

UEFA European Championship (Scotland) Act 2020: Change to exception from the ticket touting offence for auctions of tickets where the proceeds are given to a charity

Action to ensure compliance with European Convention on Human Rights: Additional Material

UEFA Euro 2020 Legislation

1. Glasgow is one of 12 host cities for UEFA Euro 2020¹. The Championship will take place from 12 June to 12 July 2020. Hampden Park in Glasgow will host three group matches (on 15, 19 and 23 June) and one round of 16 match (on 30 June).
2. The Championship as a whole presents a significant economic opportunity for Scotland. It will provide another opportunity for Scotland to demonstrate to the world that Glasgow is a vibrant, cosmopolitan and dynamic city, building on the legacy of previous major events. The Scottish Government believes that the event will reinforce Scotland's and, in particular, Glasgow's reputation internationally as a major event and tourist destination.
3. It is not unusual for the organisers of major sporting events to require host cities to introduce specific legislative protection. The purpose of the UEFA European Championship (Scotland) Act 2020² (the 2020 Act) is to help ensure successful delivery of the Championship by meeting the commitments required by UEFA in relation to protection of commercial rights for event sponsors during the period of the event and by prohibiting ticket touting.
4. The main measures in the 2020 Act are:
 - prohibiting the unauthorised sale of Championship tickets in excess of face value or with a view to making a profit;
 - prohibiting unauthorised street trading within an event zone when the zone is in operation;
 - prohibiting unauthorised advertising within an event zone when the zone is in operation;
 - creating criminal offences for unauthorised ticket touting, street trading and advertising;
 - providing for the designation of enforcement officers to enforce the advertising, street trading and ticket touting offences, and making it a criminal offence to obstruct them in their duties; and
 - providing that Glasgow City Council must publish guidance on the advertising and trading restrictions, and that Glasgow City Council must offer affected street traders alternative trading arrangements during the times when the trading offence applies.
5. The Act will be repealed on 31 December 2020.

¹ <https://www.uefa.com/uefaeuro-2020/>

² <http://www.legislation.gov.uk/asp/2020/1/contents/enacted>

Exception from ticket touting offence for charity auctions of tickets

6. Demand for tickets for the Championship, both in Glasgow and in other host cities, is expected to exceed the number of tickets that will be available. Prohibiting the touting of match tickets is expected to act as deterrent to touts who would seek to profit (potentially significantly) from resale of tickets, providing a basis for both preventative and punitive action in the event of any breach.

7. Prohibiting ticket touting will protect UEFA's rights as the only authorised seller of tickets in the primary and secondary ticketing market, supporting fair access to tickets and helping to ensure public confidence in the event. The ticket touting offence applies within and outwith Scotland, and for match tickets at Hampden Park and the eleven other venues. The offence does not include face value re-sales of tickets, although such transfers are not permitted by UEFA's terms and conditions of sale.

8. The Scottish Government based the provisions on ticket touting in the 2020 Act on provisions in the Glasgow Commonwealth Games Act 2008.

9. The Policy Memorandum for the 2020 Act provides further background on the ticket touting offence.³

10. During Stage 1 consideration of the Bill by the Culture, Tourism, Europe and External Affairs Committee, the Scottish Police Federation raised concerns that tickets which were sold or auctioned for charitable purposes, at above face value, could be considered to be an offence. In light of this feedback the Scottish Government committed to creating an exception for auctions of tickets where the proceeds were given to charity. Such an exception was not in place for the 2014 Glasgow Commonwealth Games.

11. The Committee's Stage One Report⁴ said: "The Committee welcomes the Scottish Government's commitment to make an exception to the ticket touting offence for the charitable auction of tickets. The Committee recommends that the Local Organising Committee should publicise the measures put in place by UEFA to facilitate the sale or auction of tickets for charitable purposes."

12. The exception to the ticket touting offence for charity auctions was provided for through a stage 2 government amendment which was unanimously supported by the Culture, Tourism, Europe and External Affairs Committee. The Bill was passed unanimously by Parliament at stage 3 on 17 December 2019.

Changes contained in proposed draft remedial Order

13. Section 3 of the 2020 Act currently provides an exception from the ticket touting offence in the 2020 Act where a charity, or a person other than a charity auctions a match ticket and the proceeds are donated to a charity based in the UK or EU. The Scottish Government now believes that there is insufficient justification to limit the charities that the exception applies to in this way and so it does not comply with Article

³ https://www.parliament.scot/S5_Bills/UEFA%20European%20Championship%20Bill/SPBill54PMS052019.pdf

⁴ <https://digitalpublications.parliament.scot/Committees/Report/CTEEA/2019/11/1/UEFA-European-Championship--Scotland--Bill--Stage-One-Report-1>

14 of the European Convention on Human Rights (the prohibition of discrimination) read with Article 1 of the First Protocol to the Convention (protection of property).

14. Section 3 currently provides that for a body outwith Scotland to be considered a charity, it must be registered in a register corresponding to the Scottish Charity Register or 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 2005 Act).

15. The proposed draft remedial Order amends the territories outwith Scotland where a charity can be based to include all territories, rather than the rest of the UK and EU only. It also amends the definition of a charity to require a body outwith Scotland to be registered in a register corresponding to the Scottish Charity Register. Where there is no such register, then the body's purposes must consist of one or more of the charitable purposes set out in section 7(2) of the 2005 Act and the body provides a public benefit, requiring these bodies to have charitable purposes and provide for public benefit in ways that mirror those standards as provided for in Scots law.

16. These changes will ensure that there are equivalent criteria for Scottish and non-Scottish charities alike in relation to the exception from the ticket touting offence.

17. The proposed draft remedial Order and Statement of Reasons are included as **Annex A**.

Alternative policy options

18. Alternative policy options that were considered include:

Not commencing the exception for charity auctions

19. Not commencing section 3 of the 2020 Act would allow the rest of the ticket touting provisions to be implemented as planned. However, it would mean that anyone auctioning a match ticket and giving the proceeds to charity would be committing a criminal offence. The will of the Scottish Parliament was clear that there should be an exception in these circumstances and so not commencing section 3 is not considered a suitable solution to resolve the incompatibility.

Limiting the exception to charities based in territories with UEFA member associations

20. This would still place some limits on the exception but would more clearly tie it to territories with a direct interest in the Championship. UEFA does not limit its ticket sales in this way (the first phase of sales in 2019 was open worldwide) and this policy would still create arbitrary results based on origin of the charity that the Scottish Government does not think are objectively justifiable. For example, someone living in Scotland who auctions a ticket would be permitted to do this without committing a criminal offence if they gave the proceeds to a Swedish charity which carried out projects in Australia, but not if they gave the proceeds to an Australian charity that was operating in Australia. Therefore, the Scottish Government does not believe that there is a strong enough argument to justify this policy being compliant with the Convention.

Limiting the exception to people who are resident in UEFA member territories auctioning tickets but allow donations to charities based in any territory

21. Again, this would tie the exception more closely to countries with a direct interest in the Championship but would similarly cause concerns on grounds of discrimination based on the origin of the individual in a particular jurisdiction. Therefore the Scottish Government does not believe there is a strong enough argument to justify this provision being compliant with the Convention. In addition, this exception would move further away from the policy intent Parliament initially agreed.

Limiting the exception to charity auctions where UEFA had already agreed that a transfer of ticket ownership could occur

22. This would transfer the burden of decision making to UEFA about whether or not an organisation was a charity. It would ensure that people auctioning a ticket had secured agreement from UEFA in advance that the auctioned ticket would be valid for entry. This option moves further away from the policy agreed by Parliament. The Scottish Government considers that it should be enforcement officers (who will be local authority employees), or police officers who should make the judgement about whether an organisation meets the definition of being a charity. Therefore the Scottish Government does not consider this to be a suitable solution.

Consultation on changes and next steps

23. Due to the need to resolve the incompatibility as soon as is practicable so that the ticket touting offence can be put in place, there has not been time for a formal public consultation in advance of laying the proposed draft remedial Order.

24. However, in laying this order the Scottish Ministers are putting in place the will of Parliament that was expressed during the 2020 Act's Parliamentary passage to create an exception for charity auctions. The Order will ensure that this is done in a way that is compliant with the Convention and will allow the ticket touting offence, which was broadly supported by Parliament and other organisations, to be brought in to force.

25. The changes the Order makes to the 2020 Act have been discussed with UEFA, as the only authorised seller of tickets in the primary and secondary markets. They have also been discussed with Glasgow City Council and Police Scotland, as the bodies that will enforce the legislation. These organisations have indicated that they are content with the changes made by the Order.

26. Under section 13(3)(b) of the Convention Rights (Compliance) (Scotland) Act 2001, persons wishing to make observations on this Order can do so, in writing, within the period of 60 days beginning with the day on which the proposed draft remedial Order was laid in Parliament. As the proposed draft remedial Order was laid in Parliament on 4 February 2020, and days when the Scottish Parliament is in recess are not taken into account, **the period for written representations will end on 28 April 2020.**

27. Representations should be submitted to UEFAEuro2020@gov.scot or Major Events Team, Scottish Government, Area 2G South, Victoria Quay, EH6 6QQ.

28. After this date, the Scottish Government will consider representations received and whether any changes to the Order are required before laying a draft Order before Parliament along with a summary of representations received, any changes made to the draft Order and the reasons for those changes.

29. Subject to Parliament's consideration of the draft Order, the Scottish Government expects to have the ticket touting offence, including the exception for charity auctions, in place in May 2020.

Awareness raising of the ticket touting offence and exception

30. The Scottish Government has already indicated that it will look to raise awareness of the ticket touting offence, the exception for charity auctions, and of UEFA's terms and conditions of sale of match tickets. This includes scope to provide information through the Scottish Charity Regulator (OSCR), the Scottish FA, football fan networks, and social media.

31. The exception for auctioning a match ticket and giving the proceeds to a charity (as defined by the exception) means that people who do this will not be subject to the ticket touting offence in the 2020 Act (in a similar way that face value re-sales of tickets are not captured by the offence). However, acting in this way would breach one of UEFA's terms and conditions of sale of match tickets, which is that they are non-transferable. That means that someone who wins a charity auction could be refused entry to the stadium.

32. The decision on whether to permit the transfer of a ticket is for UEFA, not the Scottish Government. However, as part of our communications activity the Scottish Government will seek to raise awareness that where someone has a ticket to a UEFA Euro 2020 match and is considering auctioning this for charity, UEFA should be contacted before this takes place in order to determine whether it will be possible to transfer the ticket.

Scottish Government
February 2020

Proposed draft Order laid before the Scottish Parliament under section 13(3)(a) of the Convention Rights (Compliance) (Scotland) Act 2001.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2020 No.

SPORTING EVENTS

**The UEFA European Championship (Scotland) Act 2020 Remedial
Order 2020**

Made - - - - 2020

Coming into force in accordance with article 1

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001⁽⁵⁾ (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this Order to be necessary or expedient in consequence of section 3 of the UEFA European Championship (Scotland) Act 2020⁽⁶⁾ being incompatible with a Convention right⁽⁷⁾.

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 13(3) of the 2001 Act the Scottish Ministers laid before the Scottish Parliament a copy of the proposed draft Order, together with a statement of their reasons for proposing to make the Order, gave such public notice of the contents of the proposed draft Order as they considered appropriate, invited observations on it and had regard to written observations submitted.

In accordance with section 13(2) of the 2001 Act a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the UEFA European Championship (Scotland) Act 2020 Remedial Order 2020 and comes into force on the day after the day on which it is made.

⁽⁵⁾ 2001 asp 7.

⁽⁶⁾ 2020 asp 1.

⁽⁷⁾ The term “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998 (c.42).

Definition of “charity” for purposes of charity auction exception to ticket touting offence

2.—(1) Section 3 of the UEFA European Championship (Scotland) Act 2020 is amended as follows.

(2) In subsection (2)(b)(i), for “England and Wales, of Northern Ireland, or of a member State of the European Union,” substitute “any territory outwith Scotland.”

(3) In subsection (2)(b)(iii)—

- (a) for “at least one” substitute “either”,
- (b) after “in” insert “paragraphs (a) and (b) of”.

(4) In subsection (3)—

- (a) after paragraph (a) insert “or”,
- (b) for paragraph (b) substitute—

“(b) if there is no such register in the territory where the body is established—

- (i) 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, and
- (ii) the body provides public benefit within the meaning given by section 8 of that Act.”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to section 3 of the UEFA European Championship (Scotland) Act 2020 (“the 2020 Act”) to remove any incompatibility with the European Convention on Human Rights arising from the exception for charity auctions from the ban on ticket touting. Under section 3 of the 2020 Act the definition of a charity for the purposes of the exception means bodies registered in the Scottish Charity Register, and bodies established under the law of England and Wales, Northern Ireland or a member State of the European Union.

Article 2 amends the definition of a charity for the purposes of the exception. Article 2(1) provides that a charity for these purposes, in addition to a body registered in the Scottish Charity Register, may be a body which is established under the law of any territory outwith Scotland. Articles 2(3) and (4) provide that the exception may apply to a charity established under the law of a territory outwith Scotland where it meets either of two conditions. The first condition is that the body is registered in a register corresponding to the Scottish Charity Register. The alternative condition is 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 (asp 10) and the body provides public benefit within the meaning of section 8 of that Act.

THE UEFA EUROPEAN CHAMPIONSHIP (SCOTLAND) ACT 2020 REMEDIAL ORDER 2020

CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

Statement of Reasons

This Statement of Reasons is provided by the Scottish Ministers in accordance with section 13(3)(a) of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”).

The Scottish Ministers have laid a proposed draft of the UEFA European Championship (Scotland) Act 2020 Remedial Order 2020 for the following reasons:–

Glasgow is one of twelve host cities for the UEFA European Football Championship (the Championship) which begins in June 2020. The UEFA European Championship (Scotland) Act 2020 (“the 2020 Act”) was necessary in order to deliver certain requirements to host the event. Section 3 of the 2020 Act provides an exception from the ticket touting offence in the 2020 Act where an auction of a match ticket is conducted by a charity, or a person other than a charity and the proceeds are donated to a charity based in the UK or EU. The Scottish Ministers now believe that there is insufficient justification to limit the charities that the exception applies to in this way, and section 3 does not comply with Article 14 of the European Convention on Human Rights (the prohibition of discrimination) read with Article 1 of the First Protocol to the Convention (protection of property).

Section 3 provides that for a body outwith Scotland to be considered a charity, it must be registered in a register corresponding to the Scottish Charity Register or 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 2005 Act”).

Legislative change is required to ensure that there are equivalent criteria for Scottish and non-Scottish charities alike, removing any scope for discrimination based on the ground of the national origin or other status of the charity.

A significant proportion of tickets for UEFA Euro 2020 matches have already been sold and on 31 March 2020 the full draw for the Championship will be known. Match tickets are due to be distributed in May. These developments are likely to lead to increased interest in the event and increased likelihood of ticket touting taking place. It is therefore important to ensure that the ticket touting offence, including the exception for charity auctions passed by Parliament as part of the consideration of creating that offence, is in place as soon as is practicable. Bringing the ticket touting offence into force will deliver this requirement of UEFA in order to host the event and will support fair access to tickets for the public. This will help to ensure successful delivery of the event, with the resulting economic, social and cultural benefits for Glasgow and Scotland more broadly.

Therefore, the Scottish Ministers consider that there are compelling reasons for making an Order under section 12 of the 2001 Act as distinct from taking any other action.

The remedial Order will amend section 3 with regard to the territories outwith Scotland to include charities based in all territories, rather than the rest of the UK and EU only. It will also amend the definition of a charity to require a body outwith Scotland to be registered in a register corresponding to the Scottish Charity Register. Where there is no such register, then the body’s purposes must consist of one or more of the charitable purposes set out in section 7(2) of the 2005 Act and the body must provide a public benefit within the meaning of section 8 of that Act, requiring these bodies to have charitable purposes and provide for the public benefit in ways that mirror those standards as

provided for in Scots law. This will ensure that there are equivalent criteria for Scottish and non-Scottish charities alike.

The Scottish Ministers will have regard to any written observations submitted to them in relation to the Order, during the 60 day period ending on 28 April 2020, and will then lay before the Scottish Parliament a statement that summarises the observations they receive.