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The draft *Football (Disorder) Bill*

This draft Bill contains measures intended to strengthen existing legislation relating to convicted football hooligans, and to give the police new powers in relation to suspected hooligans.

The Bill itself, which may contain changes from the draft version, is due to be debated on second reading on the House of Commons on 13 July 2000.

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Summary of main points

In the context of violence involving England supporters at the recent Euro 2000 tournament in Belgium and the Netherlands, and of the final stages of England's bid to host the 2006 World Cup, Jack Straw announced on 4 July 2000 that he would be introducing legislation on football hooligans which he hoped to steer through Parliament before the summer recess.

A draft Bill was published for consultation on 7 July 2000. The Bill itself may contain revisions following this brief consultation, but will not be available until the day of the debate on second reading (13 July 2000). The draft Bill proposes four main measures:

1. a new 'banning order', combining aspects of both domestic and international football banning orders;
2. requiring all banning orders to include a condition on the surrender of passports unless there are exceptional reasons not to;
3. enabling a magistrates' court to impose a banning order on suspected football hooligans;
4. summary powers enabling a constable to issue a notice preventing any British citizen from leaving the country and requiring him to surrender his passport.

These proposals have been supported by senior police officers and by the FA, but criticised by supporters' organisations, the Police Federation, and civil liberties groups.

This Research Paper sets out some background information on football hooliganism and the legislative and other attempts to control such violence and disorder. It goes on to discuss banning orders and travel restrictions in more detail, before discussing the proposals contained in the draft Bill. Finally the Paper sets out some of the responses to and comments on the draft Bill.

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I Background

A wide range of possible explanations has been put forward for the existence of violence amongst football fans, including: bad physical conditions at the ground; the fact that the match itself is confrontational; bad behaviour by the players; the involvement of extreme right-wing groups; a disregard for authority; the absence of older men or women who might have a restraining effect; the desire for a fight; unemployment; and drunkenness - or perhaps the interaction of some or all of these factors.¹

Measures have been taken or sought since the fourteenth century to deal with the problem of disorder relating to football - a 1314 proclamation of Edward II declared:

Forasmuch there is great noise in the city caused by hustling over large balls, from which many evils may arise, which God forbid, we command and forbid on behalf of the King, on pain of imprisonment, such game to be used in the city in future.

John Williams of the Sir Norman Chester Centre for Football Research traces the development of hooliganism in modern times.

Although football hooliganism only became recognised by government and the media as a serious problem in the 1960s, hooligan behaviour at football has a long history. 'Roughs' were regularly reported as causing trouble at matches in the professional game's early years at the end of the nineteenth century. Some clubs, sited in particularly tough areas, have long records of spectator disorderliness. In the game's earliest days, local 'derby' matches often provoked the worst problems but, in the absence of visiting fans, home 'roughs' on occasions attacked and stoned referees as well as the visiting players, sometimes chasing them out of town!

Between the wars, football generally became more 'respectable' and crowd problems diminished but did not disappear. It was not until the early 1960s, however, that the media coverage of football began once more regularly to report hooliganism at matches. Around this time, too, there was a general 'moral panic' about the behaviour of young people, sparked by rising juvenile crime rates, uncertainty about the future, the emergence of a number of threatening national youth styles like that of the 'teddy boy', and racial tensions symbolised by the Notting Hill disturbances of 1958. In this climate, football became increasingly identified as a venue at which fights and other kinds of disorder regularly occurred. It was around this time, too, that football hooliganism in England began

¹ See for example the *Report of the Working Party on Crowd Behaviour at Football Matches*, HMSO, 1969; Scottish Education Department, *McElhone Report on Football Crowd Behaviour*, 1977; Sports Council and Social Science Research Council, *Public Order and Sporting Events*, 1978; Football Trust, *Hooliganism and Football*, 1981; Centre for Contemporary Studies, *Football as a Focus for Disorder*, 1983; *Football Spectator Violence*, HMSO 1984;

for the first time to take on the more cohesive and organised aspect that is associated with the phenomenon today.

The mid-1960s saw ad hoc match-day alliances being formed between groups of young men drawn largely from local working class housing estates and suburbs. These supporters staked out the goal-end terraces of football grounds as their 'territory' and managed to exclude from them, much more successfully than before, older spectators and rival fans. The development of these 'youth ends' and their role in defending local masculine reputations and territories helped to produce a national network of 'gang' rivalries focussed on football. For the young men involved in these groups, their own performance in overcoming or intimidating rival 'firms' began to become more important than the performance of the players they had come to watch. Today, most serious confrontations between rival fans no longer occur over, territories inside grounds. Instead, rival groups sometimes try to meet outside, before or, more usually, after matches.²

Government interest in the subject can conveniently be dated from the setting up of the Working Party on Crowd Behaviour at Football Matches, which reported in 1969. An apparent escalation of hooliganism during the mid-1980s - most notably the Heysel Stadium disaster in May 1985 - renewed determination to seek a way of dealing with crowd disorder. Legislation directed entirely or largely at football-related violence in recent years includes the following:

- *Sporting Events (Control of Alcohol etc) Act 1985*

Prohibited the carriage of alcohol on a public service vehicle or a train which is being used for the principal purpose of carrying passengers to or from a designated sporting event, and empowers magistrates to impose conditions on licensed premises within sports grounds to ensure that alcohol should not be sold within sports grounds during the period of a match.

- *Public Order Act 1986* (section 30)

Enabled exclusion orders to be made in respect of persons convicted of certain football-related offences in England and Wales, prohibiting them from attending prescribed football matches in England and Wales

- *Football Spectators Act 1989*

Introduced restriction orders designed to prevent fans convicted either here or abroad³ of football-related offences from travelling to foreign matches by requiring them to report to a police station on the occasion of designated football matches outside England and Wales;

² Sir Norman Chester Centre for Football Research Factsheet 1 *Football and Football Hooliganism*

³ But only in those countries with whom there is a bilateral agreement, which are currently Belgium, the Netherlands, Sweden, Norway, the Republic of Ireland, Scotland, Italy and France.

and created the - unimplemented - national scheme for football membership cards to restrict entry to certain matches.⁴

- *Football Offences Act 1991*

Created three criminal offences covering the following behaviour at designated football matches: throwing of missiles; indecent or racist chanting; and going onto the playing area.

- *Sporting Events (Control of Alcohol etc.) (Amendment) Act 1992*

Extended the maximum period for which an order under section 3 of the *Sporting Events (Control of Alcohol etc.) Act 1985* can be made from five months to twelve months.

- *Criminal Justice Act 1994* (section 166)

Created a criminal offence of touting tickets for football matches. It is an offence to tout tickets in public places even if this is done on a day other than that on which the match is being played. It is also an offence to resell tickets in any way if this is done in the course of a trade or business - this seeks to catch mail order resale of tickets.

- *Crime and Disorder Act 1998* (section 84)

Makes the breach (or apprehended breach) of a restriction order imposed under the *Football Spectators Act 1989* an arrestable offence, and increases the maximum term of imprisonment for such a breach from one month to six months.

- *Football (Offences and Disorder) Act 1999*

Renamed restriction orders 'International Football Banning Orders' (IFBOs), and renamed exclusion orders 'Domestic Football Banning Orders' (DFBOs); widened the circumstances in which they could be imposed; allowed conditions (including surrender of passports) to be added to IFBOs; and broadened the offences of ticket touting and racist or indecent chanting.⁵

However, legislation is not always enough by itself. The FA has recently outlined a series of measures to be taken by the football authorities to ensure that there is a comprehensive programme to combating hooliganism:

- All those convicted at Euro 2000 will be banned for life from all league grounds and England matches.

⁴ For background to this scheme see Library Reference Sheet No 89/10. In his report on *The Hillsborough Stadium Disaster* [Cm 962, January 1990] Lord Justice Taylor expressed grave doubts about whether the scheme would effectively eliminate hooliganism from football matches and about whether the technology would be capable of fulfilling the requirements of the scheme or safety requirements. The government therefore decided not to implement the scheme - HC Deb 29 January 1990 vol 166 c21.

⁵ See Library Research Paper 99/41

- Continue to actively promote anti-hooliganism campaigns similar to the England Members' Club's "Football Yes, Violence No" campaign with other relevant authorities.
- Orchestrate an active campaign to eradicate any abusive or racist chanting inside stadiums.
- Promote more family support at England away fixtures.
- Ask organisers of future tournaments to introduce smart cards for ticket holders, backed with photographic ID. Where necessary, encourage organisers to change venues or kick-off times to maximise safety and security.
- Work with the Department of Trade and Industry to address the problem of black market tickets – up to 17,000 English fans in Charleroi did not obtain their tickets through the EMC.
- Contribute to a compensation fund for Charleroi and Brussels following the disturbances during Euro 2000.⁶

A Home Office working party, led by Lord Bassam and including members of the FA, is being set up to report on these and other measures to stamp out hooliganism. It will cover ticketing, travel and stewarding arrangements, the involvement of clubs in the community, tackling racism, and example of good practice.⁷

Some idea of the extent of the problems and recent trends can be seen in the figures given in table 1 (overleaf) for arrests both inside and just outside grounds since the 1984-85 season. The accompanying graph illustrates the trend in the rate of arrests.

The 1998-99 season saw the first – albeit slight - increase in the number of arrests since the 1991-92 season. The *rate* of arrests, however, fell marginally as attendances increased by almost 3%. This continues a long decline in the rate of arrests which has fallen to just over 13 per 100,000 spectators this year from around 30 per 100,000 at the end of the 1980s and 40 per 100,000 in the year of the Heysel tragedy. However, the Home Office would say this is partly due to a move in hooliganism away from grounds and games, both in time and distance.⁸

Figures for the 1999/00 season will not be available until August 2000. A spokesperson for the National Criminal Intelligence Service has stated that they will show a rise in hooliganism, particularly in violent incidents and among fans of clubs from outside the Premiership.⁹

⁶ *ibid*

⁷ see HL Deb 4 July 2000 cc1406-1418

⁸ Review of Football-related legislation; summary of responses to public consultation. Home Office 30 March 1999

⁹ Cited in *The Guardian* 19 May 2000 "Thugs prepare for Euro 2000 war"

Table 1
Arrests and attendances at^(a) football matches

	Football League/Premiership			Domestic Cup Competitions		
	Arrests	Attendances	Arrests per 100,000 attendances	Arrests	Attendances	Arrests per 100,000 attendances
1984-85	7,140	17,850,000	40	...	...	...
1985-86	4,143	16,499,000	25	...	...	...
1986-87	5,520	17,383,000	32	...	...	...
1987-88	6,106	17,968,965	34	...	...	...
1988-89	6,185	18,366,143	34	...	...	...
1989-90	5,945	19,360,194	31	...	...	...
1990-91	4,122	19,027,390	22	...	...	...
1991-92	5,006	20,486,892	24	1,372	3,787,373	36
1992-93	4,588	20,657,327	22	1,739	3,878,407	45
1993-94	4,227	21,653,381	20	1,296	3,984,975	33
1994-95	3,850	21,856,020	18	1,265	3,843,152	33
1995-96	3,441	21,844,416	16	897	4,046,669	22
1996-97	3,577	22,783,163	16	823	3,545,065	23
1997-98	3,307	24,692,608	13	n/a	n/a	n/a
1998-99	3,341	25,256,211	13	n/a	n/a	n/a

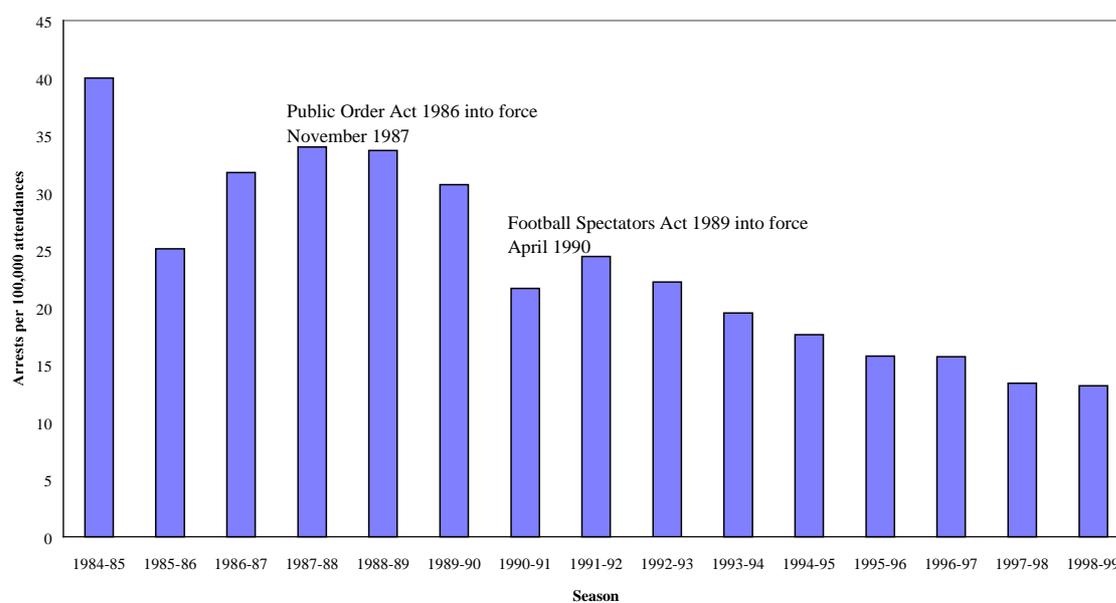
a) Inside and just outside grounds.

n/a not yet available

Sources: National Criminal Intelligence Service *Press Releases, various years*

Home Office *Deposited papers Dep 7467, 10300*

Arrests in or near football grounds, League/Premiership matches only



Examining the available data for arrests by offence for the past three seasons reveals a particular growth in violent crimes. The number of arrests for affray, for assault and for violent disorder has risen in each of the past two years:

Table 2
Football arrests 1996/97 to 1998/99 by offence

	1996/97	1997/98	1998/99
Drink related	1,338	1,168	
POA s5 - disorderly behaviour	832	523	
POA s4 - threatening behaviour	376	312	322
POA s3 - affray	19	65	69
POA s2 - violent disorder	23	52	100
FOA s4 - running on pitch	177	243	
FOA s3 - racial/indecent chanting	10	33	25
FOA s2 - throwing missiles	11	31	
Ticket touting	173	173	
Assault	19	110	133
Breach of exclusion order	19	19	
Other	580	578	
Total	3,577	3,307	3,341

Source: NCIS Press Releases 12/98; 20/99

POA = Public Order Act; FOA = Football Offences Act 1991

The extent of the violence involving England fans during the World Cup in France in 1998 provoked calls for tighter restrictions on known football hooligans.¹⁰ Both the Prime Minister and the Home Secretary called for strong action by employers against football hooligans convicted in France,¹¹ despite concerns that this could possibly lead to actions for unfair dismissal.¹² The French brought in emergency security measures to allow suspected troublemakers to be expelled from France before being convicted of any offence there, as a result of which several English men were expelled and banned from visiting France for life.¹³ 363 England supporters were also refused entry to France during the World Cup.¹⁴ Nevertheless, 275 further fans were arrested in France during this period.¹⁵ The French authorities have provided the National Criminal Intelligence Service with information about all those arrested or deported from France. For those convicted of criminal offences in France, the French authorities have provided the Home Office with the court judgments in accordance with the bilateral agreement reached with France before the World Cup.

¹⁰ see for example 'Controlling the hooligans', *Sports Law Administration and Practice*, July/August 1998

¹¹ see Home Office press notice 15/98, *Home Secretary supports action by employers against football hooligans*, 17 June 1998

¹² eg 'Sack for fan expelled by France', *The Scotsman*, 27 June 1998; David Pannick, 'Be careful before you sack a job', *The Times*, 30 June 1998; 'Controlling the hooligans', *Sports Law Administration and Practice*, July/August 1998

¹³ see 'Hooligans face expulsion from France for life', *The Guardian*, 22 June 1998 'French kick out English soccer fans', *The Daily Telegraph*, 23 June 1998.

¹⁴ HC Deb 29 July 1998 c262

¹⁵ *ibid*

The Home Secretary described preparations for the Euro 2000 tournament in Belgium and the Netherlands in a statement to the House on 19 June 2000.

The House has been kept informed about the arrangements made over many months to intensify co-operation between the United Kingdom and the Belgian, Dutch and French authorities to ensure as far as possible that anyone previously involved in football hooliganism should not be able to gain entry to those countries.

It is widely accepted across Europe that the British police, led by the National Criminal Intelligence Service and by Assistant Chief Constable Tim Hollis, are among the most professional and thorough in identifying known hooligans and in policing arrangements in co-operation with overseas police forces. The Dutch Minister of the Interior, Klaus de Vries, to whom I spoke this morning, has issued a further statement expressing his satisfaction with the co-operation provided by the British authorities.

Well in advance of the competition, lists were provided to the Dutch and Belgians of 500 British individuals subject to banning orders and a further 500 against whom there were football-related convictions but no banning orders in force. All 500 who were subject to any kind of banning order were sent letters advising them not to travel, and 101 individuals subject to international banning orders are directly prohibited from travelling abroad. There have been no reports of any of those 101 leaving the United Kingdom during the period of the competition. In addition, the National Criminal Intelligence Service has provided information to the Netherlands and Belgium on another 200 individuals on whom there was good intelligence but who had no football-related convictions.

All this has been part of an extensive international operation in which British police and immigration officials and the football authorities have been actively involved. Further details were set out in the report of the Euro 2000 Co-ordinating Group placed in the Library of the House on 7 June.¹⁶

In total, 965 British nationals were arrested during Euro 2000, with 464 subsequently deported. 'A very small number' are awaiting trial. In its own terms, preparation for the tournament could be considered a qualified success: of the 1,000 people notified to the Belgian and Dutch police forces most were believed to have not travelled or to have been prevented from entering the host nations, and only 30 were arrested or deported.¹⁷ However, the Home Secretary believes that events in Euro 2000 illustrated a change in the nature of football hooliganism, with the vast majority of disorder attributable to people with no record of football-related offences.

¹⁶ HC Deb 19 June 2000 c36-38

¹⁷ HC Deb 4 July 2000 c170

For some years, the widely accepted view has been that football hooliganism abroad is perpetrated by a relatively small minority of known football troublemakers. Measures discussed and approved by the House over a 15-year period have largely been predicated on that assumption. The blunt truth, however, which has become very clear from events last month, is this: football hooliganism abroad is no longer confined to a small minority of known troublemakers. There is now strong evidence of a larger number of England supporters getting involved in violence, drunkenness and disorder; few of them are known in advance to the police nationally as football-related offenders.¹⁸

While few of those arrested during Euro 2000 were known football-related offenders, 409 or 42% had previous convictions. The Home Secretary has compared this to the prevalence of convictions (for violent or non-violent offences) among the general population of young men – around one third.¹⁹ The latest available figures - dating from 1995 - are shown in table 3.

Table 3
Cumulative proportion of males with a conviction
England & Wales

	Year of birth				
	1953	1958	1963	1968	1973
age 19	19.9%	22.2%	22.8%	19.2%	14.2%
age 24	27.0%	29.7%	29.8%	26.0%	...
age 29	30.6%	32.7%	...	...	...
age 34	32.7%	...	...	...	...

Source: Home Office Statistical Bulletin 14/95 *Criminal careers of those born between 1953 and 1973*

¹⁸ *ibid.*

¹⁹ HC Deb 26 June 2000 c397w

II Banning orders

A. International Football Banning Orders

Part II of the *Football Spectators Act 1989* (as amended by the *Football (Offences and Disorder) Act 1999*) allows courts in England or Wales to impose International Football Banning Orders (IFBOs - formerly called restriction orders) following convictions for football-related offences, or notification of convictions in a foreign court for corresponding offences. The orders are issued and administered by the Football Banning Orders Authority at the National Criminal Intelligence Service (NCIS).²⁰

The relevant ‘football-related offences’ that can trigger IFBOs are specified in Schedule 1 of the *1989 Act* (as amended by the *1999 Act*). The list includes:

- public order/racial hatred offences committed **at a football ground** in the 24 hours on either side of the match
- public order/racial hatred offences committed **anywhere** in the 24 hours on either side of the match (if the court makes a declaration that the offence related to a football match);
- drunkenness or public order/racial hatred offences **on a journey to or from a football ground**²¹ (if the court makes a declaration that the offence related to a football match);
- ticket touting offences;
- throwing of missiles onto the pitch;
- indecent or racist chanting at a designated football match;
- going onto the playing area;
- attempts, conspiracy and incitement to commit the above offences, and aiding and abetting, counselling or procuring the commission of such offences.

A full list of the relevant offences is set out in pages 8-9 of Home Office circular 42/1999: *Guidance on Football Related Legislation*.²²

²⁰ formerly the Restriction Orders Authority, established under the *Football Spectators (Designation of Enforcing Authority) Order 1990*, SI 1990/730 - see now the *Football Spectators (Designation of Enforcing Authority) Order 1999*, SI 1999/2459

²¹ a journey may include breaks, and people may be regarded as on a journey to a match even though they do not attend or intend to attend the match - *1999 Act* s2(2)

²² September 1999

Convictions for equivalent offences in Italy, Scotland, Sweden, Norway, the Republic of Ireland, France, Belgium or the Netherlands will also allow the courts here to impose IFBOs.²³ The relevant corresponding offences are specified by Orders in Council. According to Home Office officials, there were difficulties in negotiating bilateral agreements with other countries in relation to IFBOs. Apparently, when section 22 of the *1989 Act* came into force, other European countries were approached but few expressed much interest in these arrangements. Germany, for example, was concerned that it would lead to double jeopardy for offenders, believing that it would not be right for them to be convicted in a German court but then be subject to further punishment in England and Wales. The Home Office view is that the restriction order procedure is an 'administrative procedure' despite the involvement of the courts and that, therefore, no question of double jeopardy arises. In addition, proceedings are rarely taken abroad against British offenders, since many countries prefer simply to deport them.

An IFBO may be made only in addition to a sentence imposed in respect of the offence, or in addition to an order discharging the person absolutely or conditionally. The *1999 Act* states that IFBOs must be made in all cases where a person is convicted of a football-related offence **and** there is sufficient evidence that to do so would help prevent violence or disorder at designated football matches. If the court does not impose an IFBO, it must state its reasons.

An IFBO does not ban the person upon whom it is imposed from attending particular football matches - instead, he is required to report to a specified police station at a specified date and time on the occasion of **designated football matches**.²⁴ The timing and location of the reporting requirement will be important in preventing people from travelling to take part in violence, particularly after a match, because once they have reported, they are free to do as they please. It has been suggested that some hooligans have no intention of attending the matches anyway, simply using them as a focus for their violent activity.²⁵

The *1999 Act* allows conditions to be added to the IFBO, and states that those conditions may include the surrender of a passport (at a named police station) up to five days before the matches in question. To the beginning of Euro 2000 nine people had been required to surrender their passports.²⁶ The implications of this are discussed further below (see page 27).

²³ see SI 1990/992 (Italy), SI 1990/993 (Scotland), SI 1992/708 (Sweden), SI 1992/1724 (amending the previous three SIs), SI 1996/1634 (Norway), SI 1996/1635 (Republic of Ireland), SI 1998/1266 (France), SI 200/1108 (Belgium) and SI 2000/1109 (Netherlands)

²⁴ broadly speaking, major association football matches in England and Wales - *Football Spectators (Designation of Football Matches in England and Wales) Order 1999* SI 1999/2461; and equivalent matches abroad involving the English or Welsh national sides or major English or Welsh teams - *Football Spectators (Designation of Football Matches outside England and Wales) Order 1999* SI 1999/732

²⁵ see eg 'Football yobs plot Munich showdown' - *Sunday Times* 9 July 2000

²⁶ HC Deb 12 June 2000 c505-6w

Everyone subject to an IFBO is required to provide three passport-sized photographs of himself. Of these, one is forwarded to the enforcing authority, one is retained by the police for local use, and the third is used to provide a laminated registration card.²⁷

The person subject to an IFBO can apply to the Football Banning Orders Authority (or the local police in certain circumstances) to grant exemptions from the conditions attached to it or to its reporting requirements.²⁸ This might be necessary where, for example, the person is working away from home on a short-term basis, or there is an illness in the family. A permanent change of reporting police station could be requested where the person has moved house, changed place of employment or changed domestic circumstances. If the exemption is not granted, the person may appeal to his local magistrate's court.²⁹

The order will be in force for between six and ten years if the offender has been given a custodial sentence, and otherwise it will be between three and five years. The court decides on the precise duration of each order. After two-thirds of the time set has elapsed, the person subject to the IFBO may apply to the court to terminate the Order.³⁰

Breach of the reporting requirement, or of any condition of the IFBO, is an offence punishable by a maximum of six months' imprisonment and/or a level five fine (currently £5,000),³¹ and the police may arrest without warrant a person whom they reasonably suspect of being about to commit this offence.³²

Home Office circular 31/1990 on *Part II of the Football Spectators Act 1989 (Restriction Orders): the Role of the Courts* provided guidance on how restriction orders were intended to operate. This was updated and replaced in September 1999 by Home Office circular 42/1999: *Guidance on Football Related Legislation*.

Very few orders were initially made under these provisions. In June 1995, Tony Baldry (then a junior Foreign Office minister) said:

It is a reasonable inference that, given the small number of restriction orders that have been made, that scheme is not working as well as we would have wished. We are therefore considering ways in which it may be made more effective. The Home Office is reminding the courts and other interested parties of those powers.

²⁷ para 4.21, *Guidance on Football Related Legislation* - Home Office circular 42/1999

²⁸ *Football Spectators Act 1989* s20, as amended by the *1999 Act* s 3(8) to (11)

²⁹ *ibid*

³⁰ *Football Spectators Act 1989* s 17 as amended by the *1999 Act*

³¹ This was increased from a maximum of one month's imprisonment and/or a level three fine (£1,000) by section 84(1) of the *Crime and Disorder Act 1998*.

³² *Crime and Disorder Act 1998* s84(2)

If we know the troublemakers, it may be sensible to impose restriction orders on them.³³

On 31 May 1995 a circular was issued to the police and the courts reminding them of the powers to make restriction and exclusion orders under the Act.³⁴ However, this did not seem to have a marked effect on the number of restriction orders made, and in December 1997 the Home Secretary announced that he had written to all courts and prosecutors in England reminding them again of the availability of these orders.³⁵

The number of orders rose dramatically in 1998. Table 4 shows the trend in the number of orders made and the number extant:

Table 4
Restriction Orders and International Banning Orders
England & Wales, 1990 to 2000

Orders made -	Restriction	International Banning	Total
1990	19	...	19
1991	4	...	4
1992	2	...	2
1993	nil	...	0
1994	1	...	1
1995	1	...	1
1996	1	...	1
1997	10	...	10
1998	100	...	100
1999	18	3	21
2000 (to end-June)	...	28	28
People subject to orders as of-	Restriction	International Banning	Total
May 1995	2	...	2
December 1997	10	...	10
January 1998	9	...	9
March 1998	30	...	30
June 1998	71	...	71
April 1999	113	...	113
May 2000	87	19	106

Sources: HC Deb 27 February 1995 c408w
 HC Deb 18 June 1998 c300w
 HC Deb 18 May 1995 c461
 HC Deb 16 March 1998 c517w
 HC Deb 5 July 2000
 NCIS

³³ HC Deb 8 June 1995 vol 261 c394

³⁴ Home Office Circular 31/1995

³⁵ see Home Office press notice 380/97, *Britain takes lead against football hooligans*, 26 December 1997

B. Domestic Football Banning Orders

Part IV of the *Public Order Act 1986*, as amended by the *Football (Offences and Disorder) Act 1999*, sets out the provisions on Domestic Football Banning Orders (DFBOs - previously called exclusion orders). A DFBO may be made by a court when dealing with a person convicted of a football-related offence,³⁶ but only in addition to a sentence in respect of the offence, or to a probation order or conditional or absolute discharge.

A DFBO prohibits the subject of the order from attending any **prescribed football match**³⁷ in England and Wales for a given period. This can be between one and three years. Unlike IFBOs, the DFBO does not impose any reporting requirement, nor can further conditions be imposed on it.

Breach of an order is a criminal offence, which now attracts a maximum sentence of six month's imprisonment and/or a level five fine (currently £5,000); and the police can arrest a person they reasonably suspect of committing such an offence. However, there is no power of arrest where there is simply reasonable suspicion that a person is *likely* to commit the offence.

Details of orders imposed, along with photographs of the person,³⁸ are made available to chief officer of police in whose force the offence was committed, and the Football Banning Orders Authority at NCIS, as well as to the Football Association who may inform clubs so that they can take appropriate action as regards deciding applications for tickets or for their own membership schemes.³⁹

Home Office circular 69/1990, issued in August 1990, gave guidance on how the government intended exclusion orders to be used, and included the suggestion that attendance centre orders might often be the right sentence to accompany exclusion orders where the offender was under 21. This guidance was replaced by Home Office circular 42/1999: *Guidance on Football Related Legislation* (September 1999).

Domestic football bans are more common at present than international ones. There are currently 218 people subject to exclusion orders made under the *Football Spectators Act 1989* and 170 subject to domestic banning orders under the *Football Offences and Disorder Act 1999*.⁴⁰

³⁶ the list is now the same as for IFBOs, ie that set out in Schedule 1 to the *Football Spectators Act 1989 - 1999 Act* s 7

³⁷ broadly speaking, major association football matches: see the *Public Order (Domestic Football Banning) Order 1999* - SI 1999/2460

³⁸ taken in accordance with the *Public Order Act 1986* s35 and *Police and Criminal Evidence Act 1984* Code D ('Code of practice for the identification of persons by police officers')

³⁹ *Public Order Act 1986* s34 and SI 1999/2460

⁴⁰ NCIS, 24 May 2000

C. Banning unconvicted persons

There have recently been various moves towards imposing some kind of a ban on suspected but unconvicted hooligans, to prevent them attending or travelling to matches where they might cause trouble.

Following the violent scenes at Marseilles during the World Cup in June 1998, Sir Norman Fowler moved the following new clause to the Bill that became the *Crime and Disorder Act 1998*:

FOOTBALL BEHAVIOUR ORDER

(1) If it appears to a chief officer of police that the following condition is fulfilled with respect to any person in his police area, namely that the person has acted in such a way as to give reasonable cause to believe that an order under this section is necessary to prevent him disturbing good order at any designated football match outside the United Kingdom or during the period before or after any designated football match outside the United Kingdom, he may apply for a football behaviour order in respect of that person.

(2) Such an application shall be made by complaint to any magistrates' court.

(3) If, on such an application, it is proved that the condition mentioned in subsection (1) is fulfilled, the magistrates' court may make an order which prevents the defendant from doing anything described in the order.

(4) The prohibitions that may be imposed by a football behaviour order are those necessary for the purpose of maintaining good order at any designated football match outside the United Kingdom or during the period before or after any designated football match outside the United Kingdom.

(5) A football behaviour order shall have effect for a period (not less than five years) specified in the order or until further order.

(6) Subject to subsection (7) below, the applicant or defendant may apply by complaint to the court which made a football behaviour order for it to be varied or discharged by a further order.

(7) Except with the consent of both parties, no football behaviour order shall be discharged before the end of the period of five years beginning with the date of the service of the order.

(8) The acts referred to in subsection (1) above include acts committed outside the United Kingdom.

(9) The period referred to in subsections (1) and (4) above means a period of two weeks.

(10) The football matches referred to in subsections (1) and (4) above are football matches designated under the Football Spectators Act 1989.

(11) If without reasonable excuse a person does anything which he is prohibited from doing by a football behaviour order, he shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.⁴¹

This generated a great deal of debate on both sides of the House. However, Sir Norman withdrew the amendment in the light of Jack Straw's undertakings to look into the idea further and consult the Opposition fully on any future proposals.⁴²

The Home Office *Review of football-related legislation*, issued for consultation in November 1998, contained the following proposals:

Dealing with Category Cs⁴³

23 That conspiracy and incitement should be added to the list of relevant football-related offences.

24 That consideration should be given to the courts to have the power to impose orders to prevent non-convicted persons attending designated matches.

The first of these proposals was generally supported, but the second received a mixed response:

7.2 [...] Almost all respondents considered the measure as controversial. Many raised concerns about preventing a person's ability to travel whilst not [being] subject to conviction. They were opposed to what they considered to be a serious intrusion into the civil liberties of the individual. There was also concern that supporters may be innocently caught up in incidents and [become] subject to orders of the court.

7.3 There was some discussion on what would constitute sufficient information to be placed before the court and why such information was not in the first instance considered sufficient to be placed as evidence in pursuit of a conviction. The view was expressed that the courts would be provided with

⁴¹ HC Deb 22 June 1998 c709

⁴² HC Deb 22 June 1998 c709-754

⁴³ the most dangerous category of football hooligans in the National Criminal Intelligence Service football unit's database

information in the nature of hearsay and that this mechanism would be used as a device to take action against those ‘who were believed to be guilty’.

7.4 Placing intelligence information before the court was seen as potentially compromising intelligence sources. There was also the potential for those made subject to such an order to consider to [take] civil action against the police on the basis of supplying information without a high degree of corroboration.

7.5 A number of those who raised some of these concerns, acknowledged the principle of being able to take action against those individuals who were known to be involved in football hooliganism. Such a measure would provide an important power against those people. However, there was a need to be certain that there were sufficient safeguards in place for both the public and the police.⁴⁴

The Government response to this was that it saw merit in the proposal but required further consideration on ECHR implications before taking the matter forward:⁴⁵

Events during France ’98 further illustrated the impact of football hooliganism on our international reputation. They also highlighted our lack of ability to prevent known hooligans who do not have a football-related conviction from travelling to key matches overseas.⁴⁶

Liberty, whilst voicing serious concerns about the wide-reaching nature of the 1999 proposals to extend the ambit of banning orders, also recognised the difficulty of reaching the right people:

There would be no practical guarantee that those affected would in fact be the type of persons who must be deterred for up to a decade from attending football matches. The most significant manifestations of disorder have accompanied domestic and national teams abroad, involving relatively small numbers of actively violent hooligans, who have travelled together causing criminal damage to the centre of host towns and cities, offering violence towards police and opposing fans, and exhibiting offensive as well as drunken behaviour. In practical terms the main proposal - to greatly increase the scope, severity and availability of banning order - will be likely to have relatively little effect. Such hooligans may have little interest in attending domestic football matches, or in football at all, and their domestic offending, if any, may be drink and violence related without any particular reference to domestic football-related disorder.⁴⁷

The consultation paper’s proposal relating to unconvicted persons did not appear in the private member’s bill that was to become the *Football (Offences and Disorder) Act 1999*.

⁴⁴ *Review of football-related legislation: summary of responses to public consultation* - Home Office, 30 March 1999

⁴⁵ *ibid* para. 9.2

⁴⁶ ‘Kick off for anti-hooliganism measures’ - *Home Office press notice 112/99*, 31 March 1999

⁴⁷ *Briefing for the Football (Offences and Disorder) Bill, 2nd Reading* - Liberty, April 1999

However, during the debate on the Bill's Second Reading, Simon Burns (who had presented it) stated that he would seek to amend it to include such a provision:

I would be less than candid if I did not tell the House that I would like to amend my Bill in Committee to extend the power of the courts to issue international banning orders to unconvicted football hooligans where the courts are persuaded that there are reasonable grounds to believe that a person travelling abroad is likely to commit acts of violence or disorder.

There are numerous precedents within the law, in certain circumstances, of withdrawing unconvicted individuals' rights to travel abroad. For example, unconvicted individuals who are on bail can, under existing law, have their passports removed. Secondly, in certain child custody cases where nobody has committed an offence, if the courts believe that there are reasonable grounds to think that a parent may seek to take a child beyond the jurisdiction of the British courts, that parent, too, can have his or her passport removed, despite the fact that he or she has committed no offence whatever.

[...] we now have the National Criminal Intelligence Service, a highly sophisticated, effective intelligence-gathering unit, which has done much since its creation to help to combat and overcome problems of football hooliganism. The NCIS knows many individuals who are hard-core organisers or participants in football hooliganism, who have been fortunate not to have been charged or convicted and who carry on their illegal activities. It would be up to the courts to decide whether the individual concerned should have a banning order placed on him, based on evidence, intelligence and the test of reasonableness that is used in other aspects of British law.

If someone were to find himself in that position, he would have the right to appear or to be represented in court to argue that it would be wrong to issue a banning order and, if an order were issued, then to appeal. I am satisfied that there are enough checks and balances in the system for that power not to be abused.⁴⁸

David Maclean, Eric Forth, Roger Gale, Joan Walley, Peter Pike, Michael Fabricant and Edward Leigh were amongst those who raised concerns about this suggestion, mainly on civil liberties grounds. John Greenway was more sympathetic to the proposal, and referred to attempts by Conservative members to introduce 'football behaviour orders' to the bill that became the *Crime and Disorder Act 1998*.⁴⁹

Kate Hoey said that there were problems with such a proposal, which the Government would wish to consider further before supporting a further restriction:

⁴⁸ HC Deb 16 April 1999 c 475

⁴⁹ *ibid* c507

There is no doubt that the police are aware that certain individuals - a small but important number - are involved either in the planning of or participation in violent or hooligan activity in connection with football matches. Present legislation does not provide - it is not proposed in the Bill, although the hon. Member for West Chelmsford has mentioned that he is considering introducing an amendment in Committee - an ability to deal with known hooligans without conviction for a football-related offence.

As has been said by right hon. and hon. Members on both sides of the House, such a measure is not without its difficulties and may have implications in terms of civil liberties and of compromising intelligence sources. There are a number of issues that the Government wish to consider further, and it is clear that we shall have to work with the hon. Gentleman and take advice before we reach conclusions about whether we could support and wish to bring forward a further restriction.⁵⁰

When the Bill was debated in Committee, Simon Burns did not in fact propose such an amendment, saying that he now considered it to be beyond the scope of a private Member's bill. He hoped, however, that the Government might introduce such legislation in a law and order or criminal justice Bill.⁵¹

Kate Hoey responded by saying:

The power to make banning orders in respect of people without conviction is necessary. I understand the reluctance of the hon. Member for West Chelmsford (Mr. Burns) to introduce a controversial amendment, which might make it more difficult for the Bill to make progress. However, the Government will want to return to the matter, because from football intelligence we know that some people commit offences or are involved in organising violence but cleverly manage not to be where they may be arrested. We need to find a way of dealing with those people.

We accept that the issue is complex and that the Bill is not the right place to deal with it. We will want to have further discussions, particularly with organisations that represent decent football supporters. The Football Supporters Association and the National Federation of Football Supporters Clubs know that there is a small minority that must be dealt with. If we can find a way to bring football with us so that it supports us, we may be able to deal with this issue later in a Government Bill.⁵²

On Report, David Maclean put forward amendments that aimed to cover unconvicted people (c885). This would have allowed the police to apply for an IFBO or a DFBO in relation to **any**

⁵⁰ HC Deb 16 April 1999 c511

⁵¹ SC D, 5 May 1999 c4

⁵² *ibid* c5

person if it appeared to them that making the order would help to prevent violence or disorder at or in connection with designated football matches.

Eric Forth maintained his opposition to such a measure, and Eleanor Laing said the Opposition supported the bill as it stood without Mr Maclean's amendment (c902).

The Government's concerns about the proposals were set out by Kate Hoey:

We must also take into account the practical and operational concerns about how the measures proposed in the new clause would work. The obtaining of such an order would rely exclusively on the quality of intelligence and information put before the court by the police and the prosecutor. In presenting that information, as the right hon. Member for Penrith and The Border pointed out, the police may be required to compromise their intelligence-gathering mechanisms, including information on informants. We may not like informants, but in reality, they can sometimes play an important role in combating crime--especially organised crime.

[...]

Clearly, it would be an operational decision for chief officers whether to acquire the evidence required to stop an unconvicted hooligan travelling abroad. We are also concerned that some overseas jurisdictions may look to this proposed new power as a means by which they can deport suspected offenders from their country without prosecution, on the basis that when such people returned to this country they would be liable to action in the courts here. The right hon. Gentleman will remember how annoying it was to see people behaving appallingly in European countries and being instantly sent back here. We wanted those countries to take people to court and we are co-operating with other European countries so that that can be done. We want to continue to encourage the jurisdictions in which the offence has been committed to use the due process of law in that country to seek convictions. It was most disturbing to see footage of people behaving violently, and to know that the next day they would be sent back to this country - probably free - and that we could do nothing about it.

We should also consider the position of information gathered in a foreign jurisdiction and the ability to make use of it in a court in this country. At present, the taking of video material is subject to privacy laws in some countries and those laws place restrictions on the use of such material. There are difficult, practical problems as to how we obtain the evidence in order to convict hooligans through the judicial system.

She suggested that powers against unconvicted persons might be needed in the future, but that the provisions of the rest of the bill should be given a chance to work first (cc902-4).

The police already publish photographs of suspected football hooligans, for instance those copied from security video and police photographs taken at a recent Leeds United match against the Turkish side Galatasaray. Chief Inspector Warmington, of West Yorkshire police, is quoted as saying:

We want to hear from anyone who recognises any of these men, and we will certainly seek to ban anyone convicted from all football games.⁵³

It is unclear to what extent the Code of Practice on the identification of persons by police officers⁵⁴ will apply to any photographs taken of a person subject to a banning order who has not been arrested or convicted. The existing guidance on football-related offences suggests that details of only those people who have been convicted of football-related offences should be passed to football clubs. Details of convictions for other offences, or of persons arrested or arrested and charged, should not be passed on.⁵⁵

⁵³ 'Hooligans' pictures published' - *Guardian* 7 July 2000

⁵⁴ Code D, issued under the *Police and Criminal Evidence Act 1984*

⁵⁵ para 5.15, *Guidance on Football Related Legislation* - Home Office circular 42/1999, September 1999

III Travel restrictions⁵⁶

The *Football (Offences and Disorder Act) 1999* allowed the courts to impose a condition on IFBOs requiring the person's passport to be submitted, up to five days before relevant football matches abroad. The current draft Bill aims to make this a mandatory condition of all banning orders, unless there are exceptional reasons for not doing so.

The Home Office consultation paper on the Review of Football-Related Legislation, November 1998, sets out the benefits of requiring submission of a passport:

2.14 Where a restriction order is in place, there is no certainty over whether a person will travel to an overseas match until such time as they do or do not report to the police station when required. This uncertainty could be minimised by requiring submission of the passport in advance of the reporting requirements. This would have a two-fold benefit: firstly, it would counter the major criticism that we do not do enough to stop (convicted and non-convicted) hooligans travelling in the first place; and, secondly, from a more practical perspective, failure to submit a passport on the allotted day will alert the police to a potential breach sufficiently in advance of the reporting requirements. This should allow the opportunity for action to be taken against the individual before they travel. The court would make submission of the passport a condition of the order.

There is no statutory basis for the issue or withdrawing of passports. Note no 7 on page 3 of the EC British passport states that 'This passport remains the property of Her Majesty's Government in the United Kingdom and may be withdrawn at any time'. In 1958, it was stated in answer to a PQ in the House of Lords that no-one has a right to a passport:⁵⁷

The Joint Parliamentary Under-Secretary of State for Foreign Affairs (The Earl of Gosford): My Lords, the protection of a British-born subject does not derive from the possession of a passport but is the exercise of one of the normal functions of a sovereign State. No British subject has a legal right to a passport. The grant of a United Kingdom passport is a Royal prerogative exercised through Her Majesty's Ministers and, in particular, the Foreign Secretary.

More recently, on 30 July 1998, Lord Lester of Herne Hill asked whether the Government would consider giving the present arrangements for issuing and withdrawing passports a statutory basis. Lord Williams of Mostyn replied:⁵⁸

Lord Williams of Mostyn: The Government have no plans to change the present system under which passports are issued in the United Kingdom at the discretion of my right honourable friend the Home Secretary, and by my right honourable

⁵⁶ Jane Fiddick, Home Affairs Section

⁵⁷ HL Deb 209 16 June 1958 c 860

⁵⁸ HL Deb 592, WA 238

friend the Foreign Secretary in overseas posts, both exercising the Royal Prerogative.

In practice, refusal and withdrawal of passport facilities to United Kingdom nationals is confined to certain well defined categories, of which Parliament has been informed from time to time. Although the issue of passports is a discretionary power under the Royal Prerogative, it is constrained as any statutory power might be, and the exercise of the discretion may be reviewed by the courts. The system has worked well and it has been generally accepted, under successive Administrations, that the exercise of the Royal Prerogative has not been abused.

The possibility that the exercise of the prerogative may be subject to judicial review, as mentioned by Lord Williams above, is relatively new and dates from the House of Lords decision in *Council of Civil Service Unions v Minister for the Civil Service*.⁵⁹ In *R v Secretary of State for Foreign and Commonwealth Affairs, ex p. Everett*,⁶⁰ the Court of Appeal held that the refusal of a passport was one of the areas which the courts could review, but *Macdonald* comments that the 'full ambit of the Prerogative power to issue passports has never been tested'.⁶¹

The withdrawal of a passport once issued (as opposed to a requirement to surrender it temporarily) is a rare occurrence and the circumstances in which it may be done have from time to time been stated to Parliament. They were repeated by Lord Williams of Mostyn on 30 July 1998:⁶²

Lord Williams of Mostyn: The circumstances in which a British passport would be withdrawn have been reported to Parliament on a number of occasions, the last being 7 February 1995, and have not changed. Withdrawal of a passport would be considered:

- (a) if it came to the Passport Agency's attention on replacement that it had been issued incorrectly; and
- (b) on the same basis as the refusal of an application. That is in the case of:
 - (i) a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a residence or care order had been made or who had been awarded custody; or care and control, or to the provisions of Section 25(1) of the Children and Young Persons Act 1933 as amended by Section 42 of the Children and Young Persons Act 1963, or Section 56 of the Adoption Act 1976, as amended by the Children Act 1989;

⁵⁹ [1984] 3 All ER 935

⁶⁰ [1989] 1 All ER 655

⁶¹ *Macdonald's Immigration Law and Practice*, 4th ed., 1995, para 2.42

⁶² HL Deb 592, WA 238

- (ii) a person for whose arrest a warrant had been issued in the United Kingdom, or a person who was wanted by the United Kingdom police on suspicion of a serious crime;
- (iii) very rare cases, a person whose past or proposed activities were so demonstrably undesirable that the grant or continued enjoyment of passport facilities would be contrary to the public interest;
- (iv) a person repatriated from abroad at public expense until the debt has been repaid.

On 7 February 1995, Home Office Minister Nicholas Baker stated that ‘No records are kept of the numbers, but it is very rare for a passport to be withdrawn’.⁶³

Section 1 of the *Immigration Act 1971* sets out the general principle that:

All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

There is also a general common law right to leave the United Kingdom.⁶⁴ However, even though in law it may be possible to leave the UK without a passport, which is a document of identity and an authoritative indication of a person's nationality, in practice, as Macdonald comments ‘without a passport the right is pretty useless’.⁶⁵ In this context it is, perhaps, worth mentioning that it has been decided to lift embarkation checks on passengers leaving the UK. On 16 March 1998, Home Office Minister Mike O'Brien said that:⁶⁶

We inherited an embarkation control which serves little purpose in the tracking down of immigration offenders. Enhanced technology, such as closed circuit television, combined with close liaison between the border agencies, port operators and airlines, will create a stronger deterrent than the current immigration departure checks. We will also ensure that systems will be in place to mount comprehensive embarkation checks when required in the interests of national security. We are committed to the continued operation of the All Ports Warning System for child abduction cases.

Both statutory and common law rights to leave the country are subject to exceptions. In the context of common law Wade and Bradley single out in particular the writ *ne exeat*

⁶³ HC Deb 254, c 216W

⁶⁴ Blackstone, Commentaries I 265

⁶⁵ Op cit para 2.44

⁶⁶ HC Deb vol 308 c 506W

regno - 'that he shall not leave the Kingdom' - used nowadays to prevent a defendant fleeing the jurisdiction with assets so as to defeat a lawful claim before the Court.⁶⁷ Section 1 of the *1971 Act* (above) provides that 'let or hindrance' may lawfully be imposed and Macdonald identifies four known restrictions:⁶⁸

The statutory definition of the right of abode refers to 'let or hindrance' which may be lawfully imposed on any person. The extent of this exception is unclear and untested but is thought to refer to four restrictions:

- (i) lawful imprisonment and other restrictions (eg bail conditions restricting residence) imposed by criminal courts in the exercise of their normal jurisdiction.
- (ii) lawful detention and other restrictions imposed under other statutory powers, for example, under the Mental Health Act 1983 or Prevention of Terrorism (Temporary Provisions) Act 1989;
- (iii) restrictions lawfully imposed on the movement of children by an order of a court in custody and similar proceedings;
- (iv) restraints imposed by a High Court injunction or the issue of a writ 'ne exeat regno', restraining the subject from leaving the kingdom.

Where an offence is alleged already to have been committed, the *Bail Act 1976* sets out statutory criteria whereby conditions may be imposed as a condition of bail, but the Act is not prescriptive as to what these conditions are. Under s3(6) a defendant may be required to comply with such requirements as the Court may think necessary to secure that:

- (a) he surrenders to custody,
- (b) he does not commit an offence while on bail,
- (c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,
- (d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence

It is not necessarily a condition of bail that a person should remain in the UK, but if it appears to the police or the court that a defendant is unlikely to remain in Great Britain until the time appointed for him to surrender to custody, security may be required to be given under s.3(5). However, *Chatterton's Bail: Law and Practice*, 1986, lists among 'some usual conditions of bail' the requirement that a defendant should surrender his passport and not leave Great Britain.

⁶⁷ Constitutional and Administrative law, 11th ed., 1993, p 438

⁶⁸ op cit, para 6.6

If it is anticipated that an offence of child abduction may be committed, steps can be taken to prevent the issue of a UK passport or, if one has already been issued to ask the court to order its surrender under s.37 of the *Family Law Act 1986*. It has been held that the High Court's inherent jurisdiction extends to ordering the surrender of a foreign national's passport where to do so is in the child's best interests.⁶⁹

Doubts have been expressed about the proposal to require surrender of passports in the context of free movement provisions under Community law and human and civil rights conventions. Council Directive 73/1148 provides for the abolition of restrictions on the movement and residence of nationals of a member State as providers or recipients of services. Article 8 of the directive provides that Member States shall not derogate from its provisions save on grounds of 'public policy, public security or public health'. Article 3 of Council Directive 64/221 provides that previous criminal convictions shall not in themselves constitute grounds for the taking of measures to exclude the national of a Member State on public policy grounds. In *R v Bouchereau*⁷⁰ the European Court of Justice held that:

In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.

The *Bonsignore* case⁷¹ made it clear that exclusion cannot be justified for *general* preventive or deterrent reasons - Article 3(1) requires that measures taken on grounds of public policy, etc., 'shall be based exclusively on the personal conduct of the individual concerned'.

Article 2(2) of Protocol 4 of the *European Convention on Human Rights* (ECHR) and Article 12(2) of the *International Covenant on Civil and Political Rights 1966* (ICCPR) provide that 'Everyone shall be free to leave any country, including his own'. The UK has not ratified Protocol 4 of the ECHR and it is not included in the *Human Rights Act 1998* so no obligation arises here. The UK has, however, ratified the ICCPR which states in Article 12(3) that the right to leave one's own country 'shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals...'

Proposals in relation to the passports of football hooligans have appeared in the past. The Secretary of UEFA at the time of the Heysel Stadium disaster in May 1985 proposed to Neil Macfarlane (then Minister for Sport) that known hooligans should have their

⁶⁹ *Re A-K (Foreign Passport: jurisdiction)* [1997] 2 FLR 569, CA

⁷⁰ [1978] QB 732

⁷¹ Case 67/74 [1975] ECR 297

passports confiscated to stop them getting out of Britain to football matches abroad. Mr Macfarlane is reported as having replied 'we are a democratic country and cannot do this'.⁷²

An amendment to the Criminal Justice Bill 1987-88 was proposed on 28 June 1988 by Tony Farel to introduce a new clause empowering the courts to disqualify a person convicted for an offence punishable by imprisonment from holding a UK passport of any sort.⁷³ It was opposed by the minister, Douglas Hogg:⁷⁴

Although I have considerable sympathy with the thinking behind the new clause, I could not recommend its incorporation into the Bill. There is a prerogative power to deny a passport, but it is used sparingly, and I think that the House would agree that it should be used sparingly. There is no doubt that the restriction on a person's ability to travel overseas is a curtailment of liberty.⁷⁵

These reasons were also explained in a report presented to UEFA by the Minister for Sport in June 1988:

11. UEFA have asked what might be done to restrict travel by 'supporters' known to be likely to cause trouble. The removal of passports is not an option for policy and practical reasons. A British citizen has a right in law to enter or leave the UK 'without let or hindrance'. Freedom of travel within the European community is a matter on which the EC is taking a cooperative interest in the run up to 1992. Any steps that were taken to restrict travel within the community could only be achieved by agreement of the constituent countries rather than by the unilateral action of one country. The British passport establishes identity and nationality, it is not a licence to travel.⁷⁶

In a letter to the Chairman of the FA, Bert Millichip, in 1989, Minister for Sport Colin Moynihan called for the cancellation of a friendly match against Holland in Rotterdam. He restated the Government's determination to deal with football hooliganism:

The Football Spectators Bill currently before Parliament will provide a major deterrent against football hooligans both at home and overseas. For the first time the courts will be able to stop convicted hooligans from travelling to matches abroad for up to five years. If the courts make a restriction order those convicted will have to report to police stations when key international matches are being played. This will be a far better deterrent than attempting to withdraw passports

⁷² *The Times*, 31 May 1985

⁷³ HC Deb vol 136 c 244

⁷⁴ *ibid* c 258

⁷⁵ *ibid* c 258

⁷⁶ *The 1987-88 Season: Progress On Measures to Combat Football Hooliganism*, June 1988

under present arrangements when those concerned can simply apply for British Visitors Passports at Post Offices.⁷⁷

The British Visitors Passport was discontinued from 1 January 1996 because of doubts about its security and value as an identity document.

The 1985 *European Convention on Spectator Violence at Sports Events and in particular at Football Matches*⁷⁸ states that the contracting states should encourage the co-ordination of travel arrangements to inhibit potential troublemakers from leaving to attend matches (Article 3.3). However, the Popplewell Report⁷⁹ did not address the question of restricting the travel of known troublemakers, and instead of any provisions for passport confiscation the government introduced restriction orders under the *Football Spectators Act 1989*.

According to a Home Office press notice, the proposals in the government's *Review of Football-Related Legislation* to require a person subject to a reporting requirement to submit his passport to a named police station up to five days in advance of that requirement and for a new offence of failure to do so (recommendations 6 and 7) went largely without comment from the majority of respondents. Where comment was made, it was either strongly supportive or considered the proposals excessive, but respondents on both sides suggested potential problems of compliance with international obligations.⁸⁰

Liberty's briefing for the second reading debate of Bill which became the *Football (Offences and Disorder) Act 1999* commented on the surrender of passports:

Requiring the surrender of a passport for international matches or tournaments directly conflicts with the UK's international obligations to guarantee freedom of movement under Article 12 of the International Covenant on Civil and Political Rights; and the separate obligation to secure freedom of travel in the EC to receive services such as tourism or being a football spectator (see for example Council Directive of 25 February 1964 (64/221/EEC) and *Luisa and Carbone v Ministero del Tesoro* Cases 286/82 and 26/83 (1984) ECR 377). The proposal would also appear the obligation to ensure peaceful enjoyment of personal possessions (Article 1 of the First Protocol of the ECHR).⁸¹

⁷⁷ Department of the Environment news release, 7.9.89

⁷⁸ Cmnd 9649, November 1985 (Treaty Series No. 57 (1985), Strasbourg, 19 August 1985)

⁷⁹ Final report of the Committee of Inquiry into Crowd Safety and Control at Sports Grounds ('the Popplewell Report'), Cmnd 9710, January 1986

⁸⁰ Home Office press notice 112/99, *Government publishes outcome of football-related legislation review*, 31 March 1999

⁸¹ Liberty, *Briefing for the Football (Offences and Disorder) Bill, 2nd Reading* (April 1999)

IV The draft Football (Disorder) Bill

On Tuesday 4 July 2000 Jack Straw made a statement that he was intending to introduce new legislation to deal with football hooliganism.⁸² There was speculation in the press that this announcement was timed to boost England's World Cup bid:

A senior Home Office insider said Tony Banks, the former sports minister and now special envoy to the World Cup bid, had contacted ministers twice in the past week and had urged that the measures on hooliganism be announced before (Thursday 6 July 2000), when Fifa, world football's governing body chooses the host country for the 2006 tournament.⁸³

In the event, England was excluded from consideration and a controversially close vote awarded the tournament to Germany on Thursday 6 July 2000.

A draft *Football (Disorder) Bill* was published for consultation on Friday 7 July 2000, along with Home Office notes on it. An all-party meeting was held for any Members of Parliament and Peers with an interest in the Bill on Monday 10 July 2000. Mr Straw hoped that this process would allow some degree of consensus to be reached before the Bill was presented to Parliament, thus allowing it to have a speedy passage through both Houses, even possibly before the long summer recess.⁸⁴

The draft Bill proposes four main measures:

5. a new 'banning order', combining aspects of both domestic and international football banning orders;
6. requiring all banning orders to include a condition on the surrender of passports unless there are exceptional reasons not to;
7. enabling a magistrates' court to impose a banning order on suspected football hooligans;
8. summary powers enabling a constable to issue a notice preventing any British citizen from leaving England and Wales and requiring him to surrender his passport.

These provisions are contained in Schedule 1, which would make substantial amendments to the existing legislation on banning orders. The new legislation would not apply to Scotland or Northern Ireland.⁸⁵ Clause 2 of the draft Bill is designed to give the Secretary of State a wide order-making power to make any supplementary and consequential provisions necessary to meet the purposes of the Bill, including the amendment or repeal of any existing legislation.

⁸² HC Deb 4 July 2000 cc170-183

⁸³ 'Legislation aims to crack down on hooligans' - *Financial Times* 5 July 2000

⁸⁴ *ibid* c172

⁸⁵ the consultation notes suggest that this is because criminal law is a devolved matter in Scotland and Northern Ireland, which is not true in the latter case.

A. New banning order

Schedule 1 of the draft Bill would add new sections 14 to 14J and Schedule 1 of the *Football Spectators Act 1989*. These would create a new banning order bringing together IFBOs and DFBOs.

Although there appears to be nothing to stop the courts from granting both types of existing order in relation to one person (if it considers that to be necessary for preventing violence or disorder at or in connection with the respective categories of football match), there are still many more domestic orders granted than international ones. As of May 2000, 388 domestic orders were in force, compared with 106 international ones.⁸⁶ This means that many people convicted of football-related offences cannot have the passport-surrendering conditions imposed on them.

The *1999 Act* did remove some of the discrepancies between domestic and international banning orders. The list of ‘relevant offences’ is now the same for both types of order; there is a maximum and a minimum period for each, and both are now arrestable offences. However, no additional conditions may be attached to a DFBO; the provisions on photographs of the person are different; the maximum and minimum periods for which order can be imposed are different; and the lists of relevant football matches are still contained in different statutory instruments. Nor is it entirely clear when the courts should impose an IFBO instead of (or as well as) a DFBO. In addition, the two banning orders are still contained in separate pieces of legislation, each of which is substantially amended by the *1999 Act*.

The new proposals are intended to remove the distinction between IFBOs and DFBOs. In doing so they create one new banning order that is a strengthened version of the IFBO but includes a prohibition on attending domestic matches.

There would be one list of ‘**relevant offences**’ that would trigger an order, and one list of ‘**regulated football matches**’ to replace the lists of ‘prescribed’ and ‘designated’ football matches to which banning orders would relate. However, the conditions of a banning order would still be different in relation to matches in England and Wales (a prohibition on attending the match) and those beyond (a requirement to report at a police station).⁸⁷ The enforcing authority (ie the Football Banning Orders Authority) is given the power to decide which persons subject to a banning order should be required to report to a police station in connection with particular regulated football matches.⁸⁸

⁸⁶ NCIS, 24 May 2000

⁸⁷ Everyone subject to a banning order would have to make an initial report to a specified police station within 5 days of the order being made - new section 14E(2).

⁸⁸ Schedule 1 para 3 of the draft Bill, adding a new section 19(2A) to the *1989 Act*

It is proposed that the list of football-related offences for these purposes be expanded to include offences involving the possession and/or misuse of flares or fireworks; offences involving the use, carrying or possession of an offensive weapon or a firearm; and offences of breaching a banning order or police notice preventing a person leaving the country (new Schedule 1 to the *1989 Act*).

Where a person is convicted of a relevant offence, the courts would have to impose a banning order if it is satisfied that there are ‘reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches’. If it does not make an order it must state this and give its reasons.⁸⁹ This mandatory requirement is the same as that imposed in relation to IFBOs and DFBOs by the *1999 Act*.

A banning order imposed on a person convicted of a football-related offence would remain in force for a period of between six and ten years (if in addition to a sentence of imprisonment taking immediate effect) or between three and five years otherwise.⁹⁰ This is very similar to the existing provisions for IFBOs.

B. Surrender of passports

The proposed new section 14E of the *1989 Act* includes a provision that the court must, unless there are exceptional circumstances, include in a banning order the requirement for the person to submit his passport.

The *Football (Offences and Disorder) Act 1999* gave the courts a new power to impose this condition on an IFBO, but did not make it compulsory. As a result, only nine people had been required to submit their passports up to the beginning of the Euro 2000 tournament.⁹¹

As under the existing legislation, the earliest time at which the surrender of a passport can be required would be five days before the match or tournament in question.⁹² The draft Bill does not specify an equivalent period within which the reporting requirement must be set.

C. Banning orders for suspected hooligans

The provisions allowing banning orders to be imposed on unconvicted persons are contained in a proposed new section 14B to the *1989 Act* (‘banning orders made on a complaint’). The police would have to prove that the person has caused or contributed to

⁸⁹ new section 14A(2) and (3) of the *1989 Act*

⁹⁰ new section 14F(1) to (4) of the *1989 Act*

⁹¹ HC Deb 12 June 2000 c505-6w

⁹² See Schedule 1 para 3 of the draft Bill, amending section 19 of the *1989 Act*. The definition of ‘control period’ is given in the proposed new section 14(5) of the *1989 Act*.

any violence or disorder anywhere in the world, at any time in the past - even before the provisions had come into force. The draft Bill does not specify whether this must be proved on the balance of probabilities (the civil standard of proof) or beyond reasonable doubt (the criminal standard). However, Jack Straw's said, in his statement introducing the proposed legislation, that the civil standard would be applicable here.⁹³

A new section 14C would define 'violence' for these purposes, and provide examples of behaviour constituting 'disorder' (the wording is taken from various offences under the *Public Order Act 1986*). The behaviour does not need to have been in connection with football criminal activity, nor to have amounted to a criminal offence.

If the person had been convicted of a football-related offence but was not made subject to a banning order at that time, the magistrates' court would have to consider any reasons given by the court as to why a banning order had not been imposed then. Other factors which the Bill suggests the magistrate could take into account include:

- decisions of a court or tribunal in the UK or elsewhere;
- decisions of a 'public authority' (undefined) in the UK or elsewhere;
- deportation or exclusion from a country outside the UK;
- removal or exclusion (presumably by match officials or stewards as well as the police) from a football ground in the UK or elsewhere;
- conduct recorded on video 'or by any other means'.

Then, if the magistrates' court is also satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches in the future, it must impose the banning order. It is not proposed that the court would have to give any reasons for not imposing a banning order under this provision.⁹⁴

The procedures proposed for appeal against a banning order made on complaint under these provisions are set out in a new section 14D of the *1989 Act*.

A banning order made under this section would be in force for a period of between two and three years.⁹⁵

Even where the behaviour that triggered a banning order was not criminal, breach of the order (or any conditions including in it) would be a criminal offence attracting a maximum sentence of six months' imprisonment and/or a £5,000 fine.⁹⁶ This has invited

⁹³ HC Deb 4 July 2000 c171

⁹⁴ This requirement would however be retained for persons made subject to a banning order following conviction for a football-related offence: new section 14A(3).

⁹⁵ New section 14F(5)

⁹⁶ New clause 14J

comparisons from Liberty with the legislation that introduced Anti-Social Behaviour Orders (the *Crime and Disorder Act 1998*):⁹⁷

The effect of this proposal is to bring football banning orders under a regime akin to the Anti Social Behaviour Order (ASBO) by which Banning Orders may follow from behaviour which was not criminal, and for which the defendant could not be convicted.

The ASBO regime is bitterly resented by those who support civil liberties because its effect is to create a criminal law which is specific to the defendant without any of the safeguards associated with legislation or proper criminal procedure. On the contrary, the procedure by which the order is made is informal, local, and can be based wholly on hearsay evidence. The standard of proof is only the civil standard - the balance of probabilities.

There is no duty of fair disclosure by the authorities of material which might assist the defendant (such as the names and addresses of witnesses who would give evidence in support of the defendant, or of the previous dishonesty convictions of complainant witnesses), and there appears to be no discretion of the court to exclude evidence even if it would be grossly unfair to the defendant to admit it.

Once made, the ASBO takes effect as law. The order may specify behaviour which is otherwise unlawful - such as assaulting neighbours, or acting in a violent or disorderly manner - but may well specify behaviour which would not be criminal at all. Examples might include spitting on the ground, or visiting a particular area. Breach of any term of the ASBO - whether by behaviour which would otherwise be criminal or not - may lead to imprisonment up to five years.

Liberty vigorously opposed the ASBO regime. We argued that the preliminary proceedings should carry a criminal standard of proof, a criminal disclosure regime, and criminal procedures and rules of evidence at the ASBO hearing itself. In some respects the current proposal is worse than the Anti-Social Behaviour Order. Although the current proposal appears to replicate all the unfairnesses inherent in that regime, the test for making the order is even lower than that for an ASBO - the court must make the order if it is satisfied that there are reasonable grounds to believe that to do so would help to prevent violence in connection with football. Given the substantial penalties for breach, Liberty believes that the court must be satisfied on a criminal standard that violence would be prevented by the imposition of the order.

Since the evidence called in support of an application for an order may pre-date the coming into force of the section, the new regime would have retrospective effect. That is, a defendant's non-criminal conduct in 1995 may properly found a Banning Order complaint in 2001, and a ban from football matches and restricted

⁹⁷ see Library Research Paper 98/44

international travel until 2004. Article 7(1), European Convention on Human Rights prohibits the retroactive application of criminal offences to penalise conduct which was not criminal at the time when the relevant act occurred. The definition of 'criminal offence' has an autonomous meaning under the convention, and the fact that the proceedings may be classified as civil in the domestic jurisdiction is not conclusive of their status.

Further, the court would be required to consider the effect of, for example, summary deportation from countries abroad. Liberty believes that there can be no objection to the calling of evidence of offences committed abroad but not evidence of non-criminal or pre-criminal procedures such as 'administrative detention' or 'summary deportation'. The latter type of information is by its nature likely to be less rigorous in its collection and distribution, and in practice very difficult to verify or challenge.

Our experience is that inaccurate information can be passed from country to country, without any means for the individual affected by it to challenge or correct it.⁹⁸

D. Summary powers

Paragraph 4 of Schedule 1 to the draft Bill is intended to insert new sections 21A and 21B into the *1989 Act*. This would enable the police to issue a notice preventing any British citizen from leaving England and Wales, and requiring him to surrender his passport, where they believe there may be grounds for making a banning order. The main features of this proposal are as follows:

- it would apply only within the 'control period' in relation to a football match or tournament - ie. from five days before a regulated match or tournament outside England and Wales to the end of the match/tournament (or its cancellation);
- the constable issuing the notice must be in uniform, and must have been authorised to exercise the power by an officer of at least the rank of inspector (it is not clear what form this authorisation would take - for example a purely personal authorisation to particular constables; or authorisation to all constables at a particular time or in particular circumstances; or simply ad hoc authorisation);
- the notice must be issued in writing; and
- the person subject to the notice must appear before the magistrates' court within 24 hours of being given the notice in order for the court to decide whether a banning order should be imposed (by which time a challenge might be irrelevant).

⁹⁸ *Briefing on the draft Football (Disorder) Bill* - Liberty, 12 July 2000

The constable would be able to issue a notice where it appears to him that either:

1. the person has previously caused or contributed to any violence or disorder in the UK or elsewhere (the same test as for applying on a complaint for a banning order); or
2. the person's behaviour suggests to him that immediate enquiries should be made to check whether or not there is evidence to that effect.

He would not have to give the person concerned his reasons for issuing a notice. The police would have to justify their issuing of an order to the magistrates within 24 hours; but in some cases a challenge might be irrelevant by this point. Press reports have suggested that officials have confirmed that compensation would be available for those who were wrongly detained.⁹⁹

The issuing of a notice would enable a constable to arrest the person without warrant if it appears to him necessary to do so to allow these enquiries to be made; or if it appears to him that the person **is likely** to fail to comply with the notice.¹⁰⁰ No equivalent provisions are suggested in relation to banning orders.¹⁰¹

If a person fails to comply with a notice - for example by leaving England or Wales before appearing at the magistrates' court, refusing to hand over his passport to the constable, or not turning up at the magistrates' court, he would be guilty of an offence attracting the same penalties as breach of a banning order.

⁹⁹ 'Police to get powers to keep soccer thugs in Britain' - *Guardian* 8 July 2000

¹⁰⁰ proposed new section 21B(2) of the *1989 Act*

¹⁰¹ a similar suggestion was contained in proposed amendments to the *Crime and Disorder Bill 1998-99* - HC Deb 22 June 1998 cc708-54

V Responses to the draft Bill

The Football Association has welcomed the proposals contained in the draft Bill, saying they should go a long way towards meeting its concerns expressed since the last World Cup, and amplified in the run-up to Euro 2000. The FA's Chief Executive Adam Crozier said:

If any MP isn't going to vote for this, we'd like to know why. This legislation has been required for a long time and we hope it comes to a speedy and successful conclusion. The FA has been pushing for this legislation for two years.

There is still a long way to go – this must be considered as just the start of a huge drive to stop these people disgracing not just the game of football, but the whole nation.

We have to protect our many good supporters that travel abroad. Everyone concerned believes that this is the right thing to do: this disease has to be tamed. The legislation is vital for the future of the game and its supporters.¹⁰²

The Football Supporters Association has, however, expressed 'considerable cause for concern' over the draft Bill:

The determined, clever troublemakers will don a suit and a briefcase and go through alone while groups of genuine supporters with replica shirts and tattoos could be stopped [from] travelling wrongly.¹⁰³

ACPO (the Association of Chief Police Officers of England, Wales and Northern Ireland) has given its backing to the draft Bill:

In the light of the lessons learnt from Euro 2000, we fully support the Government's new measures to combat football hooligansim. As those who are bent on disrupting major international tournaments become more sophisticated in their approach, we too must ensure we have adequate provisions to deal with them.

We will be working very closely with the Government and the football authorities to see that these powers, when they become available, are fairly and effectively applied.¹⁰⁴

ACPO was involved in the discussions leading up to the publication of the draft Bill.

¹⁰² *FA welcomes new anti-hooligan proposals* - Football Association news, 4 July 2000

¹⁰³ 'Police could hold football fans for "offensive tattoos"' - *Independent* 8 July 2000

¹⁰⁴ *ACPO supports new measures on football hooligansim* - ACPO press release, 4 July 2000

The new powers were also welcomed by the National Criminal Intelligence Service (NCIS). An NCIS spokesman was quoted as calling for hooligans to have their passports stamped so that they could be more easily identified by border officials.¹⁰⁵

By contrast, the Police Federation is reported as having concerns about the proposed powers in relation to unconvicted people. It fears that the police could be sued by banned fans who win court appeals against the restrictions and claim that the police acted maliciously. It also felt the proposals would require extra resources to be given to the police.¹⁰⁶

Liberty has condemned the powers contained in the draft Bill:

Each of these measures has significant human rights implications for all those who may be affected by them - not just the tiny minority of violent football hooligans but for the very many who might find themselves ensnared by these indiscriminate measures.

Liberty is opposed to additional criminal provision without a clearly expressed need and without careful consideration of the use that can be made of the tools already available to police and courts. It follows that Liberty opposes in principle measures such as the imposition of criminal sanctions on those unconvicted of any criminal offence in any country, let alone any football related offence.

These proposals suggest a hastily constructed and ill-thought out response to the embarrassment of a failed bid to be international tournament hosts rather than a genuine attempt to tackle the problem of violence and offensive conduct at football matches.

There appears to have been no reference in any of the supporting materials to the considerable body of academic research into the underlying causes of football hooliganism, how and why disorder may be planned and executed, and where and in what conditions it is likely to flourish.

There has been no reference to the international experience of other countries who face similar problems with their fans abroad, and of those who have experience of hosting football tournaments involving the risk of disorder from travelling fans.

There has been no analysis of the use and effectiveness of existing powers. Accordingly it is not clear whether the new proposals for extending banning orders follow from the perception that the existing powers are working well, or on the contrary, that they are working badly.

¹⁰⁵ 'New law to keep hooligan suspects at home' - *Independent* 5 July 2000

¹⁰⁶ 'Hooligan ban Bill alarms police' - *Observer* 9 July 2000

In particular, there has been no assessment whatsoever of the impact of the very significant changes introduced as recently as last September 1999, which themselves marked very substantial inroads into human rights in this country.

The spirit of these reforms runs directly counter to the Human Rights Act 1998, and will be challengeable thereunder as soon as the latter is in force on October 2 2000. The proposals regard individual freedom of movement, and peaceful enjoyment of the game of football, as privileges to be exercised on the permission of police rather than as a right of the individual.

Liberty recognizes that a balance must be struck between protecting football supporters from the offensive and violent conduct of a small minority, on the one hand, and imposing restrictions on the public, and perhaps on football players, which will be seen as arbitrary and unfair, disproportionate to the risk the individual is perceived to pose, and which breach our international obligations to secure an open system of criminal justice in which respect for human rights is paramount.

These proposals fail to strike any meaningful balance . The reality will be that for the sake of appearing tough to the international footballing authorities, the UK would take a further step down the road of imposing headline-grabbing extensions to the criminal law, removing discretion from the courts to make punishment fit the crime, and risking breaches of its international treaty and convention obligations as well as falling foul of its own Human Rights Act 1998.¹⁰⁷

The shadow Home Secretary, Ann Widdecombe, had called for new legislation to be introduced before the Euro 2000 competition in Belgium and Luxembourg in June 2000. However, in her response to Jack Straw's statement on 4 July 2000, she attacked the speed with which the Home Secretary envisaged piloting the legislation through Parliament. She emphasised the need for it to receive due scrutiny, as it would contain some very sensitive and very significant measures with serious implications for civil liberties.¹⁰⁸

Simon Hughes, responding on behalf of the Liberal Democrats, expressed his support for the proposals to unify the two football banning orders and to impose the requirement to surrender passports in nearly all cases. However, he felt that the powers proposed in relation to suspected football hooligans who had not been convicted of a football-related offence 'go far beyond conventional impositions on the rights of the citizen', and therefore could not support them. He called for the Home Secretary to place before the House the advice to Ministers that suggested the proposals complied with the provisions

¹⁰⁷ *Briefing on the draft Football (Disorder) Bill* - Liberty, 12 July 2000

¹⁰⁸ HC Deb 4 July 2000 cc173-4

of the European Convention on Human Rights.¹⁰⁹ However, this request was turned down by Jack Straw.¹¹⁰

There were several comments in the press to the effect that there was a loophole in the Bill regarding Scotland.¹¹¹ The reports suggested that there was nothing to prevent a hooligan travelling to Scotland and departing from there unnoticed to foreign stadiums. The Bill certainly does not apply to Scotland, and nor are similar powers in place or even proposed there. The summary powers to stop people leaving the country could not therefore be exercised by constables north of the border. However, someone who feared he might be stopped by the police under these provisions could in any case leave England and Wales more than five days before a match, before the police were allowed to exercise these powers.

Also, if a banning order were in place, the person subject to it would find it no easier to get to football matches abroad from Scotland than from England or Wales, especially if his passport has been surrendered.

¹⁰⁹ *ibid* cc175-6

¹¹⁰ *ibid* c181

¹¹¹ see for example 'Excuse me Mr Straw, you forgot Scotland' - *Scotsman* 5 July 2000; 'Scotland loophole in hooligan travel ban' - *Independent* 6 July 2000; 'Executive rejects Straw's hooligan laws' - *Herald* 6 July 2000