

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

[AS PASSED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 1B-EN. A Policy Memorandum is printed separately as SP Bill 1B-PM.

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to create offences concerning offensive behaviour in relation to certain football matches, and concerning the communication of certain threatening material.

Offensive behaviour at regulated football matches

1 Offensive behaviour at regulated football matches

- 5 (1) A person commits an offence if, in relation to a regulated football match—
- (a) the person engages in behaviour of a kind described in subsection (2), and
 - (b) the behaviour—
 - (i) is likely to incite public disorder, or
 - (ii) would be likely to incite public disorder.
- 10 (2) The behaviour is—
- (a) expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of—
 - (i) a religious group,
 - (ii) a social or cultural group with a perceived religious affiliation,
 - 15 (iii) a group defined by reference to a thing mentioned in subsection (4),
 - (b) expressing hatred of, or stirring up hatred against, an individual based on the individual's membership (or presumed membership) of a group mentioned in any of sub-paragraphs (i) to (iii) of paragraph (a),
 - (c) behaviour that is motivated (wholly or partly) by hatred of a group mentioned in
 - 20 any of those sub-paragraphs,
 - (d) behaviour that is threatening, or
 - (e) other behaviour that a reasonable person would be likely to consider offensive.
- (3) For the purposes of subsection (2)(a) and (b) it is irrelevant whether the hatred is also based (to any extent) on any other factor.
- 25 (4) The things referred to in subsection (2)(a)(iii) are—

- (a) colour,
- (b) race,
- (c) nationality (including citizenship),
- (d) ethnic or national origins,
- (e) sexual orientation,
- (f) transgender identity,
- (g) disability.

(5) For the purposes of subsection (1)(b)(ii), behaviour would be likely to incite public disorder if public disorder would be likely to occur but for the fact that—

- (a) measures are in place to prevent public disorder, or
- (b) persons likely to be incited to public disorder are not present or are not present in sufficient numbers.

(6) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

2 Regulated football match: definition and meaning of behaviour “in relation to” match

(1) In section 1 and this section, “regulated football match”—

- (a) has the same meaning as it has for the purposes of Chapter 1 (football banning orders) of Part 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (see section 55(2) of that Act), but
- (b) does not include a regulated football match outside Scotland unless the match involves—
 - (i) a national team appointed to represent Scotland, or
 - (ii) a team representing a club that is a member of a football association or league based in Scotland.

(2) For the purposes of section 1(1), a person’s behaviour is in relation to a regulated football match if—

(aa) it occurs—

- (i) in the ground where the regulated football match is being held on the day on which it is being held,
- (ii) while the person is entering or leaving (or trying to enter or leave) the ground where the regulated football match is being held, or
- (iii) on a journey to or from the regulated football match, or

(ab) it is directed towards, or is engaged in together with, another person who is—

- (i) in the ground where the regulated football match is being held on the day on which it is being held,

(ii) entering or leaving (or trying to enter or leave) the ground where the regulated football match is being held, or

(iii) on a journey to or from the regulated football match.

(3) The references in subsection (2)(aa) and (ab) to a regulated football match include a reference to any place (other than domestic premises) at which such a match is televised; and, in the case of such a place, the references in subsection (2)(aa) and (ab) to the ground where the regulated football match is being held are to be taken to be references to that place.

(4) For the purpose of subsection (2)(aa) and (ab)—

(a) a person may be regarded as having been on a journey to or from a regulated football match whether or not the person attended or intended to attend the match, and

(b) a person's journey includes breaks (including overnight breaks).

3 Fixed penalties

In Part 1 of the table in section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (fixed penalty offences), after the entry relating to section 52(1) of the Criminal Law (Consolidation) (Scotland) Act 1995, insert—

<p>“Section 1(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2011 (asp 00)</p>	<p>Offensive behaviour at regulated football matches”</p>
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4 Sections 1 and 2: interpretation

(1) Section 1(1) applies to—

(a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and

(b) behaviour consisting of—

(i) a single act, or

(ii) a course of conduct.

(2) In section 1(2)—

(a) membership, in relation to a group, includes association with members of that group,

(b) “presumed” means presumed by the person expressing hatred or, as the case may be, doing the stirring up,

(c) “religious group” has the meaning given by section 74(7) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(3) In section 1(4)—

(a) “disability” means physical or mental impairment of any kind,

(b) “transgender identity” means any of the following—

(i) transvestism,

- (ii) transsexualism,
- (iii) intersexuality,
- (iv) having, by virtue of the Gender Recognition Act 2004 (c.7), changed gender,
- (v) any other gender identity that is not standard male or female gender identity.

- (4) In section 2(3), “televised” means shown (on a screen or by projection onto any surface) whether by means of the broadcast transmission of pictures or otherwise.

4A Power to modify sections 1 and 4

- (1) The Scottish Ministers may by order—
- (a) modify section 1 so as to—
 - (i) add or remove a description of behaviour to or from those for the time being listed in subsection (2) of that section,
 - (ii) vary the description of a behaviour for the time being listed in that subsection,
 - (iii) add or remove a thing to or from those for the time being listed in subsection (4) of that section,
 - (iv) vary the description of a thing for the time being listed in that subsection,
 - (v) disapply paragraph (b) of subsection (5) of that section in relation to a description of behaviour for the time being listed in subsection (2) of that section,
 - (b) modify section 4 so as to—
 - (i) add or remove a definition to or from those for the time being mentioned in subsection (2) or (3) of that section,
 - (ii) vary a definition for the time being mentioned in either of those subsections.
- (2) An order under subsection (1)—
- (a) may make such consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
 - (b) may, for the purpose of making consequential provision under paragraph (a), modify this Act,
 - (c) is subject to the affirmative procedure.

Threatening communications

5 Threatening communications

- (1) A person commits an offence if—
- (a) the person communicates material to another person, and
 - (b) either Condition A or Condition B is satisfied.
- (2) Condition A is that—

- (a) the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description,
- (b) the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) the person communicating the material—
- (i) intends by doing so to cause fear or alarm, or
 - (ii) is reckless as to whether the communication of the material would cause fear or alarm.

(3) For the purposes of Condition A, where the material consists of or includes an image (whether still or moving), the image is taken to imply a threat or incitement such as is mentioned in paragraph (a) of subsection (2) if—

- (a) the image depicts or implies the carrying out of a seriously violent act (whether actual or fictitious) against a person or against persons of a particular description (whether the person or persons depicted are living or dead or actual or fictitious), and
- (b) a reasonable person would be likely to consider that the image implies the carrying out of a seriously violent act against an actual person or against actual persons of a particular description.

(4) Subsection (3) does not affect the generality of subsection (2)(a).

(5) Condition B is that—

- (a) the material is threatening, and
- (b) the person communicating it intends by doing so to stir up hatred on religious grounds.

(6) It is a defence for a person charged with an offence under subsection (1) to show that the communication of the material was, in the particular circumstances, reasonable.

(7) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

5A Protection of freedom of expression

(1) For the avoidance of doubt, nothing in section 5(5) prohibits or restricts—

- (a) discussion or criticism of religions or the beliefs or practices of adherents of religions,
- (b) expressions of antipathy, dislike, ridicule, insult or abuse towards those matters,
- (c) proselytising, or
- (d) urging of adherents of religions to cease practising their religions.

(2) In subsection (1), “religions” includes—

- (a) religions generally,

- (b) particular religions,
- (c) other belief systems.

6 Section 5: interpretation

- (1) Subsections (2) to (5) define expressions used in section 5.
- 5 (2) “Communicates” means communicates by any means (other than by means of unrecorded speech); and related expressions are to be construed accordingly.
- (3) “Material” means anything that is capable of being read, looked at, watched or listened to, either directly or after conversion from data stored in another form.
- (4) “Hatred on religious grounds” means hatred against—
- 10 (a) a group of persons based on their membership (or presumed membership) of—
- (i) a religious group (within the meaning given by section 74(7) of the Criminal Justice (Scotland) Act 2003 (asp 7)),
 - (ii) a social or cultural group with a perceived religious affiliation, or
- (b) an individual based on the individual’s membership (or presumed membership) of
- 15 a group mentioned in either of sub-paragraphs (i) and (ii) of paragraph (a).
- (5) “Seriously violent act” means an act that would cause serious injury to, or the death of, a person.
- (6) In subsection (4)—
- (a) “membership”, in relation to a group, includes association with members of that
- 20 group, and
- (b) “presumed” means presumed by the person making the communication.

6A Power to modify sections 5(5)(b) and 6

- (1) The Scottish Ministers may by order—
- (a) modify section 5(5)(b) so as to—
- 25 (i) add or remove a ground of hatred to or from those for the time being mentioned in that section,
- (ii) vary a ground of hatred for the time being mentioned in that section,
- (b) modify section 6 so as to—
- (i) add or remove a definition to or from those for the time being mentioned in
- 30 that section in consequence of a modification made under paragraph (a),
- (ii) vary a definition that relates to a ground of hatred for the time being mentioned in section 5(5)(b).
- (2) An order under subsection (1) may—
- (a) specify grounds of hatred by reference to hatred against groups of persons, or
- 35 individuals, of specified descriptions,
- (b) specify such descriptions by reference to specified personal characteristics,

(c) in relation to any ground added by the order, modify this Act so as to make such provision for the same or similar purposes as that in section 5A as the Scottish Ministers consider necessary or appropriate,

(d) remove or vary any provision made under paragraph (c).

5 (3) An order under subsection (1)—

(a) may make such consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(b) may, for the purpose of making consequential provision under paragraph (a), modify this Act,

10 (c) is subject to the affirmative procedure.

General

7 Sections 1(1) and 5(1): offences outside Scotland

15 (1) As well as applying to anything done in Scotland by any person, section 1(1) also applies to anything done outside Scotland by a person who is habitually resident in Scotland.

(2) As well as applying to anything done in Scotland by any person, section 5(1) also applies to a communication made by a person from outside Scotland if the person intends the material communicated to be read, looked at, watched or listened to primarily in Scotland.

20 (3) Where an offence under section 1(1) or 5(1) is committed outside Scotland, the person committing the offence may be prosecuted, tried and punished for the offence—

(a) in any sheriff court district in which the person is apprehended or in custody, or

(b) in such sheriff court district as the Lord Advocate may direct,

25 as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district).

7A Report on operation of offences

(1) The Scottish Ministers must lay before the Scottish Parliament—

30 (a) a report on the operation of the offence in section 1(1) during the review period, and

(b) a report on the operation of the offence in section 5(1) during the review period.

(1A) Before preparing a report under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

35 (2) A report under subsection (1) must be so laid no later than 12 months after the end of the review period.

(3) In subsections (1) and (2), “the review period” means the period—

(a) beginning on the relevant day, and

(b) ending 2 years after the 1 August next occurring after the relevant day.

(4) In subsection (3), “the relevant day” means—

- (a) in relation to a report under subsection (1)(a), the day on which section 1 comes into force,
- (b) in relation to a report under subsection (1)(b), the day on which section 5 comes into force.

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8 Commencement

- (1) This section and section 9 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

9 Short title

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The short title of this Act is the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2011.

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[AS PASSED]

An Act of the Scottish Parliament to create offences concerning offensive behaviour in relation to certain football matches, and concerning the communication of certain threatening material.

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