

Football (Strict Liability) (Scotland) Bill



A proposal for a Bill to make Scottish professional football clubs strictly liable for their supporters' behaviour

**Consultation by James Dornan MSP
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FOREWORD



Football is enjoyed by people all across Scotland. It has the power to unite communities and bring people together enabling them to appreciate skill. It can also lead to enhancement through creating cultural diversity with a sense of community. I have supported my own team for over 50 years and had the pleasure of coaching teams for many years and doing what I could to develop talent and also the soft skills that we all find necessary to develop and utilise in our lives.

I passionately care about the game and its future. I am optimistic about the future of Scottish football and have seen the huge changes that have occurred over the last few decades, most of them for the better. However we are still afflicted by the behaviour of a minority of supporters who appear to believe that football allows them to behave in a way they wouldn't consider doing anywhere else. This behaviour can manifest itself through sectarianism, homophobia, misogyny, xenophobia and also

through violence. In 21st Century Scotland this is simply unacceptable.

The challenge that confronts those who love the sport is how do we tackle this behaviour and ensure football plays its part in creating a modern and inclusive Scotland.

My proposal to that challenge is the introduction of strict liability for football clubs. Strict liability means being able to hold a party responsible for certain actions and behaviours even if that party was not at fault or negligent. In a football context, this means holding football clubs liable for the negative behaviour of their supporters. My hope is that this will foster a less hostile environment at football matches, better reflecting the multicultural society that exists in Scotland, and encouraging football to become a method of bringing people together and not an event which can on occasions be used to create or perpetuate divisions. This would provide the SFA and Scottish football generally the opportunity of creating a new and sustainable vision for the sport.

There is currently a debate concerning the future of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. My question to those who argue for the repeal of that Act is: if not that, what? I believe the time is right for strict liability, with or without the repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. That is why I am holding this consultation.

Football is generally a positive experience. I'm keen to do what I can to eradicate the last vestiges of the violent, sectarian, macho culture that most of society left behind decades ago. I'm asking for you to help me by reading this consultation document and answering the questions contained within it.

I very much look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'James Dornan', written in a cursive style.

James Dornan MSP
29 November 2016

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Email: James.Dornan.msp@parliament.scot; **telephone:** 0141 632 5238.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals:
<http://www.parliament.scot/parliamentarybusiness/Bills/12419.aspx>.

AIM OF THE PROPOSED BILL

The proposed Bill will require a system of strict liability to be established for professional football clubs in Scotland. This will require the governing body to take the leadership that is necessary to curb sectarianism, violence, and disorder by imposing sanctions on clubs, without the need to prove fault, negligence or intention.

BACKGROUND

Football holds a special place in Scottish society. It brings people, families and communities together. Football clubs contribute a lot to their local community, often through their charitable works. However, football can also create divisions within communities and wider society. When we examine behaviour at football matches it is clear that it can include abuse, both physical and verbal, assaults and a range of other criminal behaviour.

Despite recent changes to the law and initiatives to tackle offensive behaviour at football matches, problems remain, and these have been well documented recently. It is clear that the current framework is not sufficiently strong and effective enough to make serious inroads into reducing offensive behaviour, including that of a sectarian nature, at football matches. Football governing bodies in Europe and England enforce systems of strict liability on the clubs which compete in their competitions, whereby clubs are held responsible for the behaviour of their supporters. The introduction of strict liability in Scotland will require Scottish football's governing body to hold clubs responsible for the behaviour of their supporters, and therefore incentivise both clubs and supporters to take all necessary steps to eradicate offensive behaviour from football in Scotland.

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act¹ ("the Act") was passed in 2012 to try and deal with this problem. There is currently a considerable debate surrounding the effectiveness of the Act and there are calls, led by a member's bill proposal in the Scottish Parliament, to repeal the Act. But repealing the Act will not assist in dealing with sectarianism, hate crimes, and other anti-social behaviour in the context of football. The challenge for society, including those who disagree with the Act, is to seek other methods of dealing with these social problems. I believe that strict liability can be an important part of the solution whether or not the 2012 Act is repealed.

What is strict liability?

In legal terms, a person is "liable" when they are financially and legally responsible for something. "Strict liability" is a type of liability which may exist in either a criminal law or civil law context. Strict liability makes a person legally responsible for the damage or loss caused by their acts and omissions regardless of their culpability (including fault

¹ Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. Available at: <http://www.legislation.gov.uk/asp/2012/1/section/1/enacted>.

in criminal law). Under strict liability, there is no requirement to prove fault, negligence or intention. Strict liability is already a concept that is prominent in consumer law (especially product liability), company law, and criminal law.

Within the context of football, it normally refers to a system of sanctions that are applied to clubs in response to the bad behaviour of their fans, without having to establish any connection between the club's behaviour and that of the fans – even in a case where the club had taken steps to prevent or discourage that behaviour. Having this sort of strict liability system of sanctions for clubs in place would of course not prevent the police and prosecutors pursuing individual fans through the courts for their behaviour through criminal charges (see examples of possible offences below) in addition to holding the clubs themselves responsible.

Relevant law in Scotland

There are a number of statutory and common law offences that provide criminal sanctions for addressing the different types of problematic behaviour that occurs at football matches (as well as in other contexts). Most criminal offences² require proof of the *mens rea* (i.e. the mental element of the crime e.g. criminal intent) of individuals in contrast to the strict liability regime proposed for sanctions for clubs. For example, the Public Order Act 1986 creates a criminal offence of inciting racial hatred; the Crime and Disorder Act 1998 makes the pursuance of a racially aggravated course of conduct that causes alarm or distress a criminal offence; and the Criminal Justice (Scotland) Act 2003 makes provision for offences aggravated by religious prejudice, requiring courts to take such aggravation into account in sentencing. There are also common law offences such as breach of the peace and assault which may be used in relevant circumstances.

Specifically in relation to football, Part II of the Criminal Law Consolidation (Scotland) Act 1995 makes provision for several offences relating to the bringing of alcohol, controlled containers, flares and fireworks into designated events at designated grounds. Most recently, there is the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. This Act criminalises offensive and threatening behaviour at, or in connection with, football matches. In addition to this, the Act criminalises communications (whether or not in the context of football) that involve threatening or inciting serious violence. This Act was introduced following a number of incidents that occurred at Scottish football matches in 2011.

Relevant football governing bodies and associations

Scottish Football Association

Scottish football is governed by the Scottish Football Association (SFA). The SFA has responsibility for controlling and developing football in Scotland, including managing and implementing disciplinary matters, the operation of the men's and women's national teams, and organisation and management of the annual Scottish Cup competition. It has around 86 full members and six affiliated bodies. Full members include all 42 clubs

² Except certain statutory offences which impose strict liability.

in the four leagues which make up the Scottish Professional Football League, the 18 clubs of the Highland Football League, the 15 clubs of the Lowland Football League, several clubs in both the East of Scotland Football League and the South of Scotland Football League, and a small number of junior and amateur clubs. The six affiliated bodies are—

- the Scottish Amateur Football Association;
- the Scottish Junior Football Association;
- the Scottish Schools Football Association;
- the Scottish Youth Football Association;
- the Scottish Welfare Football Association; and
- the Scottish Women's Football Association.

The SFA is a member of both the international body, the Fédération Internationale de Football Association (FIFA), and the European body, the Union of European Football Associations (UEFA). IN 2011 the SFA made significant changes to its governance and structures and now has a main board, supported by two operational boards, one for the professional game, and one for the amateur game.

Article 28 of the SFA's handbook³ outlines the responsibility of clubs regarding the behaviour of supporters. Those rules state that clubs can be held liable for the behaviour of their supporters, but this liability is not strict – i.e. if a club can demonstrate that it took all reasonable steps to prevent the behaviour then no disciplinary steps/sanctions will be considered.

Scottish Professional Football League

The top four professional leagues of Scottish football are governed by the Scottish Professional Football League (SPFL). The SPFL was formed in 2013 following the merger of the former Scottish Premier League and Scottish Football League. The SPFL is not a national governing body (which is the SFA) but is responsible for operating the top four professional leagues in Scotland (Premiership, Championship, League 1 and League 2) and two cup competitions (League Cup and Challenge Cup – the Scottish Cup is a wider competition open to other clubs and is therefore managed by the SFA). The Chair of the SPFL sits on the board of the SFA.

UEFA implementation of strict liability

The governing body of European football, UEFA, operates a form of strict liability in relation to the tournaments it is responsible for and manages the clubs that compete in them⁴. It uses strict liability to tackle offensive behaviour at football matches and UEFA

³ The 2016-17 SFA handbook. Available at:
<http://www.scottishfa.co.uk/resources/documents/SFAPublications/ScottishFAPublications2016-17/Scottish%20FA%20Handbook%202016-17.pdf>.

⁴ UEFA Disciplinary Regulations (2016 edition). Available at:
http://www.uefa.org/MultimediaFiles/Download/Regulations/uefaorg/UEFACompDisCases/02/37/00/86/2370086_DOWNLOAD.pdf.

member associations and clubs are held responsible for any violation of UEFA regulations, regardless of fault. Article 8 of UEFA's strict liability rules states—

“A member association or club that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.”

This means that even if they have committed no fault, and have taken steps to eradicate unacceptable behaviour amongst their fans, the member association and club may be held responsible for the behaviour of their supporters. Once it is established that such incidents have occurred, the club can be held responsible and punished accordingly.

Eighteen sanctions for clubs are detailed, including warnings, fines, annulment of the result of a match, ordering that a match be replayed, the closure of sections of grounds, playing matches behind closed doors and the docking of points. For example, both Rangers FC and Celtic FC have been punished on this basis in the past by UEFA. In 2006, Rangers was fined £21,000 after its fans sang sectarian songs in a match against Villarreal from Spain. In 2007, Celtic was fined £25,000 after a supporter ran onto the pitch at Celtic Park during a game against AC Milan.

This strict liability system operated by UEFA could be used as the template for the operation of a similar system in Scotland.

Operation of strict liability by the Football Association in England

In 2014, the Football Association in England (the FA) introduced a limited form of strict liability with regard to discriminatory crowd misconduct by adding a sentence to its handbook which states that it is no longer a defence for clubs to demonstrate “due diligence” in relation to alleged misconduct of supporters relating to offensive behaviour relating to ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

However, due diligence is still integral in terms of what sanction may be applied (i.e. the steps clubs may have taken to try and prevent/deal with the behaviour concerned will be taken into account when deciding on the level of sanction). This is outlined in rules 7.4 and 7.5 of the Disciplinary Procedures in the FA Handbook 2016-17⁵.

The relevant rules in the conduct section⁶ of the FA's 2016-17 handbook⁷ read as follows (NB: the text added in 2014 is marked in bold below)—

⁵ The FA Handbook 2016-17, Disciplinary Procedures, rules 7.4 and 7.5, page 352.

⁶ The FA Handbook 2016-17, Section E, page 112.

⁷ The FA Handbook 2016-17. Available at: <http://www.thefa.com/~media/files/thefaportal/governance-docs/rules-of-the-association/2016-17/fa-complete-handbook-2016.ashx>.

“20. Each Affiliated Association, Competition and Club shall be responsible for ensuring:

(a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and

(b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety, or to throw missiles, bottles or other potentially harmful or dangerous objects at or on to the pitch.

21. Any Affiliated Association, Competition or Club which fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of Misconduct. It shall be a defence in respect of charges against a Club for Misconduct by spectators and all persons purporting to be supporters or followers of the Club, if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged. **This defence shall not apply where the Misconduct by spectators or any other person purporting to be a supporter or follower of the Club included a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.”**

As with the UEFA system of strict liability, the system adopted recently in England could also be considered to inform an appropriate system for Scotland.

Case for the introduction of strict liability in Scotland

Football authorities and clubs, Police Scotland and local authorities have made many advances in tackling intolerable behaviour at and around matches. However, despite these developments in leadership and engagement, there remains one unanswered question: how do we deal with intolerable behaviours?

Scottish Government Advisory Group Report 2015

The Scottish Government's Advisory Group's 2015 report on Tackling Sectarianism and its Consequences in Scotland⁸ asked this question. Its approach was governed by six principles, the first being that the current legislative framework around equality and human rights, public order and hate crimes and offensive behaviour already provides the legal basis to tackle this. However, its effectiveness requires scrutiny and monitoring of advances in law elsewhere. Future legislation requires a consistency with the approaches taken elsewhere in relation to rights and equality.

The fifth principle recognised that sectarianism exists primarily in communities and further manifests itself in personal relationships and also in the history of institutions and organisations, football clubs being among them. The Report recognised that the shape and pace of change is dependent on how these organisations and institutions respond to the underlying will to see change.

If society accepts that change comes about through a culture of responsibility rather than denial, then football associations and clubs must continue with their advances in tackling sectarianism and other behaviours that can lead to violence or the threat of violence, whether that is sectarianism, racial abuse, domestic violence or random acts of violence or abuse. Clubs need to accept responsibility for their fans' behaviour beyond the current limited liability rules of Scottish Football. While football is not the entire problem it does represent a major part in any solution.

This view constituted one of three main points this report made in relation to football, the other two being that while fans may provide a fertile environment for sectarianism and related crimes and intolerable behaviour to take place it is the responsibility of clubs to provide the leadership from within football to effectively address these issues. The third point the report made was the reticence of some clubs to provide the necessary leadership in addressing these issues, not because of a lack in will power but because many clubs and associations do not feel empowered to act and do not recognise the complex nature of sectarianism.

If football fans care about their clubs and their communities, they will not want their clubs to face sanctions and they will want their fellow supporters, and the visiting teams, to treat their communities with the respect that they deserve.

Offensive behaviour

This issue clearly affects a great many people, fans and also those with little or no interest in football. The effects of misbehaviour reverberate across Scottish society and across our communities causing multiple manifestations of harm and abuse. This is unacceptable in 21st century Scotland. While there is widespread recognition of this

⁸ Tackling Sectarianism and its Consequences in Scotland Final Report of The Advisory Group on Tackling Sectarianism in Scotland – April 2015. (Scottish Government). Available at: <http://www.gov.scot/Resource/0047/00477619.pdf>.

there is clearly a need to have a national discussion to develop an acceptable way forward. However, the core of this debate still remains – if not strict liability, then what?

The levels of offending may be small in relation to the attendance figures of matches, however, there are notable increases when there are major football fixtures across four distinct forms of offending—

- antisocial behaviour;
- violence;
- bigotry; and
- domestic abuse.

Most of the research available fails to fully explore the role of culture in relation to football spectator culture and violence. However, there was a sense that “permissions” did exist through a failure to sanction certain violent incidents and ideology. The statistics are clear, violent offending increases by 50% and domestic abuse by 36% on the dates of weekend fixtures⁹.

Expert opinion

Recently, Dr Rosmarijn van Kleef, a sports strategy consultant from Switzerland who has written a PhD thesis on strict liability in football commented—

“Scotland still has to catch up with the rest of Europe, where strict liability of football clubs is widely accepted and applied by both national and international football governing bodies ... The rationale for this type of liability is that, in the absence of a direct legal relationship with supporters, sanctioning the clubs is the only means for governing bodies to try and prevent disturbances ... Most importantly, liability without fault is accepted in the case of an overriding public interest such as the fight against violence at football.”¹⁰

Scottish Government views and recent investigations

In June 2016, the Cabinet Secretary for Justice, Michael Matheson MSP, attended the annual general meeting of the Scottish Football Association (SFA) and called for a form of strict liability to be introduced in order to combat unacceptable conduct by fans. Speaking about the scenes which followed the Scottish Cup final between Hibernian FC and Rangers FC where fans invaded the pitch and fighting broke out amongst a number of fans, he was quoted as stating—

"The scenes we saw at Hampden last week were appalling and the Scottish government condemns in the strongest possible terms the disorder and violence which scarred the end of the game. But from those dreadful scenes there is an opportunity to address some of the negative long-standing issues in the game and I

⁹ JAG Joint Review Group Concluding Report: Summary of Recommendations page 13.

¹⁰ Dr Rosmarijn van Kleef (2016). Available at: <http://nilbymouth.org/2016/guest-blog-strict-liability-in-sport-a-view-from-europe/>.

want football to be proactive and seize that opportunity. We need a transparent and robust scheme to prevent unacceptable conduct and deal with it effectively if it does occur, and encourage clubs to take all action possible to address unacceptable conduct. That may be strict liability or a form of strict liability or it may be something else, but the bottom line is we want to see football taking the opportunity to finally address this long-standing issue.”¹¹

The Cabinet Secretary said that he was encouraged by the initial response from the SFA but stated that in the absence of any action on the part of the Scottish football authorities, the Scottish Government was prepared to take action and explore alternative options to address the problem.

Following the disturbances at the Scottish Cup Final in 2016, the SFA asked Sheriff Principal Edward Bowen to investigate. His subsequent report was published in August 2016¹².

The SFA compliance officer issued “notices of complaint” against Hibs and Rangers for allegedly breaching rule 311 and Rule 28 of the Rules of the Scottish Cup. On 28 September the case against Hibs was dismissed as “irrelevant” by the SFA judicial panel¹³ in its note of reasoning¹⁴ and, as a result, the case against Rangers was dropped.

The note states—

"[Compliance officer] Mr [Tony] McGlennan accepted that he is relying on Rule 28 to import strict liability to the club for the actions of the supporters. The panel has to be satisfied that the provisions are clear and unambiguous and do not conflict with requirements of procedural fairness and natural justice before taking that step." And, in closing, the notes of reason state: "It may be thought odd that there is no apparent disciplinary sanction for this event. But that is a matter for the members to deal with, in clear terms, rather than for the Judicial Panel to innovate by a purposive interpretation of the rules. From the information which we have, there is a limited appetite for strict liability within Scottish football."

¹¹ BBC News (June 2016). Matheson ultimatum to football chiefs over cup disorder. Available at: <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36428309>.

¹² Report to the Board of the Scottish Football Association (August 2016). Available at: <http://www.scottishfa.co.uk/resources/documents/Documents/ScottishCupFinal2016Report/Scottish%20Cup%20Final%202016%20Commission%20of%20Enquiry%20-%20Report%20of%20SP%20Bowen.pdf>.

¹³ Judicial Panel Protocol 2016-17. Available at: <http://www.scottishfa.co.uk/resources/documents/SFAPublications/ScottishFAPublications2016-17/Judicial%20Panel%20Protocol%202016-17.pdf>.

¹⁴ Decision of the Judicial Panel In complaint against Hibernian FC Complaint reference number 2015 16 339 Glasgow the 28th September 2016. Available at: <http://www.scottishfa.co.uk/resources/documents/Disciplinary/Decision%20of%20Judicial%20Panel%20-%20Hibernian%20FC.pdf>.

Therefore the lack of strict liability prevented any action being taken against the clubs involved in this incident, which highlights the need for such a system to be introduced.

Why legislate?

The case for legislating is twofold—

- it is clear that there continues to be a problem and further tools are needed to tackle this (regardless of whether the 2012 Act is repealed or not); and
- it is clear that Scottish football clubs are not going to introduce a form of strict liability voluntarily, and that the SFA does not feel able to act without agreement by the clubs.

The Scottish Cup Final example mentioned above highlights that there still continues to be a problem; yet despite the clear need to deal with these matters SFA clubs voted against the introduction of strict liability in 2013. At that time, a statement from the SFA¹⁵ explained that “the majority of members [clubs] voted against proposals to introduce strict liability to combat unacceptable conduct in Scottish football”.

Also in January 2016, the SFA’s Chief Executive, Stewart Regan, stated that the Association was about to begin a rules revision process and that strict liability would form part of those discussions¹⁶. However, Alloa Athletic chairman Mike Mulraney said there was “no chance whatsoever of clubs agreeing to strict liability” describing opposition to the idea of its imposition as “pretty unanimous”¹⁷.

Regrettably, therefore, it seems unlikely that the governing body or clubs are going to adopt a system of strict liability voluntarily and that legislation is going to be required in the Scottish Parliament to make this happen.

DETAIL OF THE PROPOSED BILL

Contents of the Bill

The Bill will introduce a form of strict liability for professional football clubs in Scotland and provide a clear and transparent framework that will require the SFA to impose sanctions, such as warnings, fines and disciplinary measures and directives if any club, player, official or supporter violates any of the rules within the ambit of strict liability,

¹⁵ BBC News (11 June 2013) Scottish FA clubs vote against new discrimination rules. Available at: <http://www.bbc.co.uk/sport/football/22853305>.

¹⁶ BBC News (12 January 2016). Scottish FA: 'Strict liability' rules back on agenda - Stewart Regan. Available at: <http://www.bbc.co.uk/sport/football/35289694>.

¹⁷ BBC News (19 January 2016). SPFL clubs opposed to strict liability - Mike Mulraney. Available at: <http://www.bbc.co.uk/sport/football/35349978>.

even if the club concerned can prove the absence of any fault or negligence on their part. There would, of course, need to be a procedure for investigating alleged incidents.

In developing this proposal I am keen to get your views on two key areas—

- what types of behaviour should be covered by strict liability in Scotland; and
- what range of sanctions should be available.

Types of behaviours

The types of behaviour in UEFA's Article 16 *Order and Security at UEFA competition matches* could be adapted, or used as the starting point, for a Scottish system of strict liability—

- The invasion or attempted invasion of a field of play;
- The throwing of objects;
- The lighting of fireworks or any other objects;
- The use of laser pointers or similar electronic devices;
- The use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are political, ideological, religious, offensive or provocative in nature;
- Acts of damage;
- Causing a disturbance during national anthems; and
- Any other lack of order or discipline observed inside or around the stadium.

The FA's form of strict liability could also be considered when determining what behaviours should be covered in a Scottish system. The relevant FA behaviours are:

“improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) [by a club's directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers] whilst attending at or taking part in a Match in which it [the club] is involved, whether on its own ground or elsewhere.”

It should be noted, however, that the FA's system does not use strict liability for crowd disturbances such as pitch invasions, throwing of missiles etc.

Sanctions

As with the types of behaviour, the range of sanctions used by UEFA and the FA provide a useful starting point when considering what sanctions should form part of a Scottish system of strict liability. The UEFA sanctions are as follows—

- warning;
- reprimand;
- fine;
- ban from selling tickets to supporters for away matches;
- annulment of the result of a match;
- order that a match be replayed;
- deduction of points (for the current and/or a future competition);
- order that a match be forfeited;
- playing of a match behind closed doors;
- full or partial stadium closure;
- playing of a match in a third country;
- withholding of revenues from a UEFA competition;
- prohibition on registering new players in UEFA competitions;
- restriction on the number of players that a club may register for participation in UEFA competitions;
- disqualification from competitions in progress and/or exclusion from future competitions;
- withdrawal of a title or award;
- withdrawal of a licence; and
- community football service.

Potential impacts of the Bill

This Bill would predominantly impact on three groups—

- Football clubs and their employees;
- Football supporters, their families, friends and communities; and
- Public services, such as the police and other emergency services.

As this Bill is ultimately aimed at reducing the offensive behaviours detailed in this document by incentivising clubs, supporters and communities to take action, it is hoped that it will have a positive effect on all of the groups identified above. A reduction, or even eradication, of offensive behaviour would benefit clubs (in terms of reputation and the role they play in their communities), supporters and communities (removing current threats and impacts of behaviour) and public services (reducing the burden on the police and other emergency services).

Some clubs and and/or supporters may consider there to be unfair impacts resulting from holding clubs responsible, with potential sanctions, for the behaviour of a minority of supporters. However, I believe that this negative impact is justified by the need to take action and the incentives the proposal will provide on clubs and supporters to improve behaviour.

There could, of course, be a negative financial impact on any club which was found guilty of any of the offences covered by strict liability, and also on supporters who may suffer as a result (for example, by not being able to attend away matches, or clubs increasing prices due to the imposition of fines). However, it is hoped that strict liability, if and when used to impose sanctions, would incentivise clubs and communities to eradicate the behaviours concerned and therefore remove the threat of any negative consequences.

I am also aware of a view that has appeared in the press that the international governing body of football, FIFA, takes a very dim view of Governments interfering in footballing matters. A BBC News story stated that—

“Any direct interference in the SFA's workings would not be popular with world governing body Fifa, which has issued bans to nations whose governments have become too closely involved with football federations.”¹⁸

And Stuart Regan, the Chief Executive of the SFA, is quoted as stating—

“Clearly from a FIFA point of view any government intervention is frowned upon and it could interfere with the Scottish FA's membership of FIFA. I don't for a minute think the government are doing anything to threaten our FIFA membership - they are looking to deal with unacceptable conduct. But we've already made our point to the government very clearly that any government action doesn't interfere with the Scottish FA's membership of FIFA.”¹⁹

I am currently seeking clarification from FIFA as to whether it would have any concerns about legislation (particularly that resulting from a Member's Bill, rather than a Government Bill) to introduce a form of strict liability, such as that operated by UEFA and the FA.

Financial implications

There is likely to be no significant cost to the Scottish Administration as the system of strict liability introduced would be for Scottish football's governing bodies to enforce. There could be a resulting cost saving, via savings made by bodies such as Police Scotland, which are outlined in more detail below.

The proposal is likely to have financial implications for the three groups identified above (clubs, supporters, and public services).

¹⁸ BBC News (29 September 2016). Crowd trouble warning from government after Hibernian-Rangers disorder. Available at: <http://www.bbc.co.uk/sport/football/37512122>.

¹⁹ Eurosport (1 June 2016). Justice Secretary warns Scottish football to get a grip of fan disorder. Available at: http://www.eurosport.co.uk/football/justice-secretary-warns-scottish-football-to-get-a-grip-of-fan-disorder_sto5631130/story.shtml.

The primary financial implications would fall on any football club held responsible under the terms of the strict liability. Many of these sanctions may have a negative financial implication for the club in the short term (for example by paying fines). However, if, as is hoped, strict liability helps to eradicate or significantly reduce offensive behaviour then it could benefit clubs financially in the longer term (for example, by football being seen as more family friendly and therefore encouraging more people to attend matches, and also by clubs spending less money dealing with the consequences of such behaviour).

Some clubs have offered the view²⁰ that strict liability is not feasible due to some stadia being closed for a considerable part of the year as a result of financial hardship; fans may not visit matches or buy club merchandise. This may also be a reason for taking action through strict liability. If some elements within Scottish football have made the sport financially untenable to survive strict liability, then action is required to create an environment which will allow clubs to survive and grow.

There may also be some financial impact on supporters (for example by clubs increasing ticket prices to make up for loss of funds). However, again as stated above, this would be mitigated if, as is hoped, strict liability helps to eradicate or significantly reduce offensive behaviour.

For Police Scotland (and other emergency services), the proposal, if successful in reducing instances of offensive behaviour, could lead to cost savings by reducing the cost of policing matches. (While some clubs are responsible for paying for policing inside, and in the immediate vicinity of, a stadium, policing costs outside the stadium area fall on Police Scotland, and not the club. In relation to a Rangers-Celtic match, for example, these can account for the majority of the total cost.)

It is also important to note wider policing considerations and the impact of policing football matches and dealing with offensive behaviour on public finances. The Police Scotland Football Co-ordination Unit (FoCUS) plays an extremely important role in policing matches and ensuring that any manifestation of sectarianism, hate crime or other forms of unacceptable or intolerable behaviour is dealt with swiftly and efficiently. However, while the work of FoCUS should be commended there are other factors to be considered such as the rising level of crimes, burglaries for example, where opportunistic thieves take advantage of the reallocation of local policing as front line staff have been redeployed to police football matches.

Equalities

As the aim of the bill is to tackle offensive behaviour, including that of a sectarian nature, or the use of offensive language/action based on a person's race, sexual orientation or disability there would hopefully be a positive impact on several groups whose characteristics are protected by the Equalities Act 2010.

²⁰ Ref?

I acknowledge that there is no magic solution to the blight of sectarian and other offensive behaviour at football matches. But I believe this proposal will play a part in tackling the problem, hopefully leading to a situation where football can once again be enjoyed by families, young and old, of whatever religion, gender or sexual orientation.

Sustainability of the proposal

The proposal can be sustainably delivered and would not have a disproportionate negative effect on future generations. It is hoped that the bill, by addressing and reducing instances of offensive behaviour at football matches, would have a positive long-term impact on individual and community wellbeing and therefore improve the current situation for future generations.

QUESTIONS

SECTION 1 - ABOUT YOU

1. Are you responding as:

- an individual – in which case go to Q2A
 on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

- Politician (MSP/MP/Peer/MEP/Councillor)
 Professional with experience in a relevant subject
 Academic with expertise in a relevant subject
 Member of the public

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
 Commercial organisation (company, business)
 Representative organisation (trade union, professional association)
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- I am content for this response to be attributed to me or my organisation
 I would like this response to be anonymous (the response may be published, but no name)
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details:

SECTION 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Which of the following best expresses your view of the proposal to introduce strict liability for football clubs in Scotland?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

- Yes (if so, please explain below)
- No
- Unsure

Please explain the reasons for your response.

3. What do you think would be the main advantages, if any, of holding clubs responsible for the behaviour of their supporters?

4. What do you think would be the main disadvantages, if any, of holding clubs responsible for the behaviour of their supporters?

Behaviours and sanctions

5. If there is to be a system of strict liability, which of the following behaviours do you think should be covered (choose all that apply)—

- The invasion or attempted invasion of a field of play
- The throwing of objects
- The lighting of fireworks or any other incendiary objects
- The use of laser pointers or similar electronic devices
- Violent or threatening behaviour
- Abusive or offensive language or messages (including verbal abuse of any person by reference to their race, sex, sexual orientation, religion or belief or disability)
- Acts of damage
- Disorder in or near the stadium

Other (please specify)

Please explain the reasons for your response.

6. If there is to be a system of strict liability, which of the following sanctions do you think should be available (choose all that apply)—

- Warning/reprimand
- Fine
- Ban on selling tickets to supporters for away matches
- Match-specific penalties (e.g. annulment of result; requiring a match to be replayed; forfeiting a match)
- Competition-specific penalties (e.g. deduction of points; withdrawal of title; disqualification/exclusion)
- Playing of a match behind closed doors (i.e. fans not able to attend)
- Partial stadium closure (i.e. certain sections of a stadium closed to fans)
- Playing of a match in a neutral stadium
- Restriction on the number of players that a club may register for participation in SFA competitions
- Community action (e.g. education programmes or working with local schools)
- Other (please specify)

Please explain the reasons for your response.

Financial implications

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Football clubs

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

(b) Football supporters and other individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral

- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

(c) Scottish Government and public sector bodies (such as Police Scotland)

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

Equalities

8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

9. In what ways could any negative impact of the Bill on equality be minimised or avoided?

Sustainability of the proposal

10. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

11. Do you have any other comments or suggestions on the proposal to introduce strict liability for football clubs in Scotland?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/StrictLiability/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

Where to send responses

Responses prepared electronically should be sent by e-mail to:

James.Dornan.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

James Dornan MSP, Room M3.07, Scottish Parliament, Edinburgh, EH99 1SP

You may also contact James Dornan's office by telephone on 0141 632 5238.

Deadline for responses

All responses should be received no later than **Friday 17 March 2017**.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website www.jamesdornanmsp.wordpress.com. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the

relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI. Further information about Freedom of Information can be found at: www.itspublicknowledge.info.