I refer to the Committee’s request of 20th June 2011 seeking comment from my Association as part of the Committee’s deliberations on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. I am grateful for an opportunity to comment.

You will be aware that the Scottish Beer and Pub Association’s members account for 1,200 of the 5,000 licensed public houses in Scotland. Our members promote the responsible sale of alcohol and management in all of its licensed premises, helping to Scotland a safe and enjoyable place to visit and socialise in. Our members also include a number of Scotland’s major brewers and drinks producers. My Association’s sister trade association is the British Beer and Pub Association, the BBPA.

In advance of commenting in detail on the content of the Bill, I would like to offer a general observation on the Bill’s legislative process itself. The Association had no prior involvement in discussing the content of the Bill, nor in offering feedback on this prior to the Committee’s deliberations. My members have concerns therefore that the Bill may generate unintended consequences for their operation which are currently not evident. However, we would offer the following comments on the Bill:

**Background**

We would highlight that the holders of Premises Licences issued under the terms of the Licensing (Scotland) Act 2005 and related legislation already operate under the terms of Statements of Licensing Policy as issued by the Licensing Board in the area in which they operate.

A number of these Policy Statements already cover issues relating to “offensive” or indeed “sectarian” behaviour. We would bring to the Committee’s attention the Statement of Licensing Policy as agreed by the City of Glasgow Licensing Board which is currently in force and which indeed has been in force in similar terms for a number of years (Link).

In Section 12 of the Glasgow Board’s Licensing Policy Statement, “Policy on the prevention of malicious or ill-intentioned conduct on the basis of race, politics or religion associated with the management of Licensed Premises” that policy specifically covers aspects of behaviour which are to be covered by the Bill. Specifically it states:

“The policy will operate as follows:- In general terms, the Licensing Board looks to Premises Licence Holders not to engage in or permit conduct or activities at licensed premises which cause offence to a reasonable person or which constitute a threat to public order or safety, on racial, political, religious or sectarian grounds or which can
reasonably be construed as having such effect or which have the effect, on any one of those grounds, of discouraging a particular part of the community from using the premises. For the avoidance of doubt, the association of any licensed premises with a particular football club or the display of football programmes or football memorabilia within the licensed premises shall not of itself breach the policy. However, the football memorabilia displayed must not contain any design, insignia, word or groupings of words, which have a political, racial, religious or sectarian content or which could reasonably be construed as inciting political, racial, religious or sectarian hatred or violence.

The Premises Licence Holder shall comply with any order or instruction in the interests of public order and safety given by a Police Constable for the purpose of giving effect to this policy.”

Responsibilities of Premises Licence Holders

Additionally, there is a general expectation that premises licence holders will maintain order on their premises, including not permitting unlawful activity. I would therefore suggest that licence holders already “police” their premises in relation to existing criminal offences. If they do not then they are likely to find themselves the subject of a premises licence review initiated by the police, or indeed by “any person” under the terms of the Licensing (Scotland) Act 2005.

Whilst these responsibilities are accepted by licence holders in relation to their own premises, there is a growing concern amongst operators that increasingly as criminal legislation is broadened out with the creation of new offences, that licensees and their staff more often find themselves in the role of detecting offences and dealing with them. This places themselves and their staff in difficult situations which can often lead to conflict with errant customers, and criminals, to police involvement and perhaps even lead to incidents of violence.

Detailed Response

In relation to the new criminal offences proposed in the Bill which is before the Committee, we would suggest that many of these matters are already addressed by existing pieces of criminal legislation. The belief that further offences need to be legislated for is perhaps the reflection of a perceived lack of an appropriate level of action thus far to address them by the police and by other elements of the criminal justice system.

We must therefore question the need for additional legislation on these matters.

In relation to the content of Section 2 (3) (Regulated football match: definition and meaning of behaviour “in relation to” match), we note the intention (from the Explanatory Notes, paragraph 15) that: “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.”
It is therefore clear that the proposed offences relating to football matches will be extended to cover licensed premises, primarily pubs, where football is broadcast. As previously highlighted this will significantly extend the responsibilities of premises licence holders and their staff to detect and address the new offences, raising the issues commented upon previously.

We would have a concern about these new offences being created unless they were unnecessary and not adequately covered by existing criminal legislation.

Implementation

As an Association we would suggest, given that these new offences will cover locations which members of the public would not currently associate with football related offences, that there needs to be a public awareness campaign to reinforce the new legal position, as well as to provide clarity for those operating premises where football matches are broadcast as to what is unacceptable, and indeed criminal, behaviour. We do not believe that this clarity has been provided thus far. Without it, we do not believe that the new offences can be successfully policed and we would be concerned that premises licence holders could find themselves being held accountable, and potentially their licences sanctioned, for incidents being committed on their premises which they did not know to be criminal matters.

Additional Matters

We note in the Financial Memorandum accompanying the Bill that: “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.”

As per my previous comments I would suggest that once the Bill is enacted that there will be additional staff training costs for the operators of licensed premises where football matches are broadcast. These would relate to making staff aware of the additional offences that they should be aware of in managing and running their pubs and how to deal with them. There may also be a need for additional security for licensed premises when certain football matches are broadcast. It is difficult to quantify these additional costs in advance of knowing in detail what matters are to be viewed as offences and what conduct would be unacceptable under the Bill.

I trust that our views are of use and we look forward to the eventual outcome of the Committee’s deliberations on these issues. We will of course contribute to the Committee's further deliberations on these issues going forward.
Patrick Browne
Chief Executive, Scottish Beer and Pub Association
26 August 2011