



Offensive Behaviour and Threatening Communications (Scotland) Bill

Bill Number:	SP Bill 1
Introduced on:	16 June 2011
Introduced by:	Scottish Government
Passed:	14 December 2011
Royal Assent:	19 January 2012

Passage of the Bill

The Scottish Government initially intended to fast-track this Bill through Parliament so that it could become law in time for the new football season in late July 2011. To do this, it proposed that it should be treated as an emergency bill, although it also proposed a gap between Stage 1 (to be taken on 23 June) and Stages 2 and 3 (to be taken on 29 June). Under the Parliament's standing orders, the normal procedure for emergency bills is that the Parliament takes all three Stages on the same day.

The Justice Committee took evidence on the Bill from five panels of witnesses on 21 and 22 June 2011 in the knowledge that it would not have time to produce a report on the Bill in time for the Stage 1 debate (as would normally be the case). The Committee's intention was to take as much evidence as possible in the limited time available to help inform that debate and any future debates on the Bill. The Committee also issued a call for written evidence on the Bill (necessarily with a very short deadline for responses) targeted at key stakeholders.

On 23 June, the Parliament first debated a motion to treat the Bill as an emergency bill. This was agreed to after a division. The Parliament then agreed by division to consider the Bill according to the timetable set out above. Following this, the Parliament debated the Bill at Stage 1.

Shortly after the debate, and just before the Parliament was to vote on the general principles of the Bill at Stage 1, the First Minister announced that, if the Parliament agreed to the general principles, he would propose an extended timetable for consideration of the Bill at Stages 2 and 3. He

indicated that this would, whilst allowing more scrutiny, enable the Bill to be passed by the end of the year. He said he hoped that providing more time for evidence-taking would increase the likelihood of the Parliament and wider Scottish society achieving consensus on the issues raised.

Following the First Minister's comments, the Parliament approved the general principles of the Bill at Stage 1 (by a majority of 103 to 5, with 15 abstaining). On 29 June, the Parliament agreed, without division, a motion not to take the remainder of the Bill as an emergency bill; that the Justice Committee be the lead Committee on the Bill; and that Stage 2 be completed by 11 November. This enabled the Committee to extend the deadline for written submissions to 26 August. The Justice Committee's report on the Bill prior to consideration of amendments at Stage 2 was published on 6 October 2011 and consideration of amendments at Stage 2 took place on 22 November. The Bill was passed following the Stage 3 debate on 14 December 2011.

Purpose and objectives of the Bill

The main objective of the Bill is to tackle offensive behaviour at, or in connection with, regulated football matches which is liable to incite public disorder. The Bill was introduced following a number of high profile incidents which occurred during the 2010/11 football season. Incidents ranged from misconduct both on and off the field of play by players, managers and supporters; death threats being posted on the internet; and live ammunition and explosive devices being sent to prominent figures directly and indirectly associated with football.

The Bill also seeks to criminalise communications of any kind which (a) make threats of serious violence to a person, or which incite the commission of acts of serious violence to a person; and (b) communications of any kind which make threats intended to stir up religious hatred.

Provisions of the Bill

The Bill sought to introduce two new criminal offences:

1. Offensive behaviour at regulated football matches – this offence aims to criminalise offensive behaviour which is, or would be, likely to incite public disorder, at or in connection with regulated football matches
2. Threatening communications – this offence aims to criminalise behaviour which threatens or incites serious violence and threats which incite religious hatred

A person found guilty of either offence would be liable:

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both

Parliamentary consideration

The key issues which arose during Stages 1 and 2 were:

- whether in relation to the new offence of ‘offensive behaviour at football’, there was a need for such an offence given that a number of current offences could be used to prosecute such behaviour including, in certain circumstances, the common law offence of breach of the peace, or the offence of threatening and abusive behaviour provided by section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. A majority of the Justice Committee accepted the Government’s argument that there were gaps in the law in this area and supported the proposed new offence
- also, in relation to the offence of offensive behaviour at football, whether section 1(2)(e), which provides that a person commits an offence if they engage in behaviour that is likely to incite public disorder or which would be likely to incite public disorder, and the behaviour is that which “*a reasonable person would be likely to consider offensive*”, was too wide in scope. This provision remains in the Bill as passed
- whether in relation to the new offence of ‘threatening communications’ there should be a specific freedom of expression provision on the face of the Bill which makes it clear that Condition B (which provides that a person commits an offence if the person communicates material to another person, *and the material is threatening, and the person communicating it intends by doing so to stir up hatred on religious grounds*) does not prohibit or restrict certain behaviours that would be protected under existing rights to freedom of expression. The Bill was amended at Stage 2 to include such a provision

During the Justice Committee meeting to consider amendments at Stage 2, James Kelly MSP declared that Labour Party members would abstain on all substantive amendments, arguing that the Government had failed to build a consensus in the Parliament on the best way forward. Alison McInnes, Liberal Democrat MSP, adopted a similar position stating that she would only vote on one substantive amendment and would abstain on all others, arguing that the Bill raised so many concerns it would be impossible to amend it effectively.

Only one, very minor non-Government amendment was agreed to at Stage 3 of the Bill. Patrick Harvie MSP lodged the amendment which sought to ensure that the Government would, in producing a report on the operation of the new offences provided for in the Bill, consult publicly before producing the report as many people have first-hand experiences of such offences. The Minister for Community Safety and Legal Affairs, Roseanna Cunningham MSP, stated that although the Government fully intended to produce a report which was not simply a statistical bulletin, the Government was happy to support the amendment as it regarded as essential the need to consult as wide a range of partners as possible to assist in the preparation of the report.