

UEFA EUROPEAN CHAMPIONSHIP (SCOTLAND) ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Enforcement

Section 17: Enforcement officers

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

Section 18: General enforcement powers

33. This section sets out the general range of powers that this Act confers on enforcement officers. Subsection (1) allows enforcement officers to take such steps as they consider necessary for the purpose of preventing or ending the commission of a Championship offence (defined simply as an offence under this Act) or in connection with proceedings, or anticipated proceedings, in respect of a Championship offence.
34. Subsection (2) specifies steps that are included within this general range which include seizing, concealing or destroying anything which the officer believes to be an infringing article. This power is subject to restrictions set out in section 19.
35. Subsection (3) defines an “infringing article”. This could be an article used in connection with the commission of a Championship offence or receptacle used as a container for such an article, for example a box containing goods being sold by an unauthorised street trader.
36. Subsection (4) enables an enforcement officer to be assisted by another person as may be necessary for the purpose of taking action under this section. A third party of this kind may only act under the direction of the enforcement officer.
37. Subsection (5) provides that before requesting third party assistance, an enforcement officer must first notify Police Scotland.
38. Subsection (6) clarifies that the powers set out in this section are subject to the restrictions set out in sections 19, 21, 22 and 24.

Section 19: Restrictions on general enforcement powers

39. Subsection (1) sets out restrictions on the power of enforcement officers to seize infringing articles. They can only do so for the purpose of ending the commission of a Championship offence, preventing the future commission of such an offence, enabling the article to be used in proceedings for such an offence (as evidence), or to enable the article to be forfeited in accordance with Part 2 of the Proceeds of Crime (Scotland) Act 1995 (which makes provision for property which has been used in crime to be forfeited).
40. Subsection (2) requires a seized article to be returned when retention of it is no longer justified for the purposes mentioned in subsection (1); however, this requirement does not apply to perishable articles which no longer have any commercial value (subsection (3)).
41. By virtue of subsection (4) an article may be concealed by an enforcement officer for the purpose of ending the commission of an advertising offence or for preventing the further commission of such an offence. Concealment must cease when no longer required for either of these purposes (subsection (5)).
42. Under subsection (6) an infringing article may be destroyed only if it is appropriate to do so to end or prevent the further commission of an advertising offence and seizure or concealment would not be a reasonable course of action in the circumstances. Destruction is, therefore, only available as a measure of last resort.

Section 20: Power to enter and search

43. Subsection (1) enables an enforcement officer, without warrant – but only with the permission of the occupier, or of another person with the legal authority to give such permission, for instance an owner or tenant of the property – to enter and search a place (and any vehicle, vessel, container or other thing at that place) where the officer reasonably believes that a Championship offence has been or is being committed or which the officer reasonably believes has been or is being used in connection with the commission of a Championship offence.
44. Subsection (2) clarifies the scope of subsection (1), setting out that it does not give an enforcement officer the power to search an individual, or to access data which is stored electronically (for instance, on a smartphone or laptop).
45. Subsection (3) allows an enforcement officer, when entering a place under subsection (1), to take with them any other person or equipment necessary for the purposes of assisting the officer. This could, for example, be a locksmith in order to gain access. A third party of this kind may only act under the direction of the enforcement officer.
46. Subsection (3) provides that before requesting third party assistance, an enforcement officer must first notify Police Scotland.
47. Subsection (4) requires an enforcement officer who enters a place using powers conferred by this section to take reasonable steps to leave the place at least as effectively secured against unauthorised entry as the officer found it.
48. Subsection (5) clarifies that the powers set out in this section are subject to the restrictions set out in sections 21, 22 and 24.

Section 21: Use of reasonable force

49. Unless the owner or occupier of a place that an enforcement officer requires to enter consents to such entry, some measure of force will generally be required in order to effect entry (subsection (1)). Subsection (2) empowers a police constable to use reasonable force, or to authorise an enforcement officer or a third party assisting an officer to use reasonable force, when taking enforcement action under section 18

(general enforcement powers) or 20 (entry and search). Force may be used or authorised in this way, however, only where the police constable accompanies the enforcement officer and if either the use of force has been previously authorised by warrant issued by a sheriff or the police constable reasonably believes that there is a real risk that the delay caused by seeking such a warrant would defeat or prejudice the purpose of taking action. This power could, for example, be used to authorise a locksmith to use reasonable force to gain entry to a place. But a police constable must not authorise an enforcement officer or a third party assister to use reasonable force against an individual (subsection (3)).

50. Subsection (4) provides that the sheriff may grant a warrant only if satisfied that the use of reasonable force is necessary for the purpose of taking enforcement action.
51. By virtue of subsection (5) a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the date specified by the sheriff.

Section 22: Further restrictions on entering houses

52. This section places further restrictions on the powers of enforcement officers when the place they wish to enter is a house or can only be entered through a house. Under subsection (1) they can only enter such a place if permitted to do so by someone residing there or if granted a warrant by a sheriff.
53. Subsection (2) provides that an enforcement officer may only enter a house at a reasonable time and if accompanied by a police constable. This restriction applies where the occupier gives permission for entry but not where a warrant has been granted.
54. Subsections (3) and (4) set out the conditions of which a sheriff must be satisfied before issuing a warrant to enter a house. It requires the enforcement officer to demonstrate to the sheriff that the officer has reasonable grounds for taking action under section 18 or 20 and that the officer has been refused entry, that such a refusal is reasonably expected (and, in certain circumstances, that the occupants have been notified), that the house is unoccupied, that the occupier is temporarily absent, that the case is one of urgency, or that notifying the resident of the officer's intentions would defeat the object of the proposed action.
55. Subsection (5) provides that a warrant expires when it is no longer required for the purpose for which it was granted or, if earlier, on the day specified by the sheriff.

Section 23: Power to obtain information

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

Section 24: Requirement to produce evidence of identity and authority

57. This section provides that while an enforcement officer is taking enforcement action or exercising the power to obtain information under section 23 that officer must produce evidence of that officer's identity and of their authority to act, if requested to do so.

Section 25: Test purchases

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

Section 26: Compensation and recovery of costs

59. This section allows a person whose property is damaged as a result of any action taken by enforcement officers exercising their powers under section 18 or 20 to obtain compensation from Glasgow City Council, although this does not apply if that person has committed a Championship offence. It also allows such a person to obtain compensation from Glasgow City Council if a constable accompanying an enforcement officer damages their property as a result of anything done under section 18 or 20. However, if the damage is caused by a constable who is not accompanying an enforcement officer, it is the Scottish Police Authority that is liable to pay compensation.
60. Subsection (3) allows Ministers to make regulations making provision about: claiming compensation, determining the compensation due, and determining which court, tribunal or other body would determine any disputed compensation.
61. Subsection (4) allows Glasgow City Council to recover the cost of enforcement from the person who committed the Championship offence.

Section 27: Obstructing an enforcement officer

62. This section makes it an offence intentionally to prevent or obstruct an enforcement officer from doing anything which the officer may be authorised or entitled to do by virtue of the Act, or without reasonable cause to fail to provide an enforcement officer or a constable with information requested under section 23.

Section 28: Police powers

63. This section allows a constable to do anything an enforcement officer may do under sections 18 to 25. For example, this would allow a constable to seize, conceal or destroy unauthorised advertising within an event zone.
64. Subsection (2) extends the restrictions imposed on enforcement officers by sections 19, 21, 22 and 24 to constables. The restrictions only apply to the extent that they do not conflict with a constable's powers under any other enactment or rule of law. Subsection (3) makes it clear that a constable does not require to be accompanied by another constable when using reasonable force or when entering a house.

Section 29: Action under sections 18 to 25: procedure

65. This section allows the Scottish Ministers to make regulations specifying further procedures which an enforcement officer or constable must follow when doing anything under sections 18 to 25.