

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Letter from the Minister for Community Safety and Legal Affairs to the Convener

I am writing to provide you with a copy of the Government's proposed amendments to the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, laid earlier today. Subject to clearance by the Parliamentary authorities, they will be published in today's Daily List and tomorrow's Business Bulletin.

As was made clear in the Justice Committee's constructive report on the Bill, there is broad agreement that there is a significant issue affecting Scottish football, which has an unacceptable and often disproportionate impact on wider society. Far from inevitable, far from harmless, sectarian hate poisons our national game and spreads beyond football stadiums. It can have no place in the Scotland we all want to live in. The Lord Advocate and Scottish police service have made clear that existing legal measures are not adequate, and the football authorities have welcomed strengthened legislation to support their efforts to tackle these issues. Government and Parliament have a duty to respond.

The Government's amendments are therefore aimed at strengthening and clarifying the Bill in the ways identified by the Justice Committee's report; in particular by providing an express provision on freedom of expression. That, together with increased clarity on other measures, should provide reassurance to football supporters and others that the Bill will not impact on the behaviour of the law abiding majority. It is not the intention of the Scottish Government to in any way restrict the legitimate right of people to hold and express their religious beliefs, even when those beliefs involve criticism of the beliefs and lifestyles of others, whether religious or not.

I have attached a summary of all the Scottish Government amendments laid today along with a copy of the amendments themselves. These amendments should be read alongside the revised draft of the Lord Advocate's Guidelines to Chief Constables, which provide a very clear explanation of the expectations placed on police officers in using these new measures.

I hope you find this helpful and I would be very happy to provide any other information you or the Committee would find helpful. A copy of this letter will be placed in SPICe – bib. Number 53417.

Roseanna Cunningham MSP
Minister for Community Safety and Legal Affairs
15 November 2011

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS BILL - GOVERNMENT AMENDMENTS AT STAGE 2

‘Freedom of speech’ - Amendment 11: This amendment provides an explicit ‘freedom of expression’ protection with regard to section 5(5) – the offence concerning threats intended to incite religious hatred. It is similar to the equivalent provision at section 29J of the Public Order Act 1986 – the equivalent legislation in England and Wales.

‘Journey’ - Amendments 2, 4, 5, 6 & 8: **Amendment 4** is intended to clarify the situation regarding when the offence is committed on a journey to a regulated football match. It explicitly provides that a person who engages in behaviour constituting an offence under section 1 (e.g. sectarian chanting or otherwise offensive behaviour) who is not on a journey to a regulated football match, but who directs the behaviour at, or joins in with, people who are on a journey to a regulated football match, commits the offence. **Amendments 2, 5, 6 & 8** are consequential amendments.

‘Power to amend offensive behaviour offence’ - Amendment 9: This amendment provides a power for Scottish Ministers to modify by order the definition of the behaviour covered by the offensive behaviour at football offence, the groups against whom it is an offence to express hatred and the definitions of those matters in section 4. This power would enable the offensive behaviour at football offence to be widened to include hatred on grounds of e.g. gender and age. The power is subject to affirmative resolution procedure.

‘Power to amend threatening communications offence - Amendments 10, 12 & 13: **Amendment 13** provides a power to modify, add or remove groups against which it is an offence to make threats intended to stir up hatred. This power would enable the threatening communications offence to be widened to cover additional characteristics. The order-making power also enables the freedom of expression (amendment 11) to be modified to take account of any changes to the scope of the offence (e.g. to match any widening of the offence to cover additional characteristics). The power is subject to affirmative resolution procedure. **Amendments 10 & 12** are consequential amendments.

‘Review clause’ - Amendment 14: This amendment provides for a ‘review clause’ to be added to the Bill. It requires that the Scottish Government reports to Parliament on the operation of the offences during a period beginning on the day that the offences come into force and ending 2 years after the 1 August next occurring after that day. The report must be laid in Parliament not later than 12 months after the end of this period. This is intended to ensure that the report will cover two full football seasons.

‘Commencement’ - Amendment 15: This amendment deletes section 8 of the Bill, which provided for the Act to come into force immediately on Royal Assent (as had originally been proposed when the Bill was introduced under emergency procedure). It provides for the Act to come into force by Order made by Scottish Ministers.

‘Regulated football match’ - Amendments 1, 3 & 7: These are minor drafting amendments which ensure greater consistency in the way the Bill refers to regulated football matches.

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATION BILL - GOVERNMENT AMENDMENTS AT STAGE 2

Section 2

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- 1 In section 2, page 2, line 24, after <a> insert <regulated>

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- 2 In section 2, page 2, line 29, after <if> insert <—
(aa)>

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- 3 In section 2, page 2, line 33, after <the> insert <regulated football>

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- 4 In section 2, page 2, line 34, at end insert <, or
(ab) it is directed towards, or is engaged in together with, another person who is—
(i) in the ground where the regulated football match is being held on the day on which it is being held,
(ii) entering or leaving (or trying to enter or leave) the ground where the regulated football match is being held, or
(iii) on a journey to or from the regulated football match.>

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- 5 In section 2, page 2, line 35, leave out <(2)(a) to (c)> and insert <(2)(aa) and (ab)>

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- 6 In section 2, page 2, line 37, leave out <(2)(a) and (b)> and insert <(2)(aa) and (ab)>

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- 7 In section 2, page 2, line 38, after <the> insert <regulated football>

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- 8 In section 2, page 2, line 39, leave out <(2)(c)> and insert <(2)(aa) and (ab)>

After section 4

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- 9 After section 4, insert—

<Power to modify sections 1 and 4

- (1) The Scottish Ministers may by order—
 - (a) modify section 1 so as to—
 - (i) add or remove a description of behaviour to or from those for the time being listed in subsection (2) of that section,
 - (ii) vary the description of a behaviour for the time being listed in that subsection,
 - (iii) add or remove a thing to or from those for the time being listed in subsection (4) of that section,
 - (iv) vary the description of a thing for the time being listed in that subsection,
 - (b) modify section 4 so as to—
 - (i) add or remove a definition to or from those for the time being mentioned in subsection (2) or (3) of that section,
 - (ii) vary a definition for the time being mentioned in either of those subsections.
- (2) An order under subsection (1)—
 - (a) may make such consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
 - (b) may, for the purpose of making consequential provision under paragraph (a), modify this Act,
 - (c) is subject to the affirmative procedure.>

Section 5

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- 10** In section 5, page 4, line 29, leave out <religious hatred> and insert <hatred on religious grounds>

After section 5

Roseanna Cunningham

- 11** After section 5, insert—

<Protection of freedom of expression

- (1) For the avoidance of doubt, nothing in section 5(5) prohibits or restricts—
 - (a) discussion or criticism of religions or the beliefs or practices of adherents of religions,
 - (b) expressions of antipathy, dislike, ridicule, insult or abuse towards those matters,
 - (c) proselytising, or
 - (d) urging of adherents of religions to cease practising their religions.
- (2) In subsection (1), “religions” includes—

- (a) religions generally,
- (b) particular religions,
- (c) other belief systems.>

Section 6

Roseanna Cunningham

- 12 In section 6, page 5, line 3, leave out <<“Religious hatred”> and insert <<“Hatred on religious grounds”>

After section 6

Roseanna Cunningham

- 13 After section 6, insert—

<Power to modify sections 5(5)(b) and 6

- (1) The Scottish Ministers may by order—
 - (a) modify section 5(5)(b) so as to—
 - (i) add or remove a ground of hatred to or from those for the time being mentioned in that section,
 - (ii) vary a ground of hatred for the time being mentioned in that section,
 - (b) modify section 6 so as to—
 - (i) add or remove a definition to or from those for the time being mentioned in that section in consequence of a modification made under paragraph (a),
 - (ii) vary a definition that relates to a ground of hatred for the time being mentioned in section 5(5)(b).
- (2) An order under subsection (1) may—
 - (a) specify grounds of hatred by reference to hatred against groups of persons, or individuals, of specified descriptions,
 - (b) specify such descriptions by reference to specified personal characteristics,
 - (c) in relation to any ground added by the order, modify this Act so as to make such provision for the same or similar purposes as that in section (*Protection of freedom of expression*) as the Scottish Ministers consider necessary or appropriate,
 - (d) remove or vary any provision made under paragraph (c).
- (3) An order under subsection (1)—
 - (a) may make such consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
 - (b) may, for the purpose of making consequential provision under paragraph (a), modify this Act,
 - (c) is subject to the affirmative procedure.>

After section 7

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14 After section 7, insert—

<Report on operation of offences

- (1) The Scottish Ministers must lay before the Scottish Parliament—
 - (a) a report on the operation of the offence in section 1(1) during the review period, and
 - (b) a report on the operation of the offence in section 5(1) during the review period.
- (2) A report under subsection (1) must be so laid no later than 12 months after the end of the review period.
- (3) In subsections (1) and (2), “the review period” means the period—
 - (a) beginning on the relevant day, and
 - (b) ending 2 years after the 1 August next occurring after the relevant day.
- (4) In subsection (3), “the relevant day” means—
 - (a) in relation to a report under subsection (1)(a), the day on which section 1 comes into force,
 - (b) in relation to a report under subsection (1)(b), the day on which section 5 comes into force.>

Section 8

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15 Leave out section 8 and insert—

<Commencement

- (1) This section and section 9 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.>