

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill introduced in the Scottish Parliament on 16 June 2011:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 1-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

4. The Bill provides for two new criminal offences. The offence of ‘Offensive behaviour at regulated football matches’ criminalises offensive or threatening behaviour likely to incite public disorder at certain football matches. The offence of ‘Threatening communications’ provides for a criminal offence concerning the sending of communications which contain threats of serious violence or which contain threats intended to incite religious hatred.

COMMENTARY ON SECTIONS

Section 1 – Offensive behaviour at regulated football matches

5. This section creates a statutory offence of engaging in offensive behaviour which is likely to incite public disorder at a regulated football match.

6. Subsection (1) provides that a person who engages in behaviour at a regulated football match which is of a kind mentioned in subsection (2) and is, or would be, but for the factors listed at subsection (5), likely to incite public disorder, commits an offence.

7. Subsection (2) lists the five kinds of behaviour which trigger the offence at subsection (1). These are:

(a) Expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or group defined by reference to a characteristic listed in subsection (4), for example, by engaging in sectarian chanting or singing.

(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 paragraph (a) above (for example, expressing hatred of a particular player or manager because of that person’s presumed or actual religious affiliation).

(c) Behaviour that is motivated by hatred of a group mentioned in paragraph (a) above.

(d) Behaviour that is threatening; or

(e) Other behaviour that a reasonable person would be likely to consider offensive – this would include, but is not limited to, sectarian songs or chants.

8. Subsection (3) provides, for the avoidance of doubt, that it is irrelevant whether the hatred expressed was also based on any other factor, such as, for example, hatred of a particular football club or player’s playing style as well as their religious affiliation, race or other factor listed at subsection (2)(a) or (b).

9. Subsection (4) provides a list of further characteristics, other than religion, by which a group may be defined, in respect of which it is an offence to express or stir up hatred. These are: colour; race; nationality; ethnic or national origins; sexual orientation; transgender identity; and disability.

10. Subsection (5) provides that behaviour shall be deemed likely to incite public disorder if it would be likely to incite public disorder but for the fact that measures have been put in place to prevent public disorder, such as a strong police presence and 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, for example because ‘away’ supporters are greatly outnumbered by home supporters, or because one team’s supporters have left the match before the other.

11. Subsection (6) specifies that the maximum penalty is 5 years imprisonment and a fine not exceeding the statutory maximum.

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

12. This section provides a definition of a “regulated football match” and sets out the circumstances in which behaviour is considered to have taken place “in relation to a regulated football match”.

13. Subsection (1)(a) provides that a “regulated football match” is one as defined by section 55(2) of the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#). These will include football matches anywhere in the United Kingdom where one or both of the participating teams represent a country or territory; or a club which is a member of the Scottish Premier League or the Scottish Football League, the Football League, the Football Association Premier League, the Football Conference or the League of Wales. Subsection (1)(b) provides that matches taking place outside Scotland are only considered “regulated football matches” if the match involves a national team appointed to represent Scotland, or a team representing a club that is a member of a football association or league based in Scotland. As such, a game between, for example, two English Premier League clubs taking place in England would not be a “regulated football match”.

14. Subsection (2) provides that, for the purpose of the offence at section 1, a person’s behaviour shall be considered to have occurred in relation to a regulated football match if it

happens at the ground where a regulated football match is being held on the day on which it is being held, while the person is entering or leaving the ground where the match is being held, or on a journey to or from the match.

15. Subsection (3) provides that the references in subsection (2) to a regulated football match include any place, other than domestic premises, where a match is being televised. As such, the offence can be committed by people watching a match at a pub, or in a public space where the match is being broadcast.

16. Subsection (4) provides that a person may be regarded as having been on a journey to or from a regulated football match whether or not that person attended, or intended to attend the match. This ensures that offensive and disorderly behaviour committed by supporters travelling to matches without tickets to attend the match are covered by the offence provisions. It further provides that a person's journey may include breaks, including overnight breaks.

Section 3: Fixed penalties

17. This section amends section 128 of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) to add the offence of *Offensive behaviour at regulated football matches* at section 1 to the list of offences in respect of which a Fixed Penalty Notice under Part 11 of that Act can be issued. A Fixed Penalty Notice can be issued anywhere in Scotland under the [Antisocial Behaviour \(Fixed Penalty Offence\) \(Prescribed Area\) \(Scotland\) Regulations 2007](#).

Section 4: Sections 1 and 2: interpretation

18. This section defines the meaning of certain terms for the purposes of sections 1 and 2.

19. Subsection (1) provides that section 1(1) applies to behaviour of any kind, including things said or otherwise communicated (e.g. with a banner or on a T-shirt) as well as things done.

20. Subsection (2) provides that the references to membership of a group in section 1(2) include association with members of that group (e.g. expressing hatred of those who socialise with members of a particular religious group), that the reference to "presumed membership" in section 1(2) means presumed by the person expressing hatred or stirring up hatred, and as such, it is irrelevant that the person or people in question are not in fact members of the group and that "religious group" has the meaning given by section 74(7) of the [Criminal Justice \(Scotland\) Act 2003](#).

21. Subsection (3) defines the terms "disability" and "transgender identity" for the purpose of section 1(4).

22. Subsection (4) defines the term "televised" and makes clear that it extends to matches shown on a screen or projected onto any surface by any means (e.g. by means of internet streaming or 'webcasting', as well as conventional television broadcasting).

Section 5: Threatening communications

23. This section creates a new offence of making threatening communications.

24. Subsection (1) provides that a person who communicates material to another person where either of Condition A (set out in subsections (2)-(4) or Condition B (set out in subsection (5)) is satisfied commits an offence.

25. Subsection (2) sets out the three tests which must be satisfied for Condition A to be met. These are:

- That the material consists of, contains or implies a threat or incitement to carry out a seriously violent act against a person, or against persons of a particular description. Persons of a particular description may, for instance, be supporters of a particular football club or members of a particular religious group;
- That the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm; and
- That the person communicating the material either intends to cause fear or alarm, or is reckless as to whether the communication of the material would cause fear or alarm.

26. Subsection (3) provides that, for the purposes of Condition A, where the material consists of an image which depicts or implies the carrying out of a seriously violent act against a person or against persons of a particular description and 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, the image may be taken to imply a threat or incitement as mentioned in subsection (2)(a). This ensures, for the avoidance of doubt, that a doctored image of, for example, a prominent public figure depicting an act which would cause serious injury to that person, and intended as an implied threat, would fall within the scope of Condition A.

27. Subsection (5) sets out the two tests which must be satisfied for Condition B to be met. These are:

- That the material is threatening; and
- That the person communicating it intends to stir up religious hatred.

28. This is wider than Condition A, in that it covers threats of any kind, and not only threats of serious violence. In contrast with Condition A, a person who is merely reckless that a communication would have the effect of stirring up religious hatred would not be caught by the offence. This ensures that a person making a communication containing what he or she intended to be legitimate comment or criticism of a religion or religious beliefs would not commit the offence solely because others considered it had the effect of stirring up religious hatred.

29. Subsection (6) provides that it is a defence for a person charged with an offence under this section to show that the communication of the material was, in the particular circumstances,

reasonable. This would cover, for example, a person who communicates a threat of serious violence made by someone else for the purpose of alerting the police or a journalist reporting a threat of serious violence made by another person.

30. Subsection (7) specifies that the maximum penalty is 5 years imprisonment and a fine not exceeding the statutory maximum.

Section 6: Section 5: interpretation

31. This section defines terms used in section 5.

32. Subsection (2) provides that “communicates” means communicates by any means other than by unrecorded speech alone. As such it includes communications made by post, on the internet through websites, email, blogs, podcasts etc, by printed media, et cetera.

33. Subsection (3) defines “material” as anything capable of being read, looked at, watched or listened to, either directly or after conversion from data stored in another form. As such, it includes printed text, video, sound recordings, images, et cetera.

34. Subsection (4) defines “religious hatred” as hatred of a group of persons based on their membership of a religious group (as defined by section 74(7) of the [Criminal Justice \(Scotland\) Act 2003](#)) or of a social or cultural group with a perceived religious affiliation, or of an individual based on their membership of such a group.

35. Subsection (5) defines a “seriously violent act” as one that would cause serious injury to, or the death of, a person.

36. Subsection (6) provides that, in relation to subsection (4) “membership” of a group includes association with members of that group, and “presumed” means presumed by the person making the communication (as such, if a person stirs up hatred of a person because he believes that person to be a member of a particular religious group, it is irrelevant that the person is not, in fact, a member of that religion).

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

37. This section makes provision regarding the circumstances in which the offences at sections 1(1) and 5(1) may be committed outside Scotland. In these circumstances, the acts will constitute offences under Scots law (though not necessarily under the law of the country in which the act took place).

38. Subsection (1) provides that the offences apply to anything done outside Scotland by a person to whom this subsection applies (e.g. a British citizen or a person who is habitually resident in Scotland). As such, a British citizen commits this offence irrespective of where in the world they make the threatening communication from.

39. Subsection (2) provides that the offence at section 5(1) also applies to a communication made by any person from outside Scotland if the person intends the communication to be heard, seen, read, looked at, watched or listened to primarily in Scotland (whether or not they fall within subsection (1)). Thus the offence could be committed, for example, by an Irish national, posting a threat to a prominent figure in Scottish football from outwith Scotland, but would not be committed by, for example, a Dutch national posting a threat to a prominent figure in English football from outwith Scotland.

40. Subsection (3) provides that, where a person commits an offence outwith Scotland, he or she may be tried in any sheriff court district in which the person is apprehended or in custody, or in such sheriff court as the Lord Advocate may direct, as if the offence had been committed there.

Section 8: Commencement

41. The Act will come into force at the start of the day following the day on which the Bill receives Royal Assent.

FINANCIAL MEMORANDUM

INTRODUCTION

42. This document relates to the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill introduced in the Scottish Parliament on 16 June 2011. It has been prepared by Kenny MacAskill MSP, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

43. The purpose of this Financial Memorandum is to set out the Scottish Government's estimated costs associated with the measures introduced by the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. It should be read in conjunction with the Bill and the other accompanying documents, including the Policy Memorandum which explains in detail the policy intention of the Bill.

44. The Scottish Government does not envisage significant additional costs associated with the introduction of these measures. The main costs, where they occur, are likely to relate to the policing and enforcement of the measures set out in the Bill, the anticipated increase in the number of cases which may be brought to the courts as a result of such enforcement, and the costs associated with dealing with those convicted, whether that conviction leads to a community or custodial sentence. It is anticipated that the majority of the costs will fall to the Scottish Administration.

These documents relate to the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011

45. It is crucial to the estimates that follow that much of the behaviour that the provisions cover is already criminal and therefore liable to prosecution. There is well-established case law on the use of breach of the peace, for example, in cases similar to those set out in these provisions. The new measures do, however, bring clarity and strengthen the law. It is not necessarily the case that the estimated number of additional arrests, prosecutions, and custodial or other sentences will entail a significant new or additional financial burden, as there may well have been arrests, prosecutions and disposals anyway. It is therefore difficult to estimate the net effect of these new provisions.

46. Against this background, the Scottish Government does not expect its costs in 2011/12 to exceed £0.5 million, which could be met from within existing Justice portfolio budget provision. The new and additional costs arising as a result of the measures in this Bill falling in later years are estimated to be in the range of £0.7 million to £1.5 million per annum, with provision to be considered against other priorities as part of the forthcoming Spending Review.

BACKGROUND

47. In preparing this Memorandum, the Scottish Government has consulted with the Association of Chief Police Officers in Scotland (ACPOS), Crown Office and Procurator Fiscal Service (COPFS), Scottish Legal Aid Board (SLAB), Scottish Court Service and Scottish Prison Service (SPS).

48. A basic assumption in preparing this Memorandum has been that there is an increasing social problem in relation both to offensive behaviour associated with football and, more widely, certain threats communicated in a variety of ways. A commitment has been made to eradicate these behaviours and the attitudes underlying them from society. This will require considerable effort from a very wide range of agencies in the public and voluntary sectors.

49. Crucially, however, the provisions in this Bill are only one part of a much wider programme, building on much existing work, that will be necessary to deliver the outcomes sought. This wider programme relates to work to tackle sectarianism, violence reduction and alcohol misuse. These programmes of work are long standing with established funding mechanisms. This is intended to justify an assumption that, while there may be some refocusing and reprioritisation on the issues we are seeking to tackle through this Bill, they are in fact not new and generally can be tackled through established means.

50. This Memorandum limits itself more narrowly to the impact and any potential additional costs incurred as a direct result of the provisions in the Bill, which will naturally have an impact primarily on the criminal justice system. The financial implications of any wider programme will be considered and detailed separately as that work develops.

51. Given that the Scottish Government is seeking to eradicate these behaviours, there is likely to be an initial period of activity, but the anticipated overall costs will reduce over time as public information and the awareness of successful prosecutions begins to have a deterrent effect, and more general preventative approaches in relation to offending and sectarianism take hold. Ultimately, in the absence of the relevant offending behaviour, the Scottish Government

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would hope that these offences need rarely if ever be used. While savings would, therefore, be expected over time, it is not possible at this point to estimate the extent of such savings and when they would be realised.

52. Another crucial assumption concerns the very wide potential scope of the new offences and thereby the prospect of a very considerable number of prosecutions etc., with all the consequential costs. In relation to the offences covering offensive behaviour at football matches, this means everything covered by the definition of a “regulated football match”, along with travel to and from those matches and wherever such matches are being broadcast. In relation to the “threatening communications” offence the scope is potentially even wider, given that any relevant threatening communication could include threats communicated from outside Scotland, which can be seen or heard in Scotland. The potential costs of enforcing all such instances of the offences would be unsustainable.

53. The actual cost of these new measures, however, will be determined by the extent of their use (the number of arrests, investigations, prosecutions, trials and disposals). The assumptions used to determine the actual cost of introducing these measures have been developed in close consultation with a range of partners including ACPOS and COPFS. The most significant new costs would potentially fall to SPS, in particular if these measures lead to a number of new, substantial custodial sentences. In addition, there will be extra calls on the Legal Aid Fund, the costs of prosecution and in court proceedings, and in dealing with disposals at all levels. However, as outlined above, given the coverage of existing offences, we do not predict that there will be a significant number of additional cases.

ASSUMPTIONS

54. A number of assumptions have been made with respect to the potential costs involved in detecting and prosecuting cases under the new measures. Figures and estimates relating to policing costs have been provided by the Strathclyde Police Territorial Policing Unit, and that Force’s Finance Department. These concentrate on the recent known costs associated with “Old Firm” fixtures and, therefore, represent the most significant example of policing potential offensive behaviour at football matches. The Scottish Government accepts that there are other high profile Scottish football fixtures with their own particular demands, but considers it reasonable to use “Old Firm” fixtures as providing the upper limit of what may be required.

55. Estimates have also been made about the “unit costs” associated with pursuing prosecutions through both the Solemn and Summary court procedures. These estimates are based on known average costs in each case, and have been calculated by the Scottish Government, in consultation with other stakeholders. Similarly, assumptions about potential disposals - custodial, community payback order (CPO), fines or other disposals - are based on existing experience of court disposals.

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56. In summary, the assumptions used in the following sections are:

	Solemn cases	Summary cases
Costs		
Legal Aid costs per case	£1,367	£563
Prosecution costs per case	£6,993	£312
Court costs per case	£1,460	£252
Annual cost per CPO	£2,400	£2,400
Annual cost per prison place	£40,000	£40,000
Disposals		
% custodial	100%	10%
% CPO	0%	15%
% fine/other disposal	0%	75%
Sentence length	3 years	6 months
Actual time served	1.5 years	3 months

57. In discussion with the Scottish Children’s Reporter Administration (SCRA) it was agreed that the new offences in the Bill were unlikely to result in any significant increase in referrals. As a result, there would be very little financial impact on SCRA, and there is no estimate of such costs in this Memorandum.

OFFENSIVE BEHAVIOUR AT REGULATED FOOTBALL MATCHES

COSTS ON THE SCOTTISH ADMINISTRATION

Policing and enforcement

58. Scottish police forces already commit significant resources to policing and managing football matches, not just in and around the stadium, but in the wider area of pubs and clubs, town centres and, in the case of domestic abuse, in private dwellings. The Scottish Government accepts the principle that such resources should only be deployed when necessary. It is no part of the assumptions of this Bill that the introduction of these measures will require football matches to be policed that are not already being policed. It remains for the local Force, in consultation with football clubs, to assess risk of public disorder and respond accordingly.

59. As part of the case made to the Scottish Government in connection with the football “summit” on 8 March 2011 and the work of the Joint Action Group, Strathclyde Police have considered and provided information on “Old Firm” matches. Policing such fixtures is expensive due to the level of resources involved, which includes a number of officers who will be required to work on planned “rest days”.

60. On average, an Old Firm game costs £328k to police, with Sunday fixtures costing £346k and weekday fixtures costing £282k. Strathclyde’s figures also show that a total of 8,605 officers have been committed to policing the stadium/footprint of “Old Firm” fixtures since the

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start of the 2007/08 season, up to the match on 2 March 2011. This represents an average of some 478 officers per fixture, of which around 86% are Constables and less than 1% are Chief Superintendent or Superintendent level officers. In addition, resources dedicated to such matches include Bronze Commanders; Events Room staff; Football Intelligence Team staff; officers committed to Divisional Action Plans; and staff based in headquarters departments, as well as pre-match resourcing.

61. In total, some £2.3 million was spent policing the seven “Old Firm” fixtures between 28 February 2010 and 2 March 2011. Just under half of that expense was incurred from the additional deployment of officers throughout the Force area (in support of Divisional Action Plans), while a further 41% of the overall cost (£941k) was attributable to Stadium Footprint policing.

62. In response to problems on 2 March in particular, Strathclyde Police enhanced their response to the issues as demonstrated by initiatives such as the 35-officer dedicated anti-sectarian deployment at “Old Firm” games. This forms part of Strathclyde’s existing “Anti-Sectarian Initiative” (ASI) which will continue to set the framework for policing fixtures in that Force’s area. As a result, the additional costs of policing arising as a direct result of the new measures is likely to be relatively small, and would be absorbed within existing resources and plans. It is also important to recognise that such a response will not be necessary on many occasions through the football season.

63. What this case study has shown is the potential for disorder at football matches and beyond to be a resource-intensive business. The question is whether the measures in the Bill will add to the burden. The Scottish Government does not rule out that individuals who are not currently considered to be acting criminally will be arrested on the basis of these new offences. However, since the primary intent of the measures is to bring clarity and strengthen the law, and not criminalise behaviour that is not already likely to be prosecuted, the policing response to football matches is not expected to be dramatically different, and certainly not in a way that demands a whole new approach or significant additional resources. With these measures in place, the police will still have to police high-profile, high-risk fixtures, and police them appropriately. Indeed, since the purpose is to bring clarity and strengthen the law in relation to offensive behaviour associated with football matches, the response of Match Commanders and deployed officers should be made easier by these provisions.

Courts and Prisons

64. The report provided by Strathclyde Police showed that there have been 204 arrests within the footprint of a stadium when an “Old Firm” game has taken place between October 2007 and 2 March 2011. Of these, 62 arrests were for “sectarian” breach of the peace offences, more than half of which took place around the fixtures on 20 February and 2 March 2011. This number is, however, relatively small compared to the wider pattern of violence and disorder occurring on match days.

Solemn cases

65. The Scottish Government anticipates that the new measures set out in the Bill will in large part be used in place of existing offences including breach of the peace. Given this, it is anticipated that the new measures will lead to a relatively small additional number of the most serious cases being prosecuted in the Sheriff Courts under solemn procedure, with the expectation that a substantial custodial sentence would be imposed on conviction. It is difficult to predict exact levels of activity at this stage, but the Scottish Government has prepared estimates which assume that between five and 10 additional cases would be tried each year in the Sheriff Solemn court. Using the assumed costs set out above it is anticipated that this could give rise to additional costs to the courts of some £0.05 to £0.1 million per annum. This includes estimates for the increased cost of legal aid (£7-£14k), prosecution (£35-£70k) and court costs (£7-£15k). In addition, it is anticipated that the long-term costs to the Scottish Prison Service of five to 10 sentences imposed each year would amount to between £0.3 and £0.6 million per annum.

Summary cases

66. There will also be a higher number of less serious cases, for example of offensive chanting or singing, which are prosecuted through the Sheriff Court Summary procedure. Given the Scottish Government's stated intention of tackling and eradicating offensive behaviour at football matches, it considers that a realistic estimate of new prosecutions would lie between 50 and 100 additional cases per annum. At these levels the additional costs to the courts system, including legal aid, prosecution and costs in court, would be in the range £56k to £113k per annum. Available data on Summary case convictions show that around 10% of such cases will result in custodial sentences. Assuming a sentence length of six months (with three months served) the long-term costs to the Scottish Prison Service would be some £72k to £144k per annum, including costs associated with remand.

Direct measures

67. Under the provisions of the Bill, the police will have the option of issuing fixed penalty notices (FPNs) for relatively minor offences under the new offensive behaviour provision. Such offences might be targeted at chanting or other offensive behaviour at a less serious level. However, the Scottish Government considers that FPNs offer an appropriate method of dealing with higher numbers of such cases, while continuing to give a clear message about the commitment to tackle such behaviour. Given this, it is anticipated that between 200 and 500 FPNs might be issued directly by the police each year. The costs involved in disposing of offences in such a way are relatively small - involving perhaps five to 15 minutes of police time, with some additional processing costs relating to the collection of fines etc. However, even the upper estimate of new FPNs issued should be seen in the context of some 60,000 FPNs handed out for antisocial behaviour more generally each year. Given this, the Scottish Government considers that the additional costs of dealing with low level offences through FPNs is insignificant in relation to existing resources, and can be absorbed within the existing resources available to the police service in Scotland.

COSTS ON LOCAL AUTHORITIES

68. A further sentencing option available to the courts will be the imposition of community payback orders (CPOs). The responsibility for administering CPOs lies primarily with local authorities and the costs would therefore fall to councils. Assuming some 15% of summary cases - between eight and 15 cases per year - were disposed of through CPOs, it is estimated that additional costs would amount to between £18k to 36k per annum. Against a background of some 14,000 community sentences imposed each year across Scotland, with direct support funding of £100 million from central Government, any additional costs to local authorities arising from the new measures are not considered to be significant. The Scottish Government will, however, monitor and review these costs in consultation with COSLA once the legislation is implemented.

THREATENING COMMUNICATIONS

COSTS ON THE SCOTTISH ADMINISTRATION

Policing and enforcement

69. The policing and enforcement of offences around threatening communications is a developing area and it is difficult at this stage to estimate the costs involved in addressing the issue across such a wide range of media from written material, through broadcasting and the internet. Police and prosecutors are developing increasingly sophisticated investigatory and evidential approaches and such activity is increasingly seen as part and parcel of tackling crime. This is a crucial point in relation to estimating whether this offence will create an additional burden on those investigating and prosecuting crimes of this sort. There is a recognition from the police that an increasing level of resource will have to be directed to some of these issues to reflect changes in people's behaviour. It is, therefore, expected that the introduction of this new offence will if anything help direct police and prosecution resources more efficiently by clearly defining the scope of criminal behaviour.

70. New activity arising out of the measures in the Bill is likely to be aimed at the worst offenders, in particular in the early stages as investigative and evidential procedures are sharpened. Again, this is based on evidence from case studies. The Scottish Government is aware of recent activity in the Strathclyde Police area which would seem relevant to these provisions. Strathclyde Police have provided figures to show that they are currently investigating some 51 individuals and/or web pages displaying "sectarian" or hate-fuelled postings in the wake of high profile arrests in March 2011. However, Strathclyde Police also report that, while more people are viewing such websites etc., there has been a noticeable drop in such postings over the same period, with some users removing their own offensive remarks, or deleting accounts. This is likely to be due to an increasing recognition that the police and others are taking an interest in such activity.

71. Given activities at this level, the Scottish Government considers that the policing and enforcement of threatening communications will continue to be part of the emerging police response to such behaviour including e-crime, and that the costs of this can be absorbed within existing resources.

These documents relate to the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011

Courts and Prisons

72. As with the offence of offensive behaviour, it is difficult to predict exact levels of activity at this stage, but the Government anticipates that prosecutions pursued under this provision will be targeted at the worst offenders. It is considered that the estimates of costs below are based on a realistic assumption of the number of such prosecutions, the same unit cost assumptions as set out above.

Solemn cases

73. It is anticipated that there will be between two and five new Solemn cases through the courts each year, leading to additional court costs of between £20k and £49k per annum. Assuming each results in an average custodial sentence of three years (18 months served) the new costs to the Scottish Prison Service would range from £120k to £300k per year.

Summary cases

74. For less serious offences dealt with through Summary procedures, it is expected that there could be between 20 and 50 new cases a year, with costs to the courts service ranging from £22k to £56k per annum. Prison sentences of six months would lead to costs of £29k to £72k per annum (including remand costs).

COSTS ON LOCAL AUTHORITIES

75. Based on the assumptions set out above, the Scottish Government expects that there would be a very small number of new community payback orders imposed as a result of these offences, with potential additional costs of £7k-£18k falling to local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

76. A formal Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this Bill. The Cabinet Secretary for Justice does not consider that a BRIA is necessary, as the additional costs of policing and enforcing the offences set out in the Bill will fall largely to public service organisations including the police, Scottish Court Service, Crown Office and Procurator Fiscal Service and the Scottish Prison Service, as well as to local authorities, as set out in this Memorandum.

77. There will, however, be additional costs to football clubs where policing activity is increased around matches. Football clubs currently contribute to the costs of policing regulated football matches. Figures provided by Strathclyde Police for the seven "Old Firm" games between 28 February 2010 and 2 March 2011 show that the Force has billed the two clubs an average of some £47,300 per fixture. This covers around 34% of the costs of policing the stadium "footprint", and around 10% of the overall cost of additional policing in the Force area on fixture days. While the Scottish Government does not anticipate that the new measures will require a significant increase in overall policing resources, it is possible that there will be changes in the way different matches are policed. Such changes have the potential to lead to increased costs for clubs, but it is difficult to estimate the actual level of any increase as this will

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depend on a number of factors including discussions with police around risks at each fixture, the potential for additional in-house stewarding and liaison, etc.

OVERALL COSTS

78. Given all of the above, the total additional costs of introducing, enforcing and disposing of the new offences in the Bill may amount to between £0.7m and £1.5m per annum over the course of the next Spending Review period. Costs in 2011/12 are expected to be less given the time taken to establish the new approach following enactment; these costs should not exceed £0.5 million. These costs represent the Scottish Government's best estimate of new costs at this time, and will be kept under review as the new measures are brought into effect, and as the work of the Joint Action Group and others develops further.

Summary of cost estimates (£000)

	Offensive Behaviour		Threatening Comms		Totals	
	Low	High	Low	High	Low	High
Number of offences						
Costs						
Police	Existing resources		Existing resources		Existing resources	
Court Service						
Solemn Cases	49	98	20	49	69	147
Summary Cases	56	113	22	56	78	169
Prison Service						
Solemn Cases	300	600	120	300	420	900
Summary Cases	72	144	29	72	101	216
Fixed Penalty Notices	Not material		Not applicable		Not material	
Local Authorities	18	36	7	18	25	54
Totals	495	991	198	495	693	1,486

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* In the Table above, Court Costs may be broken down as follows (£000):

		Offensive Behaviour		Threatening Comms	
Solemn					
	Legal Aid costs	6.8	13.6	2.7	6.8
	Prosecution costs	35.0	70.0	14.0	35.0
	Court costs	7.3	14.6	3.0	7.3
	Total	49.1	98.2	19.7	49.1
Summary					
	Legal Aid costs	28.2	56.3	11.2	28.2
	Prosecution costs	15.6	31.1	6.2	15.6
	Court costs	12.6	25.2	5.0	12.6
	Total	56.4	112.6	22.4	56.4

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

79. On 16 June 2011, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

80. On 16 June 2011, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

