



Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

2012 asp 1

Threatening communications

6 Threatening communications

- (1) A person commits an offence if—
 - (a) the person communicates material to another person, and
 - (b) either Condition A or Condition B is satisfied.
- (2) Condition A is that—
 - (a) the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description,
 - (b) the material or the communication of it would be likely to cause a reasonable person to suffer fear or alarm, and
 - (c) the person communicating the material—
 - (i) intends by doing so to cause fear or alarm, or
 - (ii) is reckless as to whether the communication of the material would cause fear or alarm.
- (3) For the purposes of Condition A, where the material consists of or includes an image (whether still or moving), the image is taken to imply a threat or incitement such as is mentioned in paragraph (a) of subsection (2) if—
 - (a) the image depicts or implies the carrying out of a seriously violent act (whether actual or fictitious) against a person or against persons of a particular description (whether the person or persons depicted are living or dead or actual or fictitious), and
 - (b) a reasonable person would be likely to consider that the image implies the carrying out of a seriously violent act against an actual person or against actual persons of a particular description.
- (4) Subsection (3) does not affect the generality of subsection (2)(a).

- (5) Condition B is that—
- (a) the material is threatening, and
 - (b) the person communicating it intends by doing so to stir up hatred on religious grounds.
- (6) It is a defence for a person charged with an offence under subsection (1) to show that the communication of the material was, in the particular circumstances, reasonable.
- (7) A person guilty of an offence under subsection (1) is 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.

7 Protection of freedom of expression

- (1) For the avoidance of doubt, nothing in section 6(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.

8 Section 6: interpretation

- (1) Subsections (2) to (5) define expressions used in section 6.
- (2) “Communicates” means communicates by any means (other than by means of unrecorded speech); and related expressions are to be construed accordingly.
- (3) “Material” means anything that is capable of being read, looked at, watched or listened to, either directly or after conversion from data stored in another form.
- (4) “Hatred on religious grounds” means hatred against—
- (a) a group of persons based on their membership (or presumed membership) of—
 - (i) a religious group (within the meaning given by section 74(7) of the Criminal Justice (Scotland) Act 2003 (asp 7)),
 - (ii) a social or cultural group with a perceived religious affiliation, or
 - (b) an individual based on the individual’s membership (or presumed membership) of a group mentioned in either of sub-paragraphs (i) and (ii) of paragraph (a).
- (5) “Seriously violent act” means an act that would cause serious injury to, or the death of, a person.

- (6) In subsection (4)—
- (a) “membership”, in relation to a group, includes association with members of that group, and
 - (b) “presumed” means presumed by the person making the communication.

9 Power to modify sections 6(5)(b) and 8

- (1) The Scottish Ministers may by order—
- (a) modify section 6(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 8 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 6(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 7 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.