, agreed to.*

*Section 18 agreed to.*

**Section 19—Power to enter and search**

*Amendment 15 moved—[Ben Macpherson]—and agreed to.*

*Amendments 3 and 4 not moved.*

*Amendments 16 to 18 moved—[Ben Macpherson]—and agreed to.*

*Amendment 34 moved—[Ross Greer].*

**The Convener:** The question is, that amendment 34 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)  
Cameron, Donald (Highlands and Islands) (Con)  
Greer, Ross (West Scotland) (Green)

Rumbles, Mike (North East Scotland) (LD)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

### Against

Ewing, Annabelle (Cowdenbeath) (SNP)  
Harper, Emma (South Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McMillan, Stuart (Greenock and Inverclyde) (SNP)

**The Convener:** The result of the division is: For 5, Against 4, Abstentions 0.

*Amendment 34 agreed to.*

*Amendment 19 moved—[Ben Macpherson]—and agreed to.*

*Section 19, as amended, agreed to.*

### Section 20—Use of reasonable force

**The Convener:** Amendment 20, in the name of the minister, is grouped with amendments 21 to 23.

**Ben Macpherson:** This group of amendments responds to the points that were raised during the stage 1 process about making explicit in the bill what the process is around consent and, where that is not granted, the use of reasonable force. I would particularly like to thank Ross Greer for the constructive conversation that we had last week on that and other matters. I have also taken the opportunity to further strengthen the safeguards on assistance by a third party where reasonable force is being used.

Amendment 20 makes explicit what was previously implicit in the bill, namely that the potential use of reasonable force would take place only for enforcement action under section 17 or 19 where permission is not granted by the person who is able to grant that permission. I have done that to respond to feedback from the committee during stage 1.

Before I move on to amendments 21, 22 and 23, I want to be clear that it is already the case that, where the use of reasonable force takes place, a police constable must always be present. That recognises the seriousness of using reasonable force, whether or not a warrant has been granted by a sheriff.

Amendment 21 removes the power in section 20(1) for an enforcement officer to use, or authorise the use of, reasonable force. It replaces and reframes that so that only a police constable, who is already required to be present where reasonable force is used, may authorise that use of reasonable force, both by an enforcement officer and by any person assisting an enforcement officer, such as a locksmith.

In addition to making clear the importance of the police constable's role, the amendment further strengthens the safeguards that are in place

where the use of a third party for enforcement action takes place. As I mentioned during our discussion of the previous group of amendments, in doing so, I have gone further than the Scottish Government had indicated that we would go in response to the committee's stage 1 report. Our response had already committed to strengthening the test for receiving assistance from a third party from one of reasonableness to one of necessity.

The amendments in group 6, combined with amendment 21, significantly strengthen the safeguards that are in place where a third party assists with enforcement action.

Amendment 22 makes a minor change to section 20(2)(a) to make it clear that the constable is to accompany the enforcement officer in cases where the use of reasonable force has been authorised by a sheriff through the granting of a warrant.

Amendment 23, similarly, is a minor change to section 20(2)(b) to make it clear that the constable is also to accompany the enforcement officer in cases where there is no warrant. In such cases, the bill further provides that the use of reasonable force is permitted only if that same constable on the ground is of the view that the potential delay that would be caused by seeking a warrant for the use of force would defeat or prejudice the purpose of taking enforcement action.

I urge members of the committee to support the amendments for the reasons that I have set out, and I move amendment 20.

**Mike Rumbles:** I think that this is a really good example of committee members and the minister working together to improve the legislation, because the things that we want to do should not be implicit in legislation; they should be explicit. The minister's amendments make the issue absolutely explicit in the bill by stating that the constable and not the enforcement officer is the person who may use force or authorise the use of force. I welcome that because, as I said, it shows the committee and the minister working together to achieve the right result.

**Ross Greer:** I thank the minister and his officials for working with us on this issue. Like Mr Rumbles, I think that this is an excellent example of the committee working collectively to improve the bill. Previously, there was a slightly odd position around the use of force being granted. For us to empower anyone to use force is a significant thing to do, and it should only be done sparingly. As drafted, the bill placed us in an odd position in which the use of force could be authorised in a situation in which a police officer was present, but it would not be the police officer who would authorise that use of force. Police officers are by far the most qualified individuals in that regard.



They are the individuals who we should trust in relation to such matters, and they are also the individuals who have the cleanest lines of accountability in relation to any judgments that they make. The amendments in this section, particularly amendment 21, provide useful clarity on where the authorisation for the use of force is coming from and state that, in those situations, that power rests with the police constable, who is the individual who has the most appropriate level of training and the most appropriate lines of accountability, which will be relevant in situations in which their decisions are questioned. Therefore, I welcome all the amendments in the group.

**Ben Macpherson:** I thank Mr Rumbles and Mr Greer for their comments and engagement.

I hope that I have made clear how seriously I take considerations around the use of reasonable force when taking action related to the offences contained in the bill. However I also want to be clear that it is important that the use of reasonable force is available to ensure that effective enforcement action can be taken and that it is not possible to easily circumvent the restrictions that the bill puts in place on trading, advertising and ticket touting.

If these amendments are accepted, the bill will clearly set out the safeguards that are in place when use of reasonable force is being considered and on where it then takes place. That includes recognition of the important role of the police constable in the process. For all those reasons and those mentioned throughout the debate on this group of amendments, I would urge committee members to support these amendments.

*Amendment 20 agreed to.*

*Amendments 21 to 23 moved—[Ben Macpherson]—and agreed to.*

*Section 20, as amended, agreed to.*

### **Section 21—Further restrictions on entering houses**

**The Convener:** Amendment 24, in the name of the minister, is grouped with amendments 27, 28 and 30. I invite the minister to move amendment 24 and speak to all the amendments in the group.

**Ben Macpherson:** This final group contains Government amendments that make minor and technical changes to the bill. Amendments 24 and 30 correct minor typographical errors. Amendments 27 and 28 change the cross-references to delegated powers in section 31 so that they refer to specific subsections in order to provide greater clarity and consistency. I ask members of the committee to support the amendments.

I move amendment 24.

*Amendment 24 agreed to.*

*Section 21, as amended, agreed to.*

### **Section 22—Power to obtain information**

*Amendment 25 moved—[Ben Macpherson]—and agreed to.*

*Section 22, as amended, agreed to.*

### **Section 23—Requirement to produce authority**

*Amendment 26 moved—[Ben Macpherson]—and agreed to.*

*Section 23, as amended, agreed to.*

*Sections 24 to 30 agreed to.*

### **Section 31—Regulation-making powers**

*Amendments 27 to 29 moved—[Ben Macpherson]—and agreed to.*

*Section 31, as amended, agreed to.*

### **Section 32—Regulation-making powers: consultation and relevant considerations**

*Amendment 30 moved—[Ben Macpherson]—and agreed to.*

*Section 32, as amended, agreed to.*

### **Section 33—Interpretation**

*Amendment 31 moved—[Ben Macpherson]—and agreed to.*

*Section 33, as amended, agreed to.*

### **Section 34—Commencement**

*Amendment 32 moved—[Ben Macpherson]—and agreed to.*

*Section 34, as amended, agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

Members should note that the bill will now be reprinted, as amended, and will be available online and in hard copy from 8.30 am on Monday. The Parliament has not yet determined when stage 3 proceedings will take place, but members can now lodge stage 3 amendments at any time with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

10:30

*Meeting continued in private until 10:37.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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