Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Football Spectators and Sports Grounds Bill, introduced in the House of Commons on 22 January 2008, relating to football banning orders and their enforcement, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Kenny MacAskill, Cabinet Secretary for Justice, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Football Spectators and Sports Grounds Bill (“the FSSG Bill”) was introduced in the House of Commons on 22 January 2008 by Russell Brown, a Labour backbench MP. Part 1 of the FSSG Bill proposes a number of amendments to the legislation governing football banning orders (FBOs) in England and Wales and in Scotland. Part 2, which extends to England and Wales only, amends the remit of the Football Licensing Authority and renames it the Sports Grounds Safety Authority.

Football Banning Orders

Background

3. FBOs were introduced in Scotland as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”) on 1 September 2006. Under the provisions of the 2006 Act, an FBO can be made by a court on conviction for a football related offence, or on a civil application to the sheriff where the sheriff is satisfied that the person against whom the order is sought has contributed to violence or disorder in the UK or elsewhere. In both cases, the court or sheriff must be satisfied that there are reasonable grounds to believe that making the FBO would help to prevent violence or disorder at or connection with any football matches. The effect of such an FBO is to ban the person against whom it is made from going to any regulated football matches throughout the UK and to report at a specified police station in connection with matches outside the UK. In respect of an FBO imposed on conviction, the FBO can last up to 10 years and for an FBO on civil application, up to 3 years. Breaching an FBO is a criminal offence.

4. Whilst the 2006 Act could make provision for FBOs made in Scotland to ban persons from matches throughout the UK, it was not possible for the Scottish Parliament to legislate to create offences in England, Wales or Northern Ireland as a matter of English, Welsh or Irish law if a person was to breach an FBO in those areas. Accordingly, the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (made under section 104 of the Scotland Act 1998) includes provisions which make it an offence to breach a Scottish FBO in England, Wales or Northern Ireland. This Order was passed by the Westminster Parliament in March 2007.
5. The legislation governing FBOs in England and Wales is the Football Spectators Act 1989 (“the 1989 Act”). This legislation is broadly similar to the provisions of the 2006 Act. However, the main difference is that FBOs granted by English and Welsh courts only ban persons from attending football matches in England and Wales (compared with Scottish FBOs which ban persons from matches throughout the UK). Accordingly if a person is subject to an FBO made by the English and Welsh courts then there is nothing to prevent that person travelling to a football match in Scotland.

6. The FSSG Bill is intended to rectify this anomaly by extending the scope of English and Welsh banning orders to cover Scottish football matches and at the same time creating an offence under Scots law to breach such an FBO in Scotland. The Bill will also make some minor changes to the reporting arrangements making FBOs easier to enforce throughout the UK.

7. The proposals in the FSSG Bill are welcomed by the police, who advise that they will make it easier to reduce the threat of violence and disorder at football matches in Scotland. The police are, in general, content with the operation to date of the 2006 Act, but would welcome measures to ease cross-border enforcement. Particular problems with the current situation were highlighted during one weekend in July 2007 when eight pre-season friendly matches involving five English clubs were played in Scotland. In addition to the strain on resources caused by policing this volume of matches, forces were unable to prevent English fans subject to FBOs from travelling to Scotland to spectate, and consequently were required to deal with an increased risk of violence and disorder. Against this background, the police are supportive of proposals to address the anomalies in the current legislative framework.

8. At the end of the 2006-07 football season, Home Office statistics indicate there were 3,203 FBOs in place in England and Wales, down 5 per cent on 2005-06 figures. 644 new FBOs were imposed during that period. There are currently around 20 individuals subject to FBOs imposed by courts in England and Wales who are resident in Scotland. Since implementation in Scotland on 1 September 2006, Scottish FBOs have been issued in respect of 16 individuals, one of whom resides in England.

CONTENT OF THE BILL

Football Banning Orders

9. Application of English and Welsh FBOs to Scottish matches - As the law currently stands, FBOs issued in Scotland ban an individual from attending matches throughout the UK including matches in England and Wales. However, FBOs issued in England and Wales (E&W FBOs) only impose bans in respect of matches played in England and Wales. This means that individuals subject to E&W FBOs face no restrictions on coming to matches in Scotland and possibly causing violence or disorder here. The FSSG Bill amends the 1989 Act so that E&W FBOs will ban individuals from matches played in the UK including in Scotland or Northern Ireland.

10. Maximum custodial penalties - The maximum custodial penalty for breach of a Scottish FBO in Scotland is six months. However, the maximum penalty for such a breach elsewhere in the UK is three months instead of six because the offence was created in a section 104 Order. Section 113 of the Scotland Act 1998 provides that offences created in Scotland Act Orders cannot set a custodial penalty higher than three
months. The Bill therefore amends the maximum custodial penalty available for breach of a Scottish FBO in England, Wales or Northern Ireland from three months to six months, bringing it in line with the maximum available in Scotland. This maximum will rise to 51 weeks in England and Wales once section 281(5) of the Criminal Justice Act 2003 is commenced.

11. None of the above measures fall within the competence of the Scottish Parliament.

Issues subject to the consent of the Scottish Parliament

12. Breach of an E&W FBO in Scotland - In consequence of the extension of E&W FBOs to prohibit attendance at Scottish matches, and to make E&W FBOs enforceable by police in Scotland, offences are created in Scots law of breaching E&W FBOs in Scotland. As these offences fall in a devolved subject area, the consent of the Scottish Parliament to legislation on this point is required.

13. The offences mirror the existing offences in Scotland of breaching a Scottish FBO or any requirements imposed by the police, and provide for equivalent penalties on conviction.

14. Initial reporting requirements - The 1989 and 2006 Acts both require an individual to report to a police station specified by the court within five days of the imposition on him of an FBO. At present, the specified police station must be in the jurisdiction where the FBO is imposed. This can create practical problems where the subject does not reside in that jurisdiction. In order to alleviate this situation, the Bill amends the 2006 and 1989 Acts to enable courts to specify a police station anywhere in the UK for initial reporting purposes. Amending the 2006 Act in this way would be within the devolved competence of the Scottish Parliament and therefore a LCM is required in this regard.

15. Reporting requirements for foreign matches - Under the 2006 Act, requirements to report to a police station, and to surrender a passport, may be imposed on the subject of an FBO by police where this is considered necessary or expedient in order to reduce the likelihood of violence or disorder at or in connection with a match being played outside the UK. However, these requirements are suspended for any period during which the subject is resident outside Scotland. The Bill removes this restriction to enable reporting and passport surrender requirements imposed on an individual subject to a Scottish FBO to apply regardless of where in the UK they are resident. This amendment falls within devolved competence and therefore is subject to the LCM. Parallel amendments are made to the 1989 Act.

16. Commencement – The Bill provides for the commencement of the Act by the Secretary of State by statutory instrument. However, such an instrument commencing those provisions described above which fall within the legislative competence of the Scottish Parliament may not be made without the consent of the Scottish Ministers. This falls within devolved competence and therefore is subject to the LCM.

Sports Grounds Safety Authority

17. Part 2 of the Bill contains provisions which are safety issues and led by the Department for Culture, Media and Sport. This measure does not apply to Scotland.
The provisions extend the Football Licensing Authority’s (FLA) remit to include providing advice about safety at sports grounds hosting all types of sports. The FLA’s current remit is limited to football. The provisions also name the FLA as the Sports Grounds Safety Authority. This is not a controversial measure and there is awareness among sporting organisations and local authorities that changes to legislation are being proposed. In 2000, the proposed changes were included in the Cultural Framework Bill which did not go forward for consideration by Parliament because of time limitations.

**Reasons for seeking a legislative consent motion**

18. UK Parliament legislation is required in any event for the reserved provisions of the Bill. It would be possible to bring forward legislation in the Scottish Parliament for the provisions which fall within devolved competence. However, no Scottish Government Bill planned for the near future would provide a suitable vehicle, and introducing a short Bill purely for these minor and consequential provisions would not seem to be a proportionate or effective use of Scottish Parliamentary time or resources. It might be possible to delay passing the devolved Scottish provisions until a suitable Scottish Government Bill was introduced, but this would leave an undesirable gap after the implementation of the reserved provisions in the Westminster Bill before mutual recognition of FBOs could be fully achieved. In these circumstances, the Scottish Government considers that agreement by the Scottish Parliament to legislation by the UK Parliament on these matters presents the best option for mutual recognition of FBOs.

**Financial implications**

19. While there may be an increase in court business arising from prosecutions for the new offences, we do not anticipate any significant financial implications from the provisions of this Bill. As the provisions of the Bill are intended to make it easier for police to address the risk of violence and disorder at football matches presented by recognised individuals, this could lead to greater efficiency in operational terms.

**Conclusion**

20. The view of the Scottish Government is that it is in the interests of public safety that FBOs be made mutually recognisable across the UK. The proposals of the FSSG Bill achieve this and should be supported.