

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Offensive behaviour at regulated football matches

4. This section creates a statutory offence of engaging in offensive behaviour which is likely to incite public disorder at a regulated football match.
5. Subsection (1) provides that a person who engages in behaviour in relation to a regulated football match which is of a kind mentioned in subsection (2) and is, or would be, but for the factors listed at subsection (5), likely to incite public disorder, commits an offence.
6. Subsection (2) lists the five kinds of behaviour which trigger the offence at subsection (1). These are:
 - (a) expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or group defined by reference to a characteristic listed in subsection (4) (for example, by engaging in sectarian chanting or singing);
 - (b) expressing hatred of, or stirring up hatred against, an individual based on the individual's membership (or presumed membership) of a group mentioned in paragraph (a) above (for example, expressing hatred of a particular player or manager because of that person's presumed or actual religious affiliation);
 - (c) behaviour that is motivated by hatred of a group mentioned in paragraph (a) above;
 - (d) behaviour that is threatening; or
 - (e) other behaviour that a reasonable person would be likely to consider offensive (for example, this would include, but is not limited to, sectarian songs or chants).
7. Subsection (3) provides, for the avoidance of doubt, that it is irrelevant whether the hatred expressed was also based on any other factor, such as, for example, hatred of a particular football club or player's playing style as well as their religious affiliation, race or other factor listed at subsection (2)(a) or (b).
8. Subsection (4) provides a list of further characteristics, other than religion, by which a group may be defined, in respect of which it is an offence to express or stir up hatred. These are: colour; race; nationality; ethnic or national origins; sexual orientation; transgender identity; and disability.
9. Subsection (5) provides that behaviour shall be deemed likely to incite public disorder if it would be likely to incite public disorder but for the fact that measures have been

These notes relate to the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (asp 1) which received Royal Assent on 19 January 2012

put in place to prevent public disorder. Such measures might include a strong police presence and rigid separation of opposing supporters, or the fact that persons likely to be incited to public disorder are not present, or not present in sufficient numbers, for example because 'away' supporters are greatly outnumbered by home supporters, or because one team's supporters have left the match before the other.

10. Subsection (6) specifies that the maximum penalty on indictment is 5 years imprisonment or an unlimited fine or both.