

SPICe Briefing

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

20 June 2011

11/48

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The Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced in the Scottish Parliament on 16 June 2011. It seeks to introduce two, new criminal offences: one which will criminalise the full range of offensive and threatening behaviour, including sectarian behaviour at, or in connection with football matches and one which criminalises threatening or inciting serious violence and threats which incite religious hatred.

The Scottish Government has indicated that it will seek to have the legislation passed and in force before the start of the 2011-12 Scottish football season which is due to begin on 23 July 2011. This would require a significantly expedited legislative process as the Scottish Parliament is due to start summer recess on 2 July 2011. At the time of writing, it is expected that the Bill will be subject to emergency legislation procedure.

This briefing outlines the background to the introduction of the Bill, sets out the provisions contained in the Bill and considers a number of areas which have been the focus of particular concern. It also provides details of a number of previous initiatives and reports on sectarianism and related issues.



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EXECUTIVE SUMMARY

- The Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced in the Scottish Parliament on 16 June 2011. It seeks to introduce two new criminal offences: one which will criminalise the full range of offensive and threatening behaviour, including sectarian behaviour at, or in connection with football matches; and one which criminalises threatening or inciting serious violence and threats which incite religious hatred.
- Although the Scottish Government has acknowledged that there are a number of current legal provisions which could be applied to disorderly and offensive behaviour at football matches, there is concern that a substantial proportion of such behaviour which leads to public disorder is not explicitly caught by the current law. Similarly, while there are current legal provisions which may apply to making threatening communications, the Government believes that a specific offence will help to clarify the law in this area.
- As the Scottish Government intends to have the Bill passed and in force before the start of the 2011-12 Scottish football season, this will require a significantly expedited legislative process as the Scottish Parliament is due to start summer recess on 2 July 2011. A number of concerns have been raised that this will not allow time for proper scrutiny of the proposals contained in the Bill.
- The Bill was introduced following a number of incidents which occurred at football matches (primarily involving Rangers and Celtic football clubs), and other, more sinister incidents which, though not directly connected to football, are regarded as further manifestations of sectarianism in Scotland. Although the incidents which have occurred have been reported as being “sectarian” in nature, the Bill seeks to address issues which go beyond that narrow definition.

Sectarianism - The sectarian spirit; adherence or excessive attachment to a particular sect or party, esp. in religion; hence often, adherence or excessive attachment to, or undue favouring of, a particular 'denomination'. (Oxford English Dictionary 2011).

"The spirit of sectarianism has been the cause of our failures. We have imprisoned our own conceptions by the lines, which we have drawn, in order to exclude the conceptions of others."
(Samuel Taylor Coleridge)

BACKGROUND

A number of recent incidents during football matches (primarily involving Celtic FC and Rangers FC) and in the wider public domain led to the Scottish Government organising a summit in March 2011 to discuss the impact of sectarianism on Scottish football and on wider society. The intention of the summit was to assess and make proposals on certain aspects of the game in order to protect its reputation in Scotland and beyond. The summit was attended by Scottish Ministers and representatives of Strathclyde Police, Celtic FC, Rangers FC, the Scottish Football Association, the Scottish Football League and the Scottish Premier League.

The issue of sectarianism and associated behaviour at football matches (e.g. the singing of certain songs connected with particular religious and/or political traditions) have been to the fore of the debate.

In addition to behaviour during football matches, a number of other serious incidents have led to calls for an examination of, and response to, sectarian attitudes which pervade some sections of Scottish society. For example, the Celtic FC manager, Neil Lennon, former MSP Trish Godman, and Paul McBride QC have all recently been the intended recipients of what have been described by the police as "[viable parcel bombs](#)" (BBC 2011). The devices were found at various locations in the west of Scotland. Also, in January 2011, bullets addressed to Mr Lennon, which had been sent from an address in Northern Ireland, were intercepted at a mail sorting office in Glasgow. Bullets were also sent to [two Celtic players](#) who have recently represented Northern Ireland. A recent news article (The Telegraph 2011) also stated that the police in Scotland recently made arrests in connection with individuals who have allegedly posted [sectarian comments](#) on the internet. The comments were directed at Mr Lennon and El Hadji-Diouf, a Senegalese footballer who was recently on loan at Rangers FC.

Following the summit, a [joint statement](#) was issued on 8 March 2011 stating:

"Football is Scotland's national game and at its best combines pride and passion with a sense of responsibility, respect and discipline. There is absolutely no place in football for those who let the passion become violence, and the pride become bigotry, and we commit to doing all in our power to maintain the good reputation of Scottish football.

No football club is directly responsible for the violence, disorder and bigotry seen on our streets and in our homes, and we condemn such acts entirely. However, we accept that as professionals and role models, those who play and coach the game do have a particular duty to ensure that their behaviour on and off the pitch sets a high standard.

We accept that those involved in football can positively influence the behaviour and attitudes of the wider community, and so do have a role in addressing the problems that affect such communities, whether that be violence or bigotry or alcohol misuse. We therefore commit to work together to ensure that however we can contribute to addressing these issues, we will. In particular, we agree on a renewed focus on tackling alcohol misuse." (Scottish Government 2011)

Amongst other things, those attending the summit reached agreement on the following:

- to support the introduction of tough new measures to reduce alcohol consumption before and after games, and to make a significant contribution to the longer term effort to tackle Scotland's alcohol problem
- in light of information provided by the Chief Constable of Strathclyde Police, to explore jointly and understand the practicalities of new fixture scheduling opportunities to minimise damage to communities
- to consider the expansion of Football Banning Orders and the clubs' own codes of conduct to respond to criminal behaviour of fans away from the grounds
- to ensure that the police have the support of all relevant parties in enforcing the law in relation to public order, including on the internet

The summit also concluded that a Joint Action Group on football should be established to develop concrete proposals and to report to Scottish Ministers before the start of the new football season, which is scheduled to begin on 23 July 2011. The [first meeting](#) of the Group took place on 15 March 2011 (Scottish Government 2011a).

THE BILL

The Offensive Behaviour at Football and Threatening Communications (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament on 16 June 2011. The Scottish Government has indicated that it would like to see the Bill passed and in force in time for the start of the 2011-12 Scottish football season which is due to start on 23 July 2011. In order to achieve this, it is likely that the Bill will be subject to emergency legislation procedure. Concerns have been raised about the Government's intention to progress the Bill without a full consultation and the opportunity for the Parliament's Justice Committee to take evidence from relevant stakeholders.

Bill McVicar, Convener of the Law Society of Scotland's Criminal Law Committee stated:

"We understand the importance of tackling sectarianism. This is a very serious issue and one that needs both attention and action from our political leaders. However, it is because of the importance of this issue that the Scottish Government needs to allow adequate time to ensure the legislation can be properly scrutinised. It is particularly vital for sufficient time to be allowed at stage 1, the evidence gathering stage, for proper public consultation. Without this consultation there is the risk that the legislation could be passed which either does not meet its objective or is inconsistent with existing law, making it unworkable. It could also result in legislation that is open to successful challenge." (Law Society 2011)

The Moderator of the General Assembly of the Church of Scotland, the Right Reverend David Arnott, recently met with the Minister for Community Safety and Legal Affairs, Roseanna Cunningham MSP to discuss the Bill and stated:

"We appreciated the opportunity to meet with the Minister on this very important issue but we remain nervous about this haste in which this bill being rushed through Parliament, apparently in time for the start of the football season. Whilst we are not against the ideas in this bill, we remain unconvinced of the wisdom of this approach. The speed at which it is being rushed through means it appears to lack scrutiny and clarity. The government is rightly asking for support from across civic Scotland, but is not giving civic Scotland much time to make sure they are happy with the content." (Church of Scotland 2011)

In the Policy Memorandum to the Bill, the Scottish Government states that the measures in the Bill need to be place before the start of the 2011-12 football season to, amongst other things, begin to repair the damage done to the reputation of Scottish football and Scotland more generally by recent events and that this has curtailed the opportunity to engage in a standard consultation on the provisions in the Bill. The Government also points out that its plans to introduce the legislation have been discussed with a range of partners including the Association of Chief Police Officers in Scotland, COSLA, the Scottish Courts Service, the Crown Office and Procurator Fiscal Service and representatives of the Scottish Football Association and the Scottish Premier League. (para 58)

The objective of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill is to tackle sectarianism by preventing offensive and threatening behaviour related to football matches and preventing the communication of threatening material, particularly where it incites religious hatred. In order to achieve this, the Bill creates two new criminal offences. The first offence will criminalise the full range of offensive and threatening behaviour, including sectarian behaviour at or in connection with football matches, while the second offence criminalises threatening, or inciting serious violence and threats which incite religious hatred. The Policy Memorandum to the Bill points out that “sectarian” is a term which is not defined in Scots law and that there are many competing viewpoints about what is or should be included and excluded from any definition of sectarianism.

“What is crucial about the measures in this Bill is that they do not rest on any such definition. We intend that these measures will cover all offensive or threatening behaviour at football matches, regardless of whether it is “sectarian”. This means offensive or threatening behaviour likely to incite public disorder, whether that is through songs and chants, displaying banners or otherwise. In terms of threatening communications, the focus is on threatening or inciting serious harm intended to cause fear and alarm or threats that incite religious hatred, regardless of whether such communications are of a “sectarian” character or not.” (para 4)

Offensive behaviour at football matches

The Policy Memorandum to the Bill points out that although there are a number of legal provisions which could be applied to disorderly and offensive behaviour at football matches, there is concern that a substantial proportion of such behaviour which leads to public disorder is not explicitly caught by the current law. For example, such behaviour could, in certain circumstances, be prosecuted under the common law offence of breach of the peace, or using the offence of threatening and abusive behaviour at section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”). Where there is a racist element to the behaviour, prosecution using the offences at Part III of the Public Order Act 1986 (incitement of racial hatred) may also be appropriate. Section 74 of the Criminal Justice (Scotland) Act 2003 and section 96 of the Crime and Disorder Act 1986, which provide for statutory aggravations on grounds of religious or racial hatred, may also be relevant.

However, the Policy Memorandum suggests that a substantial proportion of offensive behaviour related to football which leads to public disorder is not explicitly caught by the current law and that such behaviour may not satisfy the criteria for causing fear and alarm which is required to prove breach of the peace or the offence of threatening and abusive behaviour at section 38 of the 2010 Act. The Bill therefore, introduces a new offence of offensive behaviour at regulated football matches. (para 21)

The definition of a regulated football match is based on that used in respect of football banning orders (FBOs). The Scottish Government has pointed out that adopting this approach will mean that any conviction arising from this new offence would automatically constitute strong grounds

for the imposition of a football banning order on the offender. Further information on FBOs is set out later in this briefing.

A regulated football match (as set out in the Police, Public Order and Criminal Justice (Scotland Act) 2006) includes:

Football matches anywhere in the UK where one or both of the participating teams represents:

- i. a country or territory
- ii. a club which is, for the time being, a member of the Scottish Premier League or the Scottish Football League or,
- iii. a club which is, for the time being, a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference or the League of Wales

Football matches outside the UK involving:

- i. a national team appointed to represent Scotland, England or Wales by, respectively, the Scottish Football Association, the Football Association or the Football Association of Wales; or
- i. a team representing a club which is, for the time being, a member of the Scottish Premier League or the Scottish Football League or a full or associate member of the Football League, the Football Association Premier League, the Football Conference or the League of Wales

Any other match anywhere in the world as may be prescribed by order made by the Scottish Ministers.

The intention of the Bill is to put beyond doubt that behaviour related to football matches which is likely to incite public disorder and which would be offensive to any reasonable person is a criminal offence. It is pointed out that there is no evidence to suggest a significant problem with disorder or sectarian or other offensive behaviour associated with other sports in Scotland and the Bill therefore provides that the new offence should apply in respect of football matches only.

The new offence will not only apply to offensive behaviour which occurs inside football stadia. Such behaviour occurring outside stadia, on the way to and from matches, including on public transport, and in public places where matches are being televised, will also be caught by the offence.

The Policy Memorandum points out that the offence does not refer specifically to “sectarian” behaviour but instead refers to behaviour which constitutes an expression of, or incitement to, religious and other hatred, behaviour which is threatening, and behaviour which a reasonable person would find offensive. The intention of the Bill is to criminalise all behaviour related to football that is likely to lead to public disorder, not only that which is deemed to be sectarian in nature. The provisions in the Bill are also intended to cover other issues which have arisen in the context of football matches, including racist and homophobic chanting. It does not focus on particular chants or songs which have become a regular feature of some football matches and the Bill does not contain a proscribed list of such material. The Government has concluded that it would be easy for football fans who indulge in such behaviour to circumvent such a list by inventing new songs or chants or by making minor adjustments to existing songs and chants.

The Bill therefore proposes to introduce an offence which:

- criminalises offensive or threatening behaviour which would be likely to incite public disorder at football matches, and at any public place where a football match is being broadcast
- targets expressions of hatred of a person or group of persons because of their religion, race, ethnicity, nationality, ethnic or national origins, sexual orientation, transgender identity or disability
- covers a wide range of offending behaviour from that which might appropriately be dealt with by fixed penalty notices or community payback orders to serious incitement to public disorder which requires to be tried on indictment. The maximum penalty is 5 years imprisonment plus an unlimited fine when tried on indictment and 12 months imprisonment plus a fine of up to £10,000 when tried summarily

The Bill also provides that behaviour will be deemed likely to incite public disorder if it would be likely to incite public disorder despite the fact that measures have been put in place to prevent public disorder, such as a strong police presence, rigid separation of opposing supporters, or the fact that persons likely to be incited to public disorder are not present or not present in sufficient numbers. This is intended to ensure that the singing of offensive and sectarian songs or chants at games where only a small number of the other team's supporters who might be offended are present, or after the vast majority of those supporters have left the ground, can and will be subject to criminal sanctions.

Threatening Communications

As pointed out above, a number of recent incidents have occurred which, while loosely connected to football, have occurred in a wider context and have been sinister and potentially dangerous. These have included the posting of threatening items such as bullets and viable parcel bombs, the motivation for which would appear to be of a sectarian nature. The Scottish Government has concluded that these incidents appear to be intended to stir up hatred against people of a particular religious faith or ethnicity and to create or contribute to an atmosphere which some people would regard as acceptable to threaten certain persons with serious violence.

As with the new offence of offensive behaviour at football matches, there are a number of current legal sanctions which may currently apply in respect of making threatening communications. These include the common law offences of breach of the peace and uttering threats, the offence of threatening and abusive behaviour at section 38 of the 2010 Act (see above), and the offences at Part III of the Public Order Act 1986 (incitement of racial hatred). Section 74 of the Criminal Justice (Scotland) Act 2003 and section 96 of the Crime and Disorder Act 1986, which provide for statutory aggravations on grounds of religious or racial hatred respectively, might also be relevant. Where communications are electronic in nature, section 127 of the Communications Act 2003 criminalises the improper use of a public electronic communications network, specifically the sending of a message or other matter that is grossly offensive, or of an indecent, obscene or menacing character (see below). The Scottish Government has stated that while these laws are in place, they are not always easily applied to the behaviour involved with making threatening communications:

“The requirement for a “public element” can make a charge of breach of the peace difficult to bring in some cases. It can also be difficult to establish that someone actually intended to carry out a threat or incite someone else to commit a crime in relation to the common law offences of uttering threats and incitement. While the offence of “threatening

and abusive behaviour” does not require a public element, it does require that the behaviour must be of a threatening and abusive *manner* and could not necessarily be used to prosecute threats made with the intent of inciting religious hatred. Finally, in relation to electronic communications, case law has left some doubt about whether the Communications Act offence can be used to prosecute people who create offensive websites or “groups” on social networks, as opposed to sending threatening emails or other communications.

A further potential gap in our law is highlighted by the fact that England and Wales, Northern Ireland and the Irish Republic have all legislated to provide for specific offences relating to inciting religious hatred. Scotland is, therefore, the only part of the UK without a specific offence relating to inciting religious hatred. Where there is a racist element to the behaviour, prosecution using the offences at Part III of the Public Order Act 1986 (incitement of racial hatred) may be appropriate but inciting religious hatred without a racial element is not currently a specific offence in Scotland.” (para 34)

The Scottish Government believes that a specific offence will bring clarity to the law in this area and as such, the Bill proposes an offence to address two classes of threat: threats of serious violence and threats intended to stir up religious hatred, whether or not they involve threats of serious violence. The new offence criminalises any communication with at least one other person which threatens a person with serious violence or death, or incites others to kill or commit a seriously violent act against a person, or which implies such a threat. It is important to point out that the offence does not apply to “live speech”. This was an issue which the Scottish Government considered in drawing up the proposals contained within the Bill. The Policy Memorandum states:

“A particular issue which we considered very carefully is whether the threatening communications offence should be extended to catch ‘live’ speech as well as recorded speech. A distinction can be made on the basis that recorded threats, like written threats, may indicate not only a stronger expression of such views than everyday speech but also a more serious intention to carry out such threats. Our view, however, was that it is not a significant enough distinction to justify their exclusion from this legislation. A primary consideration in reaching a conclusion on this issue is that the criminalising offensive behaviour related to football will cover verbal threats and the expression or inciting of religious hatred at, or on the way to and from, a regulated football match at any public place where such matches are televised where those threats are likely to lead to public disorder. The most significant consideration, however, is that verbal threats relating to sectarian hatred were not a central part of the recent upsurge of unacceptable behaviour which gave rise to the need for this Bill and the wider implications of such an extension deserve fuller consideration.” (para 55)

The offence is committed where that communication would cause a reasonable person to suffer fear or alarm and the accused either intended to cause such fear and alarm, or was reckless as to whether the communication of the material would cause such fear and alarm. The offence will apply to text, images, video and recorded sound, communicated by any means (by post, on leaflets or posters or posted on the internet). The requirement that any material communicated must be intended to cause fear or alarm (or is communicated with recklessness as to whether fear and alarm is caused) for an offence to be committed, is intended to ensure that depictions of death or injury in art, literature, the theatre, film, video games, or similar cultural and dramatic contexts, and threats made in jest that no reasonable person would find alarming are not caught by the offence. However, depictions of prominent real-life figures intended as an implied threat to that person or group of people will be criminalised. The offence is also intended to deal with threats of death or serious injury where there may not be evidence of an intention to carry such threats out. This includes the scenario where a person making such a threat does not intend to carry it out but who, nonetheless, causes fear and alarm to those subjected to the threat. Under

the current law, where there is compelling evidence that a person making a threat to kill a person intends to act upon that threat, it would be possible to charge that person with uttering threats or conspiracy to murder.

The offence also criminalises threats made with the intention of stirring up religious hatred. “Religious hatred” is defined as meaning hatred against a person or group of persons based on their membership of a religious group, or of a social or cultural group with a perceived religious affiliation. The definition of “religious group” is the same as that used in section 74 of the Criminal Justice (Scotland) Act 2003, which provides for a statutory aggravation that an offence was aggravated by religious prejudice. The Scottish Government has pointed out that “the offence of threatening communications is restricted to *threats* made with the *intent* of stirring up religious hatred and as such, it does not interfere with the rights to preach religious beliefs nor a person’s right to be critical of religious practices or beliefs, even in harsh or strident terms”. (para 41)

The Government highlights the fact there was extensive criticism of early attempts to criminalise incitement to religious hatred in England and Wales on the grounds that provisions extending to insults and abuse as well as threats may have inadvertently criminalised comedians and satirists who make jokes about religion, or religious texts. This is discussed later in this briefing under the heading ‘Freedom of Speech Issues’.

While recent incidents have appeared to centre on football and have been sectarian in nature, the Bill does not confine the threatening communications offence to football related matters or to sectarian incidents. The Bill therefore proposes to introduce an offence which:

- criminalises communications of any kind to one or more persons which make threats of serious violence to a person, or incite the commission of acts of serious violence to a person
- criminalises communications of any kind to one or more persons which make threats intended to stir up religious hatred
- will apply to postings, messages etc., displayed in, or primarily intended to be seen in Scotland and
- is triable either way¹ and subject to a maximum penalty of 5 years imprisonment plus an unlimited fine when tried on indictment and 12 months imprisonment plus a fine of up to £10,000 when tried summarily.

The Government has acknowledged that children and young people may be particularly affected by this offence and its potential relevance to particular means of communication such as mobile telephones, the internet and social networking sites. The Government has engaged with the Commission for Children’s Rights amongst others, in order to understand how the legislation might impact on children and young people.

¹ An offence which is triable either at the summary level or on indictment can carry a maximum custodial sentence of up to 12 months when prosecuted at summary level, and up to 5 years when prosecuted on indictment in the Sheriff Court

CURRENT LEGAL FRAMEWORK

Hate Crime

Traditionally, hate crimes (including those involving a sectarian or racist element) have been dealt with by the courts using their general powers to have regard to particular circumstances of an offence as an aggravating factor when sentencing someone for any offence. Thus, for example, evidence that a common law assault was motivated by sectarian hatred could be taken into account when sentencing the offender. However, in recent years, a number of statutory provisions, which have effect in Scotland, have been introduced to specifically address such offending:

- Part III of the Public Order Act 1986 introduced offences relating to the incitement of racial hatred for which the maximum penalty is an unlimited fine or seven years imprisonment – ‘racial hatred’ means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins
- section 33 of the Crime and Disorder Act 1998 introduced offences of pursuing a racially-aggravated course of conduct which amounts to harassment of a person and acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress – the maximum penalty is an unlimited fine or seven years imprisonment
- section 96 of the Crime and Disorder Act 1998 made provision for offences which are racially aggravated, requiring courts to take such aggravations into account when determining sentence
- section 74 of the Criminal Justice (Scotland) Act 2003 made provision for offences aggravated by religious prejudice, requiring courts to take such aggravation into account when determining sentence and also to state the extent of and reasons for any consequent difference in sentence
- the Offences (Aggravation By Prejudice) (Scotland) Act 2009 provided for statutory aggravations for crimes motivated by malice and ill will towards an individual based on their sexual orientation, transgender identity, or disability
- section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 makes provision for the offence of threatening and abusive behaviour

The Crown Office and Procurator Fiscal Service (COPFS) has published a [summary of statistics](#) on offences since 2003 where the police report included an aggravation of religiously motivated behaviour in terms of section 74 of the Criminal Justice (Scotland) Act 2003. The figures indicate, for example, that in 2009-10 reports to procurators fiscal throughout Scotland included 629 charges of an offence aggravated by religious prejudice. (Crown Office and Procurator Fiscal Service 2011)

A substantial number of offences which are committed inside or around football stadia may currently be dealt with by means of the common law offence of breach of the peace in conjunction with any relevant aggravations.² A number of recent court decisions have sought to clarify the scope of the common law offence of breach of the peace. In particular, important guidance is provided by the case of [Harris v HM Advocate](#) (2009), which was considered by a bench of five appeal court judges. It confirmed that a breach of the peace is committed only where both parts of the following test are satisfied:

² The maximum penalty for common law offences is only limited by the normal maximum sentencing powers of the court dealing with the offence.

- (a) there must be conduct which is severe enough to cause alarm to ordinary people (further described as conduct which does present as genuinely alarming and disturbing, in its context, to any reasonable person); and
- (b) that conduct must threaten serious disturbance to the community (further described as conduct which creates a reasonable apprehension of disturbance to the public peace)

Following a number of recent matches between Celtic and Rangers, Strathclyde Police have made large numbers of arrests for breach of the peace, and racist or sectarian offences. For example, following a game on 2 February 2011, more than [229 people were arrested](#) (Guardian 2011) in the force area, and following the Co-operative Insurance league cup final between the teams on 20 March 2009, Strathclyde Police recorded 118 incidents of breach of the peace (also see section on Domestic Abuse below).

Alcohol

At the end of the Scottish Cup Final between Celtic and Rangers in 1980, a pitch invasion by both sets of supporters led to rioting which was eventually broken up by mounted police. This incident led to a ban on alcohol at designated sporting grounds in Scotland.

The controls over alcohol, which were introduced in 1980, are set out in Part II of the Criminal Law (Consolidation) (Scotland) Act 1995. Section 18 of the Act provides Scottish Ministers with the power to designate sporting events and grounds that are subject to alcohol controls. The current designations provide that FIFA, UEFA and Scottish Association professional football matches played at the grounds of clubs in the Scottish Premier League, Scottish Football League, Highland League and at Murrayfield stadium are subject to alcohol controls. In June 2007 the Scottish Government de-designated Murrayfield Stadium and other stadia in respect of international men's rugby matches. The controls do not apply to non-designated events at designated grounds. Thus, events such as concerts, American football, rugby league matches, rugby union club matches are not and never have been designated events.

The existing controls include offences relating to:

- being in possession of alcohol in a designated ground for designated events or attempting to take alcohol in to a designated ground for a designated event
- attempting to enter while drunk, or be drunk in, a designated ground for a designated event
- carrying or consuming alcohol on a coach or train specifically hired for the carrying of supporters to a designated event at a designated ground

Football Banning Orders

Football Banning Orders (FBOs) were introduced as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (see sections 51 to 69). They have been available as an option since September 2006.

FBOs are designed to remove those involved in violence and disorder from all aspects of football. A person subject to an FBO is prohibited from entering any premises for the purposes of attending regulated football matches in the UK. A person subject to an FBO is not only banned from attending all regulated football stadia, but also from attending public houses when live matches are shown. Orders are not designed to address isolated and minor disorder or

drunkenness, but are primarily directed at those engaging in football related violence or sectarianism.

There are two types of FBO – FBOs on conviction and FBOs on summary application. A court can impose an FBO on an individual convicted of an offence instead of, or in addition to, any sentence the court could impose for the offence. The police can also make a summary application to a sheriff court for an FBO to be imposed against an individual. FBOs imposed through either process have the same effect on the banned person.

An FBO is made for a specified period. Bans last no longer than:

- 10 years for an FBO on conviction made in addition to a sentence of imprisonment
- five years for all other FBOs on conviction
- three years for an FBO on summary application

Before imposing an order the court must be satisfied:

- that the person was aged 16 or over at the time of the offence
- that the offence involved violence or disorder
- that the offence related to a football match
- that there are reasonable grounds to believe that making the order will help prevent violence or disorder at or in connection with any football match

The mandatory requirements of an order are as follows:

- the person is prohibited from attending any regulated football match
- the person must report at a police station in connection with certain regulated football matches
- the person must report to a police station within five days of the order being made
- the person must notify certain prescribed information to the football banning orders authority within seven days of the occurrence of any events that are relevant to the order e.g. change of address
- the person must surrender their passport when relevant overseas matches are to be played (this requirement can be waived in exceptional circumstances, e.g. where the person's employment requires them to travel frequently)

There are a number of offences in relation to compliance with an FBO which are provided for in section 68 of the 2006 Act. These include one making it an offence to fail to comply with any requirement of an FBO (without reasonable excuse). A conviction for this offence can result in a custodial sentence of up to six months and a maximum fine of £5,000.

Scottish Government officials have stated that, as at 13 May 2011, a total of 128 FBOs on conviction have been issued with 13 having been granted on civil summary application, bringing the total number of FBOs issued in Scotland to 141³.

³ Source: Personal communication with Scottish Government officials.

ALCOHOL AND FIXTURE SCHEDULING

A senior police officer at Strathclyde Police, Assistant Chief Constable Campbell Corrigan, has stated that it is not the respective football clubs who are to blame for the violence and disorder which affects communities on match days, but the excessive consumption of alcohol:

“It’s clear that some people continue to drink excessively around the times of these high-profile matches and do so over a sustained period of time. As a result, they get drunk, become full of aggression, and inevitably end up getting into bother. Alcohol is the problem, football is just the excuse. This has to stop. Alcohol-fuelled violence in all forms, whether at home, within licensed premises or out on the streets is absolutely unacceptable. It’s time to break the culture of drinking to excess.” (Strathclyde Police 2011)

A number of organisations have also commented on what may be the most appropriate times for matches between Celtic and Rangers to take place in terms of minimising potential disorder through alcohol consumption both during and after games.

In a recent [article](#) in the Herald newspaper (2011), Glasgow Chamber of Commerce and the Scottish Licensed Trade Association (SLTA) stated that scheduling games away from weekends where possible would reduce unwanted impact on city-centre retail and restaurant trade, and limit the time for drinking after the games. Following discussions both groups stated that Monday evenings would be the optimum time for such fixtures. SLTA Chief Executive, Paul Waterson stated:

“More matches have to be played on midweek evenings, preferably Mondays – traditionally the quietest night of the week in the city centre. Where games have to be at weekends, for example cup finals, the kick-off time should always be 3pm. Early kick-offs have simply not worked. Cutting the opening hours of bars would simply lead to fans drinking more at home. The problem is the vast majority of fans who are going to abuse alcohol do so at home anyway. We have become a nation of take-home drinkers.”

This perhaps begs the question as to how police forces could reasonably be expected to police those supporters who choose to drink at home before attending games. Short of breathalysing every supporter who wishes to enter a stadium, it is difficult to see how a zero tolerance approach to alcohol at football matches could be achieved.

Both organisations were keen to stress that while recent events at games risked damaging Glasgow’s image, it was important that any proposed restrictions around the consumption of alcohol on match days should not adversely affect the city’s ability to attract tourists.

Spokesmen for Celtic and Rangers have indicated that the issue of fixture scheduling is a complex one in relation to which the views of many groups have to be taken into account (e.g. the police, the general public, football supporters and transport organisations). The [fixtures](#) for the 2011-12 Scottish football season were published recently.

DOMESTIC ABUSE

Strathclyde Police have previously highlighted that, following football matches between Celtic and Rangers, levels of domestic abuse (and other forms of criminal behaviour) in the Strathclyde Police area increase dramatically. Following the Co-operative Insurance cup final between the teams in 2009, levels of reported domestic violence increased by 88 per cent to 231 cases. The police also recorded four attempted murders, 160 assaults and 118 breaches of the peace (see above). Once again, alcohol appeared to be a critical factor. At that time, in an

article in the Herald newspaper (2009), Assistant Chief Constable John Neilson [stated](#) that more than 550 people had been arrested on the day of the match and that all of the offenders were drunk:

“This is the real picture of alcohol-fuelled violence when there is a game of football on - and there is absolutely no excuse for this level of violence. I want people to know this is happening across the whole of Strathclyde - and that something has to be done.”

THE INTERNET

As pointed out above, the police in Scotland have recently made arrests in connection with individuals who have allegedly posted sectarian comments on the internet. According to the [BBC news release](#) (2011) both individuals were charged with the common law offence of breach of the peace. It is understood that the addresses of the individuals were identified with the help of the [Internet Service Providers Association](#). In the news release, Superintendent Kirk Kinnell of Strathclyde Police’s anti-violence directorate stated:

“I would like to deliver a clear message to those who continue to make hate-filled comments and cause distress to decent members of the public, that we will pursue you relentlessly until this behaviour is stopped. Some people seem to think that they are anonymous online or can hide in a crowd, but technology can also be used to bring the police directly to you wherever you are.”

A recent academic study carried out on behalf of the charity [Nil By Mouth](#) by researchers at Strathclyde University examined sectarian language on unofficial football boards allied to particular football teams on the web. The study, amongst other things, highlighted sectarianism as a particularly salient issue in Scotland. The study also identified a significant abundance of sectarian messages as daily occurrences, overwhelmingly concentrated on the Rangers and Celtic football boards, though other team boards did contain some non-sectarian offensive material, though to a far lesser extent. The study pointed out that sectarian messages were characterised by “offensive stereotypes, accusations of bigotry, threats of violence and reference to Northern Ireland” (Strathclyde University 2005).

As outlined above, Part III of the Public Order Act 1986 (which has effect in Scotland) introduced offences relating to the incitement of racial hatred for which the maximum penalty is an unlimited fine or seven years imprisonment. Section 19 of the Act deals with acts intended or likely to stir up racial hatred. It provides that a person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if the intention was to stir up racial hatred or, having regard to all the circumstances, that racial hatred would be likely to be stirred up. References in this Part of the 1986 Act to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

The Communications Act 2003 includes a number of provisions relating to messages sent electronically. For example, sections 127(1)(a) and 127(2) of the Act provide that it is an offence to send messages that are grossly offensive or of an indecent, obscene or menacing character, or which are false and intended to cause annoyance, inconvenience or needless anxiety. It is irrelevant whether a message which is sent and which includes any of the above categories is received or not - the offence is one of sending, so it is committed when the sending takes place. Currently, anyone found guilty of such an offence is liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (£5,000), or to both.

FREEDOM OF SPEECH ISSUES

European Convention on Human Rights

Articles 9 and 10 of the European Convention on Human Rights are relevant when considering freedom of speech.

Article 9 provides for the right to freedom of thought, conscience and religion, and states that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The protection afforded by Article 9 includes manifesting one's beliefs in practice. Furthermore, it includes in principle the right to try to convince others through "teaching".⁴ For an analysis of the application of Article 9 see ['The Missionary's Position after Kokkinakis v Greece'](#).

Article 10 provides for the right to freedom of expression and states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Relevant Developments in England and Wales

The Racial and Religious Hatred Bill was introduced in the UK Parliament in 2005. It sought, in relation to England and Wales only, to extend the incitement to racial hatred offences in Part III of the Public Order Act 1986 to include stirring up hatred against persons on religious grounds. The Bill sought to amend the existing provisions so that an offence would be committed if a person used threatening, abusive or insulting behaviour or displayed any written material which is threatening, abusive or insulting and is likely to be seen or heard by a person in whom it is likely that racial or religious hatred will be stirred up.

During the passage of the Bill at Westminster, opposition from a number of sources to the UK Government's original proposals centred on freedom of expression issues as outlined in Article 10 of the European Convention on Human Rights. The Bill, as introduced, faced considerable opposition from a range of religious (both Christian and non-Christian) and secular groupings,

⁴ 'Human Rights Cases' Alastair N. Brown; T&T Clark, Edinburgh 2000.

and from broadcasters and authors, all of whom were concerned about limitations that the provisions would place on their freedom of speech and expression in terms of evangelising and proselytising, and in terms of satire and criticism. For example, Keith Porteous Wood, the executive director of the National Secular Society, argued that the:

“[...] inevitable consequence of this proposed legislation would be to protect religious dogmas and beliefs from insult and mockery. The Government is rushing ahead, ignoring all the opposition with legislation that will have the effect of restricting the expression of thought and opinion.”⁵

The Bill re-introduced provisions that were originally included in the Serious Organised Crime and Police Bill but dropped before the general election in May 2005 in order to secure passage of that earlier bill. The Joint Committee on Human Rights at Westminster reviewed the provisions on incitement to religious hatred included in the Serious Organised Crime and Police Bill and commented that:

“During the Second Reading debate, a number of speakers expressed concern that vigorous criticism of, or disagreement with, a set of religious beliefs or the practices of members of a religious group, or comedic representations of the group concerned, might lead to prosecution. If this were to occur, it would be very likely to violate the right to freedom of expression under ECHR Article 10 as being a disproportionate interference with the freedom. The question is whether it would actually be likely to have that effect.”⁶

During its passage through the House of Lords, the Racial and Religious Hatred Bill was amended in order that “abusive and insulting behaviour” would not be criminalised where it was not also “threatening” behaviour; and to provide that persons should not be prosecuted for “recklessly” stirring up religious hatred (i.e. without intent).

The resulting Racial and Religious Hatred Act 2006 amends the Public Order Act 1986 by creating new offences, which only apply to England and Wales, of stirring up hatred against persons on religious grounds. The new offences apply to various forms of expression, including the use of words or behaviour or display of written material. For each offence, the words, behaviour, written material, etc. must be threatening and intended to stir up religious hatred. Religious hatred is defined as hatred against a group of persons defined by reference to religious belief or lack of religious belief.

Section 29J of the Public Order Act 1986 provides that the offences of stirring up religious hatred are not intended to limit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule or insult, or abuse of particular religions or belief systems, or lack of religion, or of the beliefs and practices of those who hold such beliefs, or to apply to proselytisation, evangelism or the seeking to convert people to a particular belief or to cease holding a belief.

The House of Commons Library has published a [standard note](#) on the 2006 Act which provides further information.

⁵ The National Secular Society, news release ‘[Freedom of expression under threat from Government](#)’ June 2005.

⁶ Joint Committee on Human Rights, *Scrutiny: First Progress Report*, Fourth Report, 24 January 2005, HL 26/HC 224 2004-05, para 1.120

APPENDIX: PREVIOUS INITIATIVES AND REPORTS ON SECTARIANISM AND RELATED ISSUES

This appendix provides links to relevant academic reports and initiatives undertaken by the previous Scottish Executive.

- [Offender Demographics and Sentencing Patterns in Scotland and the UK](#) (2010) – research commissioned by the Public Petitions Committee in consideration of a petition on Catholics in Scottish prisons
- [Territoriality and Sectarianism in Glasgow: A Qualitative Study](#) (2008) – report of a study funded by the British Academy which explores how young people (aged 16-18) in Glasgow view their city and the extent to, and ways in which, sectarianism influences them.
- [Update on Action Plan on tackling sectarianism in Scotland](#) (2006)
- [Action Plan on tackling sectarianism in Scotland](#) (2006) – document outlining the previous Scottish Executive's ongoing work in the areas of education, sport, faith and parades and marches following the summit on sectarianism which took place in 2005 (see below).
- [Review of Parades and Marches in Scotland](#) (2005) – review undertaken by Sir John Orr looking at the arrangements in place for marches and parades in Scotland.
- [The Extent of Sectarianism Online](#) (2005) - academic study carried out on behalf of the charity [Nil By Mouth](#) by researchers at Strathclyde University examining sectarian language on unofficial football boards allied to particular football teams on the internet.
- [Progress report on tackling sectarianism](#) (2005) – statement outlining progress on relevant work undertaken by the previous Scottish Executive since 2002.
- [Religious discrimination and sectarianism in Scotland: A review of the evidence 2002-2004](#) (2005) – paper identifying key texts from academic and research companies in relation to attitudes to religion, religious discrimination and sectarianism.
- [Record of the discussion of the summit on sectarianism](#) (2005)
- [Working Group on Hate Crime Report](#) (2004) – recommendations from the Working Group on Hate Crime which was set up by the previous Scottish Executive to consider the most appropriate measures needed to combat crime based on hatred towards social groups.
- [Tackling Religious Hatred: Report of the Cross Party Working Group](#) (2002)

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