

Justice Committee

Report on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill at Stage 2

Response from the Scottish Government

I am writing to attach the Scottish Government's response to the Justice Committee's report on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. I am extremely grateful to the Committee for the effort taken in scrutinising the Bill in particular given the amended timetable.

I welcome the unanimous recognition by the Committee that there is a significant issue in Scottish football that requires to be tackled. Whether it be expressions of racist, religious and other forms of hate including celebrating terrorist organisations; whether at a football match or on the internet, such behaviour is entirely unacceptable in a modern Scotland. As the victims of hate crime will testify, none of this is just banter and those who deny that such behaviour exists or that it does terrible damage both to real people and our nation's reputation have contributed to the problem festering for far too long.

I believe we are now mature enough and strong enough as a society to take on this appalling behaviour and ensure that our national game is not tainted by the actions of a mindless minority. I know the decent majority agree, with 91% of Scots supporting this tougher stance on the bigots and peddlers of hate.

The Bill provides the tools police and prosecutors have asked for to eradicate such behaviour. These new tools are intended to complement and enhance not replace the tools already available, and I remain entirely confident that they are proportionate and necessary. I accept the obligation the Government is under to ensure that new laws are clear. We will be bringing forward amendments to deliver on this obligation and I am grateful to the Committee and those who provided evidence for their expert contributions, which have greatly assisted.

The desired clarity however will come not just through the provisions of the Bill but in supporting guidelines, professional training and additional resources. I know that the Lord Advocate, who is responding to your report separately, will be considering revisions to the Guidelines to Chief Constables, which will greatly assist. The appointment by the Solicitor General of 3 dedicated football liaison prosecutors will also ensure that there is a consistency of approach across Scotland. We are already beginning to see the benefits delivered by the new national football policing coordination unit made possible by a £1.8 million investment from the Government. We are also working with Scotland's football authorities and clubs to ensure that their commitment to eradicate this behaviour is helping deliver long term change. All of this vital work is about providing coordination and clarity to support the introduction of the Bill's provisions.

The Bill represents just the first step on the journey to a safer and more inclusive Scotland, where difference is celebrated without recourse to hate and the divides of the past are healed. This is difficult and long term work that will require us to come

together across agencies, the length and breadth of Scotland, to support individuals and communities from the earliest years to those with the most entrenched views. I will ensure that as this wider and deeper agenda develops that the Committee receives early sight of proposals to allow us to work closely together.

Roseanna Cunningham
Minister for Community Safety and Legal Affairs
1 November 2011

SCOTTISH GOVERNMENT RESPONSE TO THE JUSTICE COMMITTEE'S REPORT ON THE OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (SCOTLAND) BILL AT STAGE 2

Background to the Bill

31. *It is, however, important to note at the outset that the Government envisaged the Bill as a response to the widely reported events that occurred on and off the pitch during the 2010-11 Scottish Premier League football season. This included threatening mail, including parcel bombs, being sent to certain individuals apparently because of their links to particular football clubs (Celtic in particular) and hateful messages being posted online. The Government has presented the Bill as complementary to the work of the Joint Action Group, comprising representatives of the Government, the Old Firm, football authorities and the police, set up in the aftermath of a particularly stormy Celtic-Rangers match on 2 March 2010, although not every member of the group has, in the end, fully signed up to the Bill. It was, and is, the Government's view, that new laws are needed to address the problem.*

Government Response: The Government welcomes the Committee's acknowledgement of the context in which we are taking forward this legislation. The events of last season shamed Scotland and cannot be allowed to happen again. However, the issues we seek to address did not just emerge in the last football season. For too long we have seen sectarian and other hateful behaviour tarnish our national game and our country's reputation. Not banter, but hate; and not just hate but hate that leads to violence and disorder. 91% of Scots have indicated they want to see tougher, more effective action to tackle this issue. The Bill sends the strongest possible message that such behaviour is completely unacceptable and is a necessary first step in achieving the long term attitudinal change needed to remove sectarianism from our society.

Dealing with sectarianism, bigotry and hatred: the wider context

45. *The Committee notes that the Government does not consider that the Bill is a solution in itself to what the Government sees as Scotland's sectarian problem. We would be interested to know what other non-legislative action the Government proposes to take, and invite it to clarify whether it has examined, or proposes to examine, for example work done in Northern Ireland.*

Government Response: The Government is clear that sectarianism is not confined to football and will not be solved by legislation on its own. However, we have to recognise that there have been particular sectarian problems associated with Scottish football and it is absolutely right that the Government is taking action to address them as an immediate priority.

Achieving the long term attitudinal change that is required to tackle this insidious issue once and for all will require considerable effort from every part of Scottish society and we do not underestimate the challenges that lie ahead. However, it is essential that the work to tackle sectarianism is underpinned by robust legislation

that will ensure that the police and courts have the tools to tackle those who continue to indulge in sectarian and other offensive behaviour.

The Government will be taking forward a broad range of actions to tackle sectarianism. Two approaches are of particular interest. First, the shift in public policy toward prevention. This Bill will contribute to preventing sectarian problems associated with football and expressed on the internet and elsewhere, by providing a clear deterrent. However, prevention means something deeper: working systematically back to the early years to change attitudes before they get a grip. In the end, the Government's hope is that the measures in this Bill are no longer needed because the behaviour it seeks to address has been eradicated.

Secondly, the Government is interested in how sectarianism impacts on the lives of individuals and their communities. Not just overcoming the negative manifestations of sectarianism through the criminal law but building on the assets of individuals and communities to promote the positive, assets such as pride and passion for identity and culture. We do not believe that the manifestations or impact of sectarianism are uniform across Scotland, or that a one-size-fits all approach to resolving these issues is appropriate. Central to our approach will be seeking the views of communities, and responding to identified need. We fully acknowledge the work of the many charities, voluntary groups and particularly individuals within those communities who have recognised the negative impact that sectarian behaviour has had on them and had the courage to do something about it. We believe that the key to eradicating sectarianism once and for all is to work with individuals and communities at grass roots level, break down real and perceived barriers and create strong cohesive communities so that everyone, regardless of background, can live with dignity and respect.

Finally, the Government is interested to learn how sectarianism is being tackled elsewhere, and look at whether good practice can be adapted and tailored to address the issue in Scotland. This will include but not be limited to the experience in Northern Ireland, experience we can access due to excellent established links between the respective administrations.

46. The Committee draws to the Scottish Government's attention some witnesses' concerns that the Bill should not bring large numbers of young people into the criminal justice system. We note the general availability within the criminal justice system of diversions from prosecution and non-custodial disposals in appropriate cases.

Government Response: The Government note and share the Committee's concerns about dealing proportionately with offending by young people. This issue has been raised and is being discussed by the Strategic Implementation Group, who are overseeing the work necessary to bring the Bill's provisions into force. The Group's membership includes officials responsible for Youth Justice as well as the Police and the Crown Office and Procurator Fiscal Service. As the Committee notes, diversion from prosecution and non-custodial disposals are an important consideration along side the formal measures available through the Children's Hearings system. As indicated in the Policy Memorandum and Financial Memorandum, the Government is confident that existing arrangements, including the

Lord Advocate's Guidelines on 'Reporting to procurators fiscal of offences alleged to have been committed by children' and the recently published Diversion from Prosecution Toolkit, will ensure that children and young people are dealt with appropriately and are not brought into contact unnecessarily with the criminal justice system.

Procedural history of the Bill

52. *The Committee recognises that the Scottish Government accepted the case for taking more time to consider the Bill. We warmly thank those witnesses who appeared before us in June for agreeing to do so at extremely short notice and before they had had the time to fully consider and discuss the implications of the Bill. Their testimony helped secure more time for consideration.*

53. *Following the First Minister's comments, the Parliament went on to approve the general principles of the Bill at Stage 1 (by a majority of 103 to 5, with 15 abstaining).*

Government Response: The Government welcomes the Committee's support for the revised timescale for consideration of the Bill and the Parliament's endorsement of the general principles of the Bill at stage 1.

"Sunset clauses" and provision for review of the legislation

59. *The Committee notes that the Scottish Government may be receptive to the inclusion of a provision in the Bill requiring the Scottish Government to undertake formal review of the legislation after an appropriate point, should it be enacted. The Committee would welcome the inclusion of a review provision.*

Government Response: The Minister indicated in evidence to the Justice Committee that the Government were open to including a review clause. Given that the Committee would welcome such a provision, the Government will bring forward an amendment to the Bill at Stage 2 to include a review provision, requiring the Government to report to Parliament on the operation of the legislation in practice after it had been in place and operating for a reasonable length of time.

The role of the media

91. *The Committee notes the important role the media play in relation to the reporting of Scottish football. This places an onus on the media to use this power responsibly.*

Government Response: The Government shares the Committee's view that the media have an important role to play when reporting on Scottish football. The media should be conscious of their responsibility to act responsibly when fulfilling their role in reporting on events and their ability to act as a force for good in helping to bring about the longer term attitudinal change needed in our society if we are to eradicate sectarianism.

Stigma, public awareness, and improving the recording of hate crimes

135. *The Committee pursued the issue of data capture with the Lord Advocate. He was asked whether, under the current law, it would be possible to capture in formal records what type of conduct (eg religious bigotry, racism, homophobia, etc) had been prosecuted. He said that it was his understanding that it would be very hard to do so “working within the confines of the current IT system.” (We take the Lord Advocate to be referring to cases where a conviction for an offence involving hateful or offensive behaviour has been obtained but where, for whatever reason, a statutory aggravation was not attached to the charge.)*

136. *It was put to the Lord Advocate that enacting the section 1 offence would not in itself guarantee increased clarity as to why someone had been convicted under the provision (ie, for instance, whether they had been convicted for chanting that was racist rather than homophobic). There might for example need to be sufficient precision in the charge before the court for the relevant data to be captured. The Lord Advocate conceded that this was “a valid point” and that he would “go away and think about it” before finalising his guidelines on the Bill.*

Government Response: This will be responded to by the Lord Advocate.

Committee conclusions on the section 1 offence

137. *The Committee believes that there are lasting problems surrounding offensive behaviour in Scottish football that need to be dealt with. Most football supporters are law-abiding; they are passionate about their team without being hateful or offensive. A minority cross the line. The Committee accepts that football matches are not always places for the thin-skinned but arguments that the hatefulness sometimes evident there forms part of a “pantomime” atmosphere are not convincing. There can be no excuse for provocative and hateful displays of bigoted behaviour in any public environment.*

Government Response: The Government agrees with the Committee’s views in their entirety. The Bill makes clear that there is no place in a modern Scotland for sectarian or racist or homophobic behaviour or songs and chants in support of terrorist organisations. Especially in the context of provoking public disorder, these are not victimless crimes. Banter and passionate support for football teams, even passionate opposition to other football teams, is the life blood of football. Sectarianism and other expressions of hate are not. They poison football and all they touch. The people of Scotland have said they will no longer tolerate this poison and the public disorder that follows from it. The Bill provides the police and courts the tools they have asked for to help eradicate this poison from Scottish football.

138. *A majority of the Committee support the new offence of offensive behaviour at football. The majority believe that the Government has made the case that there are gaps in the law that do not enable the police and prosecutors to target offensive behaviour effectively.*

Government Response: The Government is convinced that the Bill will clarify and strengthen existing law, as was testified to by all the police experts who gave

evidence to the Committee. This is not about replacing existing law – existing laws will remain available - but about giving even better and sharper tools to the police and prosecutors to allow for a more effective response to an issue that has proven to this point intractable.

Furthermore, this is an issue over which many appear resigned to accept the status quo; believing change to be impossible. The Government reject such pessimism entirely and sees legislation as a proper way of expressing a commitment to transform attitudes and expectations. As Parliament has done many times previously, it is entirely proper to seek to use legislation to register public outrage about a particular form of behaviour, even when that behaviour is, to some degree, already criminal. Such action sends the strongest possible message that sectarianism and other offensive behaviour related to football is unacceptable and will be dealt with severely. This will then demonstrate that with determination we can achieve change, the resulting optimism will be critical in the long term, difficult work of eradicating sectarianism from society as a whole. The Government believes that the people of Scotland wish such a hopeful signal to be sent and it is important therefore that Parliament unites behind that view to meet this demand.

140. The Committee would welcome clarification from the Lord Advocate as to whether section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 is being used this season to prosecute cases of offensive behaviour at football matches. If so, we would also welcome an assessment from the Lord Advocate of the efficacy of that provision in obtaining convictions.

Government Response: This will be responded to by the Lord Advocate.

141. The Committee agrees that it is important to label offences so that it is clear whether a hate crime has been committed and, if so, what type of hatred it is. “Naming and shaming” can be an important weapon in the criminal law’s armoury, in helping to change attitudes about what is considered socially unacceptable. The Committee would welcome clarification that the Crown Office and Procurator Fiscal Service are seeking to ensure the right data is captured for football-related offences.

Government Response: This will be responded to by the Lord Advocate.

142. The Committee agrees it is important that Scottish football polices itself effectively. This includes taking firm action against clubs, elements of whose support bring the game into disrepute. The Committee agrees that the football authorities have failed to take firm action to deal with offensive behaviour at football. Over many years, they have allowed the issue to drift. If firm action had been taken earlier, offensive behaviour at football might have been stamped out, or at least significantly reduced.

143. It is for the SFA and the SPL to determine once and for all who has authority in relation to disciplinary issues concerning the supporters of SPL clubs. We are dismayed that the two bodies do not appear to be close to resolving this issue at a time when clear leadership, and effective joint working, is badly needed. We would expect this matter to be dealt with as a matter of urgency.

Government Response: The Government notes the Committee's conclusions regarding the football authorities, their strong views on this matter and their desire for the issues to be addressed as a matter of urgency. The Government is working actively with the football authorities in the Joint Action Group to address these and other problems relating to football. The Joint Action Group has made considerable progress but the Government recognises that more progress needs to be made and know that the football authorities share that view, together with the desire to address the crucial issue identified by the Committee. For this reason a sub-group of the Joint Action Group has been established to consider football's role in tackling offensive behaviour. This sub-group will report its findings to the Joint Action Group in December.

The section 1 offence: more detailed issues

146. Some concern has been expressed in the evidence about the degree of certainty the Bill can deliver. Concerns were expressed about a lack of clarity about what would be a criminal offence. Neither the Minister nor the Lord Advocate ever sought to argue before the Committee that the Bill could provide complete clarity. Instead, they consistently repeated that, in determining the criminality of behaviour under section 1, context is fundamental. After discussing and considering various hypothetical examples during the course of our evidence-taking, this is a proposition the Committee is content to accept.

147. After due consideration, the Committee also accepts the argument that it would be unhelpful for the legislation to identify and proscribe particular songs, chants, banners etc. Leaving aside the possible drafting difficulties inherent in such an approach, witnesses have stressed that, were such provisions written into the Bill, some football supporters would see getting the better of the drafting as an enjoyable challenge, and would quickly find new ways, not covered in the legislation, of expressing the same sentiments. The Committee accepts that this would risk making a mockery of the criminal law.

Government Response: The Government welcomes the Committee's support for our approach to these important issues.

149. The Committee notes a general view amongst witnesses that aspects of the section 1 offence remain unclear. The draft guidelines to the police are welcome but the Committee notes that it is also important to ensure that the legislation itself is robust.

Government Response: The Government notes that the Committee itself accepts that context is fundamental in the application of the legislation in practice but notes that view was not shared by all witnesses. The Government has noted the specific issues raised by the Committee and will seek to clarify the Bill's provisions in a number of ways, including by bringing forward amendments to the Bill (see the responses to paras 153, 196, 231 & 237 below). The Government also notes the intention of the Lord Advocate to provide further clarity through amendment to his Guidelines to Chief Constables.

Offensive behaviour

153. *The Committee is supportive of the Scottish Government's decision not to restrict the section 1 offence to expressions of sectarian hatred only. We invite the Government to consider whether it would be appropriate to include expressions of hatred on the basis of age and gender within the scope of the offence.*

Government Response: The Government notes the Committee's support for the inclusion of categories beyond sectarian hate in relation to the section 1 offence and the invitation to consider the inclusion of age and gender. The Government also notes the very detailed and thoughtful consideration by the Equal Opportunities and Justice Committees on the same issue in the context of the Offences (Aggravation by Prejudice) (Scotland) Act 2009. Given the complex arguments presented in the course of the consideration of the 2009 Act, the Government will bring forward an amendment to allow for the extension of the offence to cover additional characteristics including age and gender at a later date, which will enable the issues to be examined following consultation and full consideration of evidence.

"Behaviour that a reasonable person would be likely to consider offensive"

163. *The Committee invites the Scottish Government to reflect on concerns that the "catch-all" test for offensive behaviour set out in section 1(2)(e) may be too expansive and may raise concerns in respect of adherence to freedom of speech and other requirements under the European Convention on Human Rights.*

Government Response: The Government notes the concerns referred to by the Committee but remain firmly of the view that the provisions of the Bill are proportionate, justified and in compliance with ECHR. The freedom of speech of law abiding football fans in Scotland – who form the vast majority – remains protected. The Bill is intended to impact on the small minority who, wrongly, have for too long considered themselves free to express threatening and hateful views regardless of the public disorder that might ensue. The Government is clear that, for example, songs and chants supporting terrorism or terrorist organisations are offensive to any reasonable person and should be caught by the Bill where they are likely to incite public disorder. The Government recognises the need to assist the public in understanding the scope of the offence and will seek to clarify that in a variety of ways. The Government notes that there are recent examples of football supporters modifying their behaviour to remove offensive and sectarian elements, which indicates that supporters are very well aware of where the boundaries of acceptability lie. The Government welcomes and supports this self-regulation by football supporters.

167. *In his first appearance before the Committee, the Lord Advocate was asked for his views on the application of section 1(5)(b) to a pub where all those present support the same club or to a supporters' club. He replied that he did not want to rush into providing an answer but hoped to be able to write to the Committee on the issue at a later date. At the present time, we have not yet received any further clarification from the Lord Advocate on this point. Nor is the issue covered in his draft guidelines to police officers.*

Government Response: This will be responded to by the Lord Advocate.

170. The Committee notes the Scottish Government's assurances that the purpose of the section 1 offence is to protect public order in relation to football matches rather than to create a "hate crime" that outlaws certain behaviour whether or not anyone else is present to be offended or provoked. We seek the Scottish Government's views on whether this could be made clearer in the drafting of the section 1 offence.

171. The Committee would also welcome the Scottish Government clarifying its views – whether in the legislation or in, for example, the Lord Advocate's guidance to the police – as to the section 1 offence's application to venues such as supporters clubs, where it may be presumed that those present would generally be of a like mind. At the same time, the Committee recognises the basic right of all employees to work in a dignified environment, free from language or behaviour that they may consider offensive towards them.

Government Response: The Government's view is clear; hateful and threatening behaviour which risks causing public disorder is unacceptable anywhere. It should not be tolerated at matches, on the way to and from matches or in supporters clubs or anywhere else football is televised. Neither is it acceptable in stadia when opposition fans are not present to be offended or provoked, or when measures are in place to make public disorder unlikely. There remain risks in such situations. For one thing, such expressions of hate are communicated by radio and television, potentially provoking public disorder elsewhere. Also, the Government is not so pessimistic as to believe that simply by supporting a particular football club the sectarian and hateful views of fellow supporters will be tolerated or accepted. Nor should they. The Government is aware of examples where unacceptable behaviour by football fans has caused outrage not just amongst opposition fans but amongst fellow fans. Hence the rejection of the idea that simply being surrounded by fellow supporters excludes the risk that disorder ensue. That is why the Bill makes the provision it does at section 1(5)(a) & (b). Those provisions send out a strong message that there is no home for such behaviour in a modern Scotland, and certainly not in the supporters clubs and other venues where such views may gain acceptance.

The Government accepts that there are practical limitations on the enforcement of section 1(5)(b) but believes that it is essential that this legislation makes clear that such behaviour is never acceptable.

Televised matches

195. The Committee acknowledges that offensive behaviour that may provoke public disorder can be a problem in relation to matches televised in public places (pubs for instance), that this sort of behaviour is unacceptable, and that it may sometimes be necessary to apply the criminal law to deal with it. If there is to be a new offence of offensive behaviour at football matches, we accept that it is appropriate that it cover televised matches. But the Scottish Government should consider whether the parameters of the offence in relation to televised matches need to be made clearer.

Government Response: The Government welcomes the Committee's support for the inclusion of televised matches in the Bill's provisions and note the Committee's

comments about the need for clarity about the parameters of the offence. The Government's view is that the Bill should tackle all bigoted, sectarian and other offensive behaviour related to football, including televised matches and highlights shown in a public place. The Government recognises the need to assist the public in understanding the scope of the offence and will seek to ensure there is greater clarity on this as we take the Bill forward and implement it in practice.

Travel to and from the match

196. The provisions in the Bill concerning travel to or from matches raise similar questions about whether or not particular situations are covered. We accept that some of the worst manifestations of offensive behaviour that provokes public disorder can occur when fans are travelling to a match (often with little concern about whether they actually get inside the stadium) and that it is appropriate to seek to make provision for this. Again, we invite the Scottish Government to consider whether there is scope to make the relevant provisions any more clear.

Government Response: The Government welcomes the Committee's support for the Bill's coverage of such problematic behaviour. We should not allow for a situation where someone – even with no intention of going to football or awareness that a game is on - can hurl sectarian abuse at groups of supporters or can willingly join in with offensive behaviour likely to cause public disorder and not be arrested. We will bring forward an amendment to make clear that the Bill's provisions apply to those who join in such unacceptable behaviour, as well as those who choose to provoke people going to or from a football match.

The Section 5 Offence: Threatening Communications

217. The Committee supports efforts to prevent hateful and inflammatory communications online and in other types of new media. There is a need to make sure that our laws are robust and up-to-date, in order to deal with this fast evolving milieu. It would be a matter of concern if gaps in the current law prevented the successful prosecution of serious cases of hateful communication. Not all Members are wholly convinced that the Scottish Government has made a clear case that those gaps exist, particularly in view of recent successful prosecutions under the current law.

218. However a majority of the Committee are prepared to support the proposal for a new offence of threatening communications. The majority notes that the creation of this offence may provide greater certainty to online users about what is and is not legally acceptable under Scots law.

Government Response: The Government remains of the view that the Bill clarifies and strengthens existing law and sends the strongest possible message that such behaviour is completely unacceptable. The Government believes it is important that Parliament unites behind that view and responds to the demands of the people of Scotland.

220. The Committee would welcome the Government (a) giving consideration to our queries and recommendations below on how the provision might be made more

effective, and (b) providing further information to the Committee on whether and, if so, why, section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 is not considered adequate to prosecute threatening online communications, despite a number of apparently successful recent prosecutions.

Government Response: This will be responded to by the Lord Advocate.

221. The Committee invites the Scottish Government to note the comments of some organisations about the danger of drawing large numbers of children and young people into the ambit of the criminal law or the Children's Hearing system via the new offence of threatening communications.

Government Response: See the response to para 46, above.

Condition B and freedom of expression

231. The Committee notes that the Scottish Government is open to considering the inclusion of a provision protecting freedom of speech in relating to the new offence of threatening communications, to provide assurance that section 5 of the Bill does not inhibit the free, open and, perhaps at times offensive expression of views on religious matters. We would welcome such a provision.

Government Response: The Government have made clear that the Bill will not infringe legitimate freedom of expression but that we do not have any objection in principle to the incorporation of an explicit freedom of expression clause. Given that the Committee would welcome such a provision in relation to condition B of section 5, the Government will bring forward an amendment to the Bill at Stage 2, which we hope will serve to allay any concerns on this matter.

Widening the ambit of the section 5 offence?

237. The Committee recognises differing views on whether to widen section 5 to cover other categories of protection and acknowledges that this is an issue that would require more consideration. The Committee therefore invites the Scottish Government to consult on widening section 5 at an appropriate point should the Bill be passed.

Government Response: The Government notes the concerns about the lack of consultation on the implications of widening section 5 and the Committee's conclusion that such consultation should be undertaken after the Bill is enacted. The Government will therefore bring forward an amendment to allow for the extension of the offence to cover additional characteristics at a later date, which will enable the issues to be examined following consultation and full consideration of evidence.

The exclusion of unrecorded speech

242. The Committee would not support the widening of the section 5 offence to include unrecorded speech, because we recognise the civil liberties implications of creating a law that, perhaps unwittingly, has the potential to criminalise private conversation or conversation within domestic premises.

Government Response: The Government notes the Committee' view that the offence should not be widened to include unrecorded speech.

243. *The Committee would welcome clarification as to whether a live stream of a speech or conversation would be deemed to be "unrecorded speech" under the Bill.*

Government Response: The Bill includes recorded speech only, so 'live speech' even where broadcast or 'streamed' (over the internet) is not covered. Live, broadcast or streamed speech would only be covered if it was recorded and that recording was then communicated.

Enforcement of section 5

254. *The Committee notes the resource implications of section 5, if it were enforced to its full extent. We consider that this points to the likelihood of it being used for "exemplary" purposes to deal with extreme cases of threatening behaviour online. The Committee would welcome the Scottish Government clarifying what resources and training are being provided to law enforcement services to deal with online crime generally. We note the suggestion that an advisory committee of experts might be appointed to assist in the development of effective law enforcement in the online sphere.*

Government Response: The Government notes the Committee's comments about potential resource implications but would re-emphasise that the additional cost of the Bill's provisions are relatively limited, partly for the reasons identified by the Committee. The Government remains of the view expressed in the Financial Memorandum 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." (para 45).

In setting out the case for the Bill, the Government has not sought to quantify the current costs of dealing with such offences nor of the much wider costs of dealing with online crime more generally and precise information on those costs is not therefore available, though paras 69 to 71 of the Financial Memorandum do set out the general background in relation to investigation of e-crime and its relationship to the section 5 offence.

The Strategic Implementation Group for the Bill, is giving consideration to these issues, where they are specific to the Bill, including training provision for all relevant agencies on every aspect of the Bill. In relation to the section 5 offence in particular, the new national football policing coordination unit (FoCUS) are leading on training for law enforcement, working with partners across the UK. Through the Strategic

Implementation Group, the Government has asked that the Committee is provided with information on the measures already being put in place by the police to assist with implementation of the Bill.

Extraterritoriality

255. Given the absence of clear national barriers online, the Committee accepts the case for an extraterritorial provision in respect of the offence of threatening communications. The Committee expects that use of it would be restricted to exceptional cases, where it is considered in the national interest to pursue a conviction and there is reasonable prospect of it being successful.

Government Response: The Government welcomes the Committee's support for the extraterritorial provision in respect of the offence of threatening communications. While such offences may be committed furth of Scotland, they are clearly closely connected to Scotland and it is only right that we should take all possible steps to address such activity where we can.

It appears likely that anyone indulging in such offensive behaviour relating to Scottish football supports a Scottish team. It is therefore possible that they will travel to Scotland to attend matches. We therefore envisage that the majority of prosecutions for extraterritorial offences will follow an arrest in Scotland – and not abroad - where there is evidence that an extraterritorial offence has been committed, and the police have intelligence that the offender will be in Scotland.

Prosecution is a matter for the Lord Advocate, but the Government agrees with the Committee's conclusion that, other than the instances outlined above, the application of the extraterritorially provisions is likely to be restricted to exceptional cases, where it is considered in the public interest to pursue a conviction and there is reasonable prospect of it being successful.