



RESEARCH PAPER 99/41
14 APRIL 1999

The Football (Offences and Disorder) Bill

Bill 17 of 1998-99

This paper aims to provide background to Simon Burns's private member's Bill on football-related offences in England and Wales, which is due to be debated on second reading in the House of Commons on Friday 16 April 1999. It is intended to be read in conjunction with the Explanatory Notes to the Bill [Bill 17-EN] produced by the Home Office with the consent of Mr Burns. The Government has indicated its support of the *Football (Offences and Disorder) Bill*.

Arabella Thorp

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Summary of main points

The issue of football hooliganism was highlighted last summer when, during the football World Cup in France in June 1998, a number of England supporters were involved in violent clashes with other fans and with the French police. Although the overall figures show that the number of arrests in England and Wales for football-related offences has been decreasing in recent years, there is a view that the problem is moving from the bigger to smaller clubs, and even beyond the grounds and the matches themselves.

Recent legislation intended to deal with these problems in England and Wales includes a number of measures aimed at preventing football hooligans from attending certain matches, outlawing racist or indecent chanting, banning alcohol in certain circumstances, and dealing with black-market ticket touts. Despite the success of some of these provisions in controlling football-related violence, the problem has not disappeared.

The Home Office issued a *Review of Football-Related Legislation* for consultation in November 1998. This made 29 recommendations, some of which had been proposed in the 1995 policy document entitled *A New Framework for Football: Labour's Charter for Football*. Some of these were dropped and others amended as a result of responses received.

Simon Burns's *Football (Offences and Disorder) Bill* seeks to implement a number of the changes proposed in this consultation document. It concentrates on amending four areas of legislation:

- *Restriction orders intended to prevent football hooligans travelling abroad to certain matches.* These would be renamed International Football Banning Orders and changes would be made to widen the circumstances in which they could be imposed, and to increase the penalties for breach of an order;
- *Exclusion orders intended to prevent football hooligans attending certain matches within England and Wales.* These would be renamed Domestic Football Banning Orders, and similar substantive changes are proposed;
- *Racist or indecent chanting.* This offence can currently be committed only where two or more people act together; the Bill seeks to amend this to apply where a person acts alone.
- *Ticket touting.* The Bill is intended to allow ticket touting in England and Wales for matches abroad to be an offence.

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I Background and existing legislation

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.

In modern times, 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. Disasters such as the Ibrox tragedy of 1971, the Bradford fire and the Heysel Stadium disaster both in May 1985, and Hillsborough in 1989 each renewed determination to seek a way of dealing with disorder and crowd control at football matches.

Some idea of the extent of the problems and recent trends can be seen in the figures given in the table below for arrests both inside and just outside grounds since the 1984-85 season; and the rate of arrests per 100,000 attendees by season is summarised in the subsequent chart:

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;

Arrests and attendances at ^(a) football matches

	Football League/Premiership			Domestic Cup Competitions			All Matches		
	Arrests	Attendances	Arrests per 100,000 attendances	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	6,378	24,274,265	26
1992-93	4,588	20,657,327	22	1,739	3,878,407	45	6,327	24,535,734	26
1993-94	4,227	21,653,381	20	1,296	3,984,975	33	5,523	25,638,356	22
1994-95	3,850	21,856,020	18	1,265	3,843,152	33	5,115	25,699,172	20
1995-96	3,441	21,844,416	16	897	4,046,669	22	4,338	25,891,085	17
1996-97	3,577	22,783,163	16	823	3,545,065	23	4,400	26,328,228	17
1997-98	3,307	24,692,608	13	n/a	n/a	n/a	n/a	n/a	n/a

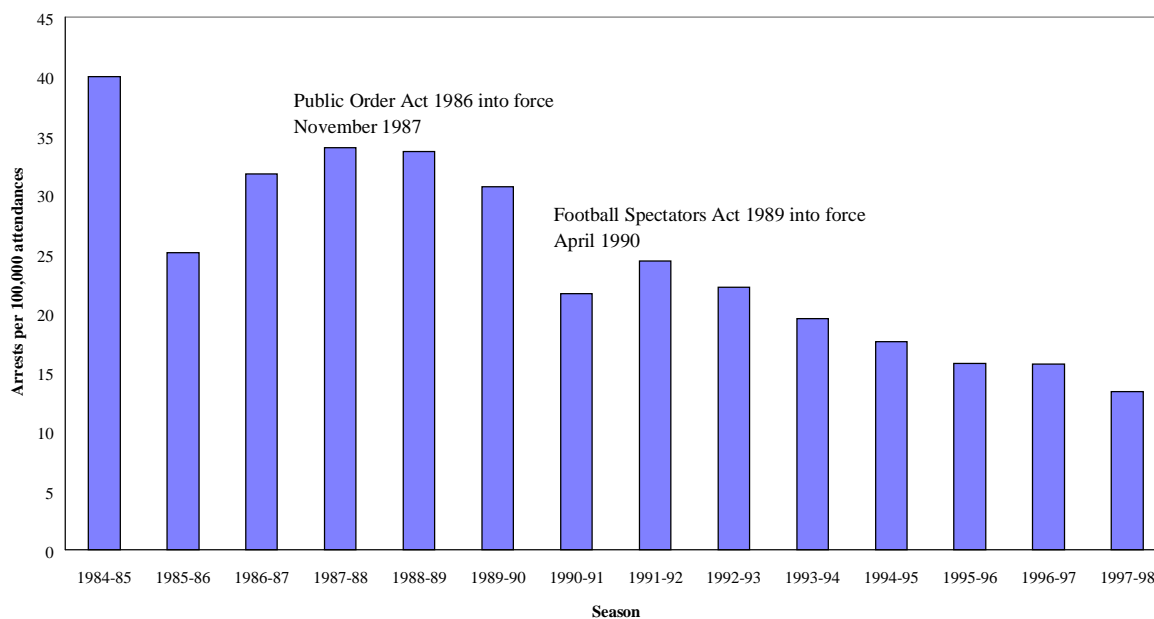
a) Inside and just outside grounds.

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



The rate of arrest at league matches has fallen to just over 13 per 100,000 spectators this year from some 16 per 100,000 spectators last season and 40 arrests in the year of the Heysel tragedy. This is the fifth annual fall in the *rate* of arrests, but unlike last season, this fall is a result of a decreasing number of arrests as well as the increasing number of people attending matches. 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.² Moreover, when one examines arrests by offence for the past two seasons, some crimes have continued to rise:

Football arrests last two seasons by offence

	1996/97	1997/98	<i>change</i>
Drink related	1,338	1,168	-13%
POA s5 - disorderly behaviour	832	523	-37%
POA s4 - threatening behaviour	376	312	-17%
POA s3 - affray	19	65	242%
POA s2 - violent disorder	23	52	126%
FOA s4 - running on pitch	177	243	37%
FOA s3 - racial/indecent chanting	10	33	230%
FOA s2 - throwing missiles	11	31	182%
Ticket touting	173	173	0%
Assault	19	110	479%
Breach of exclusion order	19	19	0%
Other	580	578	0%
Total	3,577	3,307	-8%

Source: NCIS Press Release 12/98

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

As the National Criminal Intelligence Service point out, the more violent offences of affray, violent disorder and throwing missiles, plus racial and indecent chanting and the general offence of assault, have all shown large increases since last season.

The extent of the violence involving England fans during the World Cup in France last summer provoked calls for tighter restrictions on known football hooligans.³ Both the Prime Minister and the Home Secretary called for strong action by employers against football hooligans convicted in France,⁴ despite concerns that this could possibly lead to actions for unfair dismissal.⁵ 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.⁶ 363 England supporters were also refused entry to France during

² Review of Football-related legislation; summary of responses to public consultation. Home Office 30 March 1999

³ see for example 'Controlling the hooligans', *Sports Law Administration and Practice*, July/August 1998

⁴ see Home Office press notice 15/98, *Home Secretary supports action by employers against football hooligans*, 17 June 1998

⁵ 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

⁶ 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.

the World Cup.⁷ Nevertheless, 275 further fans were arrested in France during this period.⁸ 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. The government has requested further details in a number of cases with a view to determining whether there are sufficient grounds to apply to the domestic courts for the issue of a restriction order to prevent the offenders travelling to future matches abroad.⁹

Recent press reports have suggested that improvements in safety and security at Premiership and Football League grounds have pushed the problem of football hooliganism down to smaller clubs.¹⁰

A. General football-related legislation

In recent years the following legislation has been directed entirely or largely at football:

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

Prohibits 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)

Enables 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*

Set up the licensing system to implement the recommendations of the Taylor Report into the Hillsborough Disaster; introduced restriction orders designed to prevent fans convicted of football-related offences either here or abroad¹¹ from travelling to foreign matches by requiring them to report to a police station on the occasion of designated football matches

⁷ HC Deb 29 July 1998 c262

⁸ *ibid*

⁹ HC Deb 10 February 1999 c261

¹⁰ 'Hooligans put the boot in non-leaguers', *The Times* 18 February 1999; 'Violence lurking under surface', *The Guardian* 16 February 1999;

¹¹ But only in those countries with whom there is a bilateral agreement, which are currently Sweden, Norway, the Republic of Ireland, Scotland, Italy and France.

outside England and Wales; and created the unimplemented national scheme for football membership cards to restrict entry to certain matches.¹²

- *Finance Act 1990* (section 4)

Effectuated a reduction in pools betting duty on the basis that a sum equivalent to the reduction was handed over to the Football Trust for assistance towards ground improvements following the Taylor Report.

- *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.

- *Broadcasting Act 1996*

Contains provisions to guarantee the availability of live coverage of listed events on free-to-air television. The list of protected events was revised in June 1998 to include the European Football Championship, in addition to the FIFA World Cup, the FA Cup Final, and the Scottish FA Cup Final (in Scotland only).

- *School Standards and Framework Act 1998* (section 77)

Requires LEAs (and governing bodies where appropriate) to obtain the Secretary of State's consent before disposing of school playing fields.

- *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.

¹² 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.

B. Restriction orders

Part II of the *Football Spectators Act 1989* allows a court to impose a restriction order as a result of either a conviction for a football-related offence¹³ committed in England and Wales up to two hours before or one hour after a match; or a notification of a conviction in a foreign court for a corresponding offence.

Orders in Council have been made so far listing corresponding offences in Italy, Scotland, Sweden, Norway, the Republic of Ireland and France which will be notified to the Football Spectators Restriction Orders Authority.¹⁴ According to Home Office officials, there have been difficulties in negotiating bilateral agreements with other countries in relation to restriction orders. Apparently, when section 22 of the *1989 Act* came into force, 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.

A restriction order may be made only in addition to a sentence in respect of the offence, or to a probation order. Where the offender has been given a custodial sentence, the order will be in force for five years, and otherwise it will be two years, although it is reviewable after one year in either case. A restriction order does not ban the person upon whom it is imposed from attending certain football matches - instead, he is required to report to a police station on the occasion of designated football matches outside England and Wales.¹⁵ Breach of this reporting requirement is an offence punishable by a maximum of six months’ imprisonment and/or a level five fine (currently £5,000),¹⁶ and the police may arrest a person whom they reasonably suspect of being about to commit this offence.¹⁷ The Restriction Orders Authority,¹⁸ rather than the police, is responsible for administering and enforcing the reporting duty of restriction orders.

¹³ as specified in Schedule 1 of the *1989 Act*. Those which are committed outside the ground require the court to make a declaration that the offence related to football matches.

¹⁴ 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) and SI 1998/1266 (France)

¹⁵ see the *Football Spectators (Designation of Football Marches outside England and Wales) Order 1990*, SI 1990/732, as amended by SI 1992/1554

¹⁶ 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*.

¹⁷ *Crime and Disorder Act 1998* s84(2)

¹⁸ established under the *Football Spectators (Designation of Enforcing Authority) Order 1990*, SI 1990/730

Home Office circular 31/1990 on *Part II of the Football Spectators Act 1989 (Restriction Orders): the Role of the Courts* gives guidance on how restriction orders are intended to operate. However, few orders were initially made under this section. In answer to Tony Bank's adjournment debate on English football supporters in June 1995, Tony Baldry, then a junior Foreign Office minister, said:¹⁹

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

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.²⁰ 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 restriction orders.²¹

The number of restriction orders made under the Football Spectators Act 1989, which came into force in April 1990, have increased dramatically over the past few years. As of June 1998, 69 orders had been made since May 1997 (i.e. during the term of the Labour Government)²² and 71 people remained under the terms of an order²³. At present, just over 110 restriction orders are in force.²⁴

¹⁹ HC Deb vol 261 c394 - 8.6.95

²⁰ Home Office Circular 31/1995

²¹ see Home Office press notice 380/97, *Britain takes lead against football hooligans*, 26 December 1997

²² HC Deb 23 June 1998 c441w

²³ HC Deb 18 June 1998 c300w

²⁴ Source: National Criminal Intelligence Service 14.4.99; the figure may be subject to revision

Restriction orders under Football Spectators Act 1989

Orders made -	
1990	19
1991	4
1992	2
1993	nil
1994	1
1995	2
People subject to orders as of-	
May 1995	2
December 1997	10
January 1998	9
March 1998	30
June 1998	71
April 1999 ^(a)	113

(a) approximate

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

NCIS

C. Exclusion orders

Part IV of the *Public Order Act 1986* provides that an exclusion order may be made by a court when dealing with a person convicted of a football-related offence,²⁵ whether committed on a journey to or from a match or at the ground and two hours before or one hour after a match. An exclusion order may be made only in addition to a sentence in respect of the offence, or to a probation order or conditional or absolute discharge. It prohibits the subject of the order from attending any prescribed football match²⁶ in England and Wales for a given period. Home Office circular 69/1990, issued in August 1990, gives 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.

Orders are issued for a minimum of three months and there is no maximum duration. Breach of an order is a criminal offence attracting a maximum sentence of one month's imprisonment or a level three fine (currently £1,000); 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.

²⁵ as set out in section 31 of the *1986 Act*

²⁶ under the *Public Order (Football Exclusion) Order 1987*, SI 1987/853, as amended by SI 1992/1556

The Football Unit of the National Criminal Intelligence Service [NCIS] is responsible for the enforcement of the scheme, but details of orders are also made available to chief officer of police in the force area concerned, 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.

As of March 1996, 6,303 exclusion orders under the Public Order Act 1986 had been made in total, and 308 were still extant.²⁷ The number of orders extant at any time builds up during the season and orders last for varying periods, so it is difficult to provide consistent series of orders in force. However, as at 14 April 1999, according to NCIS, there were some 385 exclusion orders in force, and approximately 50 further orders had been received from the courts.²⁸

D. Racist behaviour

1. General legislation

The definition of the offence of incitement to racial hatred in its present form is now contained in Part III of the *Public Order Act 1986*. The offences under Part III are all punishable on conviction on indictment by up to two years' imprisonment or an unlimited fine or both and on summary conviction by up to six months imprisonment, or a fine not exceeding £5,000, or both.

Any prosecution would be under either section 5, which contains the offence of causing harassment, alarm or distress, or Part III section 18 as discussed above. Under section 5, 'it is a defence for the accused to prove that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress'. Under Section 18 it would have to be proved that there was 'intent to stir up racial hatred'.

2. Specific legislation

The *Football Offences Act 1991* created three offences - throwing a missile, indecent or racist chanting and going onto the playing area - which can only be committed at a designated association football match.²⁹ The three offences were recommended by Lord Justice Taylor in his final report on *The Hillsborough Stadium Disaster*.³⁰ In chapter 9 of the report Lord Justice Taylor explained why he felt that separate offences for football spectators were necessary, despite the argument that the behaviour concerned would already be

²⁷ HC Deb 5 March 1996 c191w

²⁸ Source: National Criminal Intelligence Service 14.4.99; the figure may be subject to revision

²⁹ Currently, designated matches for these purposes include Football League, Premier League, European and international matches played at major grounds - *Football (Offences) (Designation of Football Matches) Order 1991*, SI 1991/1565, as amended by SI 1992/1554

³⁰ Cm 962, January 1990, recommendation 71

covered in England and Wales by the *Public Order Act 1986*. He concluded that racist abuse of the kind chanted at football matches was probably not intended to stir up racial hatred; nor could it readily be proved that racial hatred was likely to be stirred up. Section 3 of the *1991 Act* does not include a requirement that the chanting was within the sight or hearing of a person likely to be caused harassment, alarm or distress.

The offence of racist chanting under section 3 of the *1991 Act* can only be committed by two or more people. The recent Football Task Force report entitled *Eliminating Racism from Football* recommended changing the offence of indecent or racist chanting under section 3 of the *Football (Offences) Act 1991* to include chanting by an individual as well as by groups.³¹ The government announced in response that it intended implementing this change as soon as legislative time could be found.³²

3. Other Initiatives

At the start of the 1993/4 football season the Commission for Racial Equality (CRE) launched a campaign called *Let's Kick Racism out of Football* with the aim of highlighting anti-racist and equal opportunities messages within the context of football. Clubs were asked to sign up to a nine-point voluntary code of anti-racism activity. The campaign resulted in the setting up of the Action Group Against Racism and Intimidation (AGARI) and more recently to *Kick It Out* - football's independent anti-racism campaign involving all the major organisations in football

Although there was opposition to the campaign from some clubs who argued that it would bring negative publicity to the game, by the start of the 1994/5 season 91 of the 92 had professional clubs declared their support (the exception being York City). It has been argued that the campaign's success was that it encouraged initiatives within individual clubs; and that at clubs where there was no extra support beyond the display of the CRE's posters, the campaign was largely ineffective.³³

In March last year, the government's Football Task Force published its report on racism in football.³⁴ Amongst its recommendations were the following:

The Government should:

- amend the Football Offences Act to make racist abuse by individual spectators at football matches a criminal offence;
- set a clear time-table for any future work which arises out of this report and commission a follow-up report to identify progress

³¹ 30 March 1998

³² HC Deb vol. 309 c472, 31 March 1998

³³ Centre for the Study of Public Order, *Racism, Xenophobia and Football*, 1995

³⁴ Football Task Force, *Eliminating Racism from Football*, 30 March 1998

The Football Association should:

- issue new guidance to referees to make clear that an immediate red card should be shown to players making any racist comments on the field of play;
- amend FA disciplinary rules to recognise racist abuse on and of the pitch as a distinct offence punishable by separate and severe disciplinary measures;
- require county FAs to sign up to an anti-racism charter and pledge positive action to encourage wider participation in all aspects of the game;
- create a Charter Mark to be awarded to clubs and organisations (including county FAs) making substantial efforts to implement the measures in this report

Local authorities should:

- exclude local football clubs with a record of involvement in racist incidents from council-owned playing facilities

The Football Trust (and other bodies awarding grant-in-aid to football clubs) should:

- require recipients of grant-aid to implement the nine-point plan of the Kick It Out campaign on a regular and on-going basis

All professional clubs and Conference clubs should:

- amend ground regulations to recognise racist abuse as a separate offence - distinct from the use of foul language - and set out the penalties involved;
- set up a confidential freephone 'hotline' through which supporters can report incidents of racist abuse to club officials;
- implement measures in the Kick It Out campaign on a regular basis, including the broadcasting of a clear anti-racism message prior to kick-off of all home games

The Football Association, Football Licensing Authority and Football Safety Officers Association should:

- ensure football stewards are trained to deal with incidents of racism at football matches as part of a mandatory NVQ or equivalent qualification;
- agree a simple procedure to deal with incidents of racism at football matches to be made standard at all grounds in England.

E. Ticket touting

1. General legislation

Persons who engage in ticket touting for any type of event are subject to the general law relating to activities such as theft, deception, obstruction or threatening behaviour. For

example, if forged tickets are sold, the seller could be found guilty of the criminal offence of theft or deception.

In certain circumstances, ticket touts may also be subject to specific regulations on the resale of tickets. The *Price Indications (Resale of Tickets) Regulations 1994*³⁵ require a resale ticket seller to disclose specified information about a ticket before making a sale. The Regulations were made under Part III of the *Consumer Protection Act 1987*, which makes it an offence for a trader to give a misleading indication of the price at which goods and services are available. The Regulations came into force on 20 February 1995 and apply in England, Scotland and Wales.³⁶

Briefly, the Regulations apply where:

- a person is prepared, or may be prepared, to supply a ticket by way of resale;
- that person is acting in the course of a business;
- the ticket is for an entertainment event; and
- the reseller gives to consumers an indication of the price at which the ticket, or the ticket in combination with something else, is or will be available.

The Regulations require that where a reseller gives a price indication, he must also give the consumer, before any contract for the supply of a ticket is concluded between them:

1. in writing, except in telephone transactions, any information originally printed on the ticket by the event's holder or promoter concerning its price and the rights it confers. This must include any printed details about the location of any seat or space, but information such as the date on which the ticket is valid would also be relevant;
2. orally for all transactions, details of the location of any seat or space which the consumer will have the right to use, together with any information which the reseller knows or might be expected to know about features of that seat or space which might adversely affect the consumer's use or enjoyment of it, such as a restricted view.

2. Specific legislation

The *Criminal Justice and Public Order Act 1994* (section 166) created a criminal offence of touting tickets for designated football matches, implementing one of the recommendations of the 1990 Taylor Report.³⁷ This provision was introduced in an attempt to deal with problems of crowd safety and security arising from breaches in ground segregation which may follow from the sale of unauthorised tickets to rival supporter groups.

Under section 166 it is an offence for an unauthorised person to tout tickets in public places, even if this is done on a day other than that on which the match is being played; or to resell

³⁵ SI 1994/3248

³⁶ Parallel regulations have been made in Northern Ireland under Article 19 of the *Consumer Protection (Northern Ireland) Order 1987*. These are the *Price Indications (Resale of Tickets) Regulations (Northern Ireland) 1995* (S.R. 1995/No.258), which came into force on 24 July 1995.

³⁷ *The Hillsborough Stadium Disaster: Final Report* [Cm 962], January 1990, recommendation no. 70

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). This is an arrestable offence for the purposes of the *Police and Criminal Evidence Act 1984*, allowing someone suspected of committing this offence to be arrested without a warrant.

These provisions only apply to tickets for designated football matches, ie. those designated for the time being by orders made under section 1(1) of the *Football Offences Act 1991*.³⁸ Currently, designated matches for these purposes include Football League, Premier League, European (UEFA) and international matches played at major grounds in England and Wales; tickets for World Cup matches in England, for instance, would therefore be covered by section 166.

It is not, however, illegal to resell tickets here for matches taking place abroad. Any action taken against companies making such sales would have to be based on a failure to supply tickets in accordance with their own undertakings.³⁹ Nor is it illegal under the *1994 Act* to resell tickets abroad for matches in this country or any other country. The basis of common law criminal jurisdiction in this country is territorial and is based on the need to maintain the Queen's peace. In certain limited circumstances the courts here do try offences relating to acts committed abroad, but there is a presumption that, unless a contrary intention appears, an 'offence-creating' section of an Act is not intended to make conduct taking place outside the territorial jurisdiction of the Crown an offence triable in England. This contrasts with the position in certain other countries where the courts' jurisdiction relates to that country's nationals rather than its territory. Thus that country's courts may try its nationals in respect of conduct wherever it took place.

Subsections (6) to (8) of section 166 make provision for the Secretary of State to apply the section, with suitable modifications, to other specified sporting events or categories of sporting events for which 6,000 or more tickets are issued for sale. No orders have yet been made under this section.

³⁸ currently the *Football (Offences)(Designation of Football Matches) Order 1991*, SI 1991/1565, as amended by SI 1992/1554

³⁹ see eg. 'Cup ticket scam feared for 25,000', *The Guardian*, 5 June 1998

II Proposals for change

The Home Affairs Committee published its second report of 1990-91 on *Policing Football Hooliganism* in February 1991.⁴⁰ It made a number of recommendations, including the establishment of a European register of football hooligans and an effective means of preventing hooligans from travelling abroad. The government, in its reply to this report published three months later, stated that it was not convinced that a central register of football hooligans would contribute to closer co-operation between the police forces of different countries allowing the exchange of accurate and up-to-date intelligence on football hooligans. It also declared that it would continue to encourage the courts to make full use of restriction orders, and would seek to negotiate more bilateral agreements to extend the scope of the scheme.⁴¹

The Liberal Democrat Party declared its support for government legislation against racial chanting and abuse in sports grounds, in its 1992 policy paper *All to Play For*.⁴² This paper also welcomed the 1991 report of the Home Affairs Committee on *Policing Football Hooliganism*.⁴³

In 1995 the Labour party published a document entitled *A New Framework for Football: Labour's Charter for Football*, which set out a number of policy and legislative initiatives which it proposed to implement in government. In relation to football violence, these included commitments to:

- promote the use of restriction orders and increase the level of punishment for their breach;
- seek further bilateral agreements to allow restriction orders to be imposed on those convicted of football-related offences in other countries;
- encourage ratification and implementation of the *European Convention on Spectator Violence*;
- act to prevent access to stadia of anyone in possession of racist or offensive banners and prevent their display in the stadia;
- discourage deportation of football hooligans from other countries in favour of prosecution in the country where the offence was committed, or, failing that, in England and Wales;
- tighten the laws on chanting obscene or racist remarks to cover individual transgressions and provocation of players and supporters;
- substantially increase the level of punishment for crimes under the *Football Offences Act 1991*; and

⁴⁰ HC 1 1990-91, February 1991

⁴¹ *Policing Football Hooliganism - the government reply to the second report from the Home Affairs Committee Session 1990-91 HC 001*, Cm 1539, May 1991, p11

⁴² Liberal Democrat Party, *All to Play For: Liberal Democrat Policies for Sport*, Federal Green Paper Number 28, December 1992

⁴³ Home Affairs Committee second report of 1990-91, HC 1 1990-91, February 1991

- ensure that legislation against ticket touting is enforced.⁴⁴

The Home Secretary announced at the EU Presidency Seminar on Football held in Blackburn in February 1998 that a review would be carried out of the legislation relating to football, which would examine existing legislative measures and take into account lessons to be learnt from the World Cup Finals at France '98.

The Home Office published a consultation paper on football-related offences in November 1998, whose main recommendations were as follows:

Restriction Orders

- 1 That the restriction order would be replaced with an international banning order.
- 2 That the order may be issued in relation to football-related offences which take place 72 hours either side of a designated match being played outside England and Wales; or 24 hours either side of a designated match being played in England and Wales.
- 3 That the courts could issue an order at or around the venue or location irrespective of attendance or intention to attend the match but where evidence exists to show that the person's attendance was principally in connection with the match.
- 4 That the courts could also issue an order in respect of football-related offences committed at venues or locations other than the ground where it can be shown that the person's attendance or behaviour was principally in connection with the match.
- 5 That the courts would have the power to require reporting at the time of key international matches to a named specific police station.
- 6 That a constable should have the power of arrest without warrant if he has reasonable grounds for believing that a person is likely to breach the reporting or passport requirements of the banning order.
- 7 That a condition of an international banning order would require the person to submit his passport to a named police station five days before key designated matches as prescribed by the enforcing authority.
- 8 That a new offence be created for failure to submit a passport as part of the reporting requirement, carrying a level 3 fine.

⁴⁴ *A new framework for football: Labour's Charter for Football*, Labour, 1995, pp7-8 and 11

- 9 That the period of international banning orders is increased to six years on conviction and to ten years on conviction for an offence carrying a term of imprisonment.
- 10 That persons provided with exemptions to reporting requirement would have to submit passports to the police.
- 11 That the period of withdrawal of termination process for restriction orders in operation is increased from one year to four years and six years respectively.
- 12 That enforcement powers should provide for:
 - Reporting requirements copied to a designated police station
 - Action to be taken by the named police station in the event of a breach
 - Passport Office to be advised of those subject to international banning orders
 - Provision for the issue of an arrest warrant for those overseas in breach of an order
 - Ports to be advised of those subject to international banning orders

Exclusion Orders

- 13 That the exclusion order is re-titled domestic banning order.
- 14 That the orders should be issued for a minimum period of one year.
- 15 That breaching an order would be made an arrestable offence.
- 16 That a new offence of likely to commit or about to commit a breach of an exclusion order is provided.
- 17 That the order may be issued in relation to football-related offences which take place 24 hours either side of a designated match being played in England and Wales.
- 18 That the penalty on breaches is increased to six months and/or level 5 fine.
- 19 That the enforcing authority would maintain records of domestic banning orders and subsequent breaches.

Racist chanting at football grounds

- 20 That it should become an offence for an individual to make racist or indecent chants at football grounds.

Ticket Touting

- 21 That ticket touting legislation should be extended to make it unlawful to sell tickets in England and Wales for designated matches being played in other parts of the United Kingdom and abroad.

Alcohol

- 22 That legislative provision be introduced to enable chief officers of police to make application to the local licensing authority for the issue of an order, with the consent of the Secretary of State, to restrict the sale of alcohol in specified areas, or the whole area within their licensing area, for a specified period of time and prevent the public consumption and carrying of alcohol in those areas during that time.

Dealing with Category Cs⁴⁵

- 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.

Automatic requirement by the courts to issue restriction orders

- 25 That the issue of restriction orders (international banning orders) is required 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 played overseas.
- 26 That the threshold for imposing restriction orders should be reduced from "satisfied" to one of reasonable grounds.
- 27 That the requirements for reporting of football-related convictions by foreign jurisdictions should be simplified.

Automatic requirement by the courts to issue exclusion orders

- 28 That the issue of an exclusion order (domestic banning order) is required 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 played in England and Wales.
- 29 That the threshold for imposing exclusion orders should be reduced from "satisfied" to one of reasonable grounds.⁴⁶

⁴⁵ the most dangerous category of football hooligans in the database of the National Criminal Intelligence Service's football unit.

⁴⁶ Home Office, *Review of Football-Related Legislation*, November 1998

Fifty responses to this consultation were received, which on the whole were supportive of most of the proposals. However, it was announced that three of the 29 proposals had been dropped through lack of support (numbers 6 and 16, on the creation of a new offence of being likely to commit a breach of a restriction order; and number 22, on an alcohol ban), and that the recommendation in relation to troublemakers who have no football-related conviction (number 24) would require further consideration on the ECHR considerations.⁴⁷ In relation to the remainder of the proposals, the government has expressed the hope that these could all be in place in advance of Euro 2000 (the European Championships).⁴⁸

⁴⁷ The provisions of the European Convention on Human Rights which might be relevant include Article 5 (right to liberty and security of person) and Article 6 (right to a fair trial).

⁴⁸ Home Office press notice 112/99, *Government publishes outcome of football-related legislation review*, 31 March 1999

III *The Football (Offences and Disorder) Bill 1998-99*

Simon Burns wrote about the proposed effects of his Bill in the *House Magazine* on 25 January 1999 (p13). The Bill itself was published on the same day as the outcome of the government's review of football-related legislation (31 March 1999), and welcomed by Home Office Minister Kate Hoey in the following terms:

The measures proposed in the Football (Offences and Disorder) Bill reflect the contents of our review on football-related legislation and the outcome of the public consultation exercise. They provide a sensible and balanced approach to help combat football hooliganism and to ensure that the decent, law-abiding supporter can enjoy football in a safe and secure environment.⁴⁹

The Sports Minister, Tony Banks, also expressed his approval of the Bill and referred to the all-party nature of support for the proposals.⁵⁰ In view of the government support for this Bill, it is likely to have a higher chance of becoming law than some other private members' bills.

A. **International Football Banning Orders [clauses 1 to 5]**

It is proposed that restriction orders should be renamed International Football Banning Orders [IFBOs], to provide greater indication of the purpose of the orders. In addition the following substantive changes to such orders are put forward in the Bill.

1. **Court's duty to make order [clause 1(1)]**

Under clause 1(1) it is proposed that IFBOs should be imposed when the court has 'reasonable grounds' to believe that such an order would help to prevent violence or disorder at or in connection with designated football matches. The present legislation states simply that the court must be 'satisfied' this would be the case [*1989 Act* section 15(2)], although it is not clear on the face of the legislation whether this has to be decided beyond reasonable doubt (the criminal standard of proof) or on the balance of probabilities (the civil standard), or to some other standard.

At present, the court is simply given the *power* to make such an order. However, the Bill seeks to impose a *duty* on the court to make an order in the circumstances it sets out, and suggests that the court should give its reasons for concluding that it is not satisfied that there are reasonable grounds to believe that such an order would help to prevent violence or disorder at or in connection with designated football matches.

⁴⁹ Home Office press notice 112/99, *Government publishes outcome of football-related legislation review*, 31 March 1999

⁵⁰ Department for Culture, Media and Sport press notice 85/99, *Banks welcomes anti-hooligan Bill*, 31 March 1999

It is proposed that an IFBO could be imposed on a person where the court has made an order discharging him conditionally or absolutely (as well as where a sentence has been imposed). In the current legislation, a similar provision applies to exclusion orders but not to restriction orders.

2. Relevant offences [clauses 2 and 5]

Clause 2 includes provisions designed to add to the list of football-related offences for these purposes (contained in Schedule 1 of the *1989 Act*) certain offences of violence or disorder which were not committed at a football ground or on a journey to a football match but which were committed during the 24 hours on either side of a match and which the court certifies related to that match. The proposal in the Review of Football-Related Legislation that an order could be issued in relation to football-related offences which take place 72 hours either side of a designated match being played outside England and Wales does not appear in the Bill.⁵¹

The 'relevant period' for other offences listed in Schedule 1 would not be altered; however, it is proposed that the meaning of a journey in the relevant paragraphs of the Schedule should be extended to include breaks, and that a person may be regarded as being on a journey to a match even though he does not intend to attend the match.

Clause 5 is intended to simplify the process under which details of convictions for corresponding football-related offences committed outside England and Wales are provided to the courts here. The existing provisions are contained in section 22 of the *1989 Act* and the orders made under it.

3. Surrender of passports [clause 3(1)]⁵²

Clause 3(1) provides that among the conditions which may be imposed by the courts when making an international football banning order is a requirement to surrender a passport. A person may not be required to do so more than five days in advance of a requirement to report and his passport must be returned as soon as reasonably practical after the match in question has taken place. Clause 3(5) amends s.16(4) of the 1989 Act to create an offence of failure to comply with the duty to comply with conditions in addition to that of failing to comply with the duty to report. The penalties available under s.16(5) of the 1989 Act on summary conviction were imprisonment for up to one month and a fine not exceeding level 3 on the standard scale. These limits were increased by s.84(1) of the *Crime and Disorder Act 1998* (by which time level 3 was £1,000) to a maximum of six months imprisonment and a level 5 fine, ie. £5,000.

⁵¹ Home Office, *Review of Football-Related Legislation*, November 1998, recommendation 2

⁵² Jane Fiddick, Home Affairs Section

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:⁵³

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:⁵⁴

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 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.

⁵³ HL Deb 209 16 June 1958 c 860

⁵⁴ HL Deb 592, WA 238

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*.⁵⁵ In *R v Secretary of State for Foreign and Commonwealth Affairs, ex p. Everett*,⁵⁶ 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"⁵⁷

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 1998:⁵⁸

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;
 - (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.

⁵⁵ [1984] 3 All ER 935

⁵⁶ [1989] 1 All ER 655

⁵⁷ *Macdonald's Immigration Law and Practice*, 4th ed., 1995, para 2.42

⁵⁸ HL Deb 592, WA 238

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".⁵⁹

S.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.⁶⁰ 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".⁶¹ 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:⁶²

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 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.⁶³ S.1 of the 1971 Act (above) provides that 'let or hindrance' may lawfully be imposed and Macdonald identifies four known restrictions:⁶⁴

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:

⁵⁹ HC Deb 254, c 216W

⁶⁰ Blackstone, Commentaries I 265

⁶¹ Op cit para 2.44

⁶² HC Deb vol 308 c 506W

⁶³ Constitutional and Administrative law, 11th ed., 1993, p 438

⁶⁴ op cit, para 6.6

- (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.

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.⁶⁵

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

⁶⁵ *Re A-K (Foreign Passport: jurisdiction [1997] 2 FLR 569, CA*

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*⁶⁶ 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* case⁶⁷ 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 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'.⁶⁸

An amendment to the Criminal Justice Bill 1987-88 was proposed on 28 June 1988 by Tony Farrell 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.⁶⁹ It was opposed by the minister, Douglas Hogg.⁷⁰

⁶⁶ [1978] QB 732

⁶⁷ Case 67/74 [1975] ECR 297

⁶⁸ *The Times*, 31 May 1985

⁶⁹ HC Deb vol 136 c 244

⁷⁰ *ibid* c 258

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.⁷¹

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.⁷²

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 under present arrangements when those concerned can simply apply for British Visitors Passports at Post Offices.⁷³

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*⁷⁴ 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 Report⁷⁵ did not address the question of restricting

⁷¹ *ibid* c 258

⁷² *The 1987-88 Season: Progress On Measures to Combat Football Hooliganism*, June 1988

⁷³ Department of the Environment news release, 7.9.89

⁷⁴ Cmnd 9649, November 1985 (Treaty Series No. 57 (1985), Strasbourg, 19 August 1985)

⁷⁵ Final report of the Committee of Inquiry into Crowd Safety and Control at Sports Grounds ('the Popplewell Report'), Cmnd 9710, January 1986

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.⁷⁶

4. Duty to report [clause 3(2) and (3)]

In the current legislation, only the police station to which a person subject to reporting requirements must make his initial report is required to be specified in the order. These provisions are intended to require that the order specifies the police station to which all reports must be made. No particular provision is suggested for subsequent or temporary changes to the police station specified in the order, although the Explanatory Notes to the Bill could be read as suggesting that the person would be able to report to the police station of their choice if they gave prior indication to that police station or to the enforcing authority [para. 16].

5. Duration and termination [clause 4]

Respondents to the Home Office consultation were apparently broadly in favour of increasing the duration of exclusion orders/IFBOs from five years (where a custodial sentence had been imposed) and two years (otherwise); however, many did not agree with the fixed period suggested in recommendation 9.⁷⁷ Clause 4 is intended to provide a certain amount of flexibility for the court in fixing the duration of an IFBO, which it is proposed could be for between 6 and 10 years in the former case and between 3 and 5 in the latter.

Clause 4(2) of the Bill differs from the equivalent proposals in recommendation 11 of the Home Office Review, although this provision would still have the effect of greatly increasing the period during which a person subject to an IFBO would not be able to apply to the courts to terminate the order.

The civil liberties group Liberty has suggested that these proposals:

⁷⁶ Home Office press notice 112/99, *Government publishes outcome of football-related legislation review*, 31 March 1999

⁷⁷ Home Office press notice 112/99, *Government publishes outcome of football-related legislation review*, 31 March 1999

risk breaching accepted human rights standards as to proportionality in restricting freedom of movement and depart from obligations to protect the liberty and security of the individual, and to ensure freedom of movement, expression and association, as guaranteed by the European Convention on Human Rights, and under EC law.

The procedures appear to us to be in breach not only of our international obligations expressed in European Community Law, the International Covenant for Civil and Political Rights, and the European Convention of Human Rights, but will also be liable to challenge under the Human Rights Act 1998 as soon as it comes into force.

The sheer scale of these orders will be out of all proportion to the offence that triggers them. It is worth stressing that there can be no possible justification for the courts being required to refuse to consider any application - no matter how well-founded - for variation before the minimum periods are reached. Examples of illness, bereavement, or other special circumstances can be expected to arise in practice. The inability of the courts to effect a just response will tend to bring the entire regulatory regime into disrepute.⁷⁸

B. Domestic football banning orders [clauses 6-8]

It is proposed, in addition to the substantive changes discussed below, that exclusion orders should be renamed Domestic Football Banning Orders [DFBOs]. This would make clearer the distinction between such orders and International Football Banning Orders [IFBOs] which are currently known as restriction orders.

1. Court's duty to make order [clause 6(1)]

The proposed provisions of clause 6(1) in relation to DFBOs mirror those for IFBOs in clause 1(1) [see above, Part III A 1].

2. Relevant offences [clause 7]

Clause 7 is intended to make the list of offences in relation to which DFBOs could be sought the same as that for IFBOs - in other words, that contained in Schedule 1 to the *1989 Act*. Currently the relevant offences for exclusion orders are differently defined listed in section 31 of the *1986 Act*, whereas only those for restriction orders are set out in the *1989 Act*.

This provision would allow the changes to Schedule 1 proposed by clause 2 of the Bill to apply in relation to DFBOs as they would to IFBOs.

⁷⁸ Liberty, *Briefing for the Football (Offences and Disorder) Bill, 2nd Reading*, April 1995

3. Duration [clause 8(1)]

In contrast to the proposals for the duration of IFBOs, clause 8(1) proposes that DFBOs should be in force for a period of between one and three years, regardless of any sentence imposed. Arguments presented by respondents to the Home Office consultation over the proposed duration of exclusion orders/DFBOs included the fact that orders imposed during or near to the close season would have a shorter effective life than those imposed during the playing season, although the consultation document mentioned that advice to courts indicates that they should take account of the close season in setting the duration of an order.⁷⁹

4. Breach of an order [clauses 8(2) and (3)]

The proposals in clause 8(2) and (3) echo the provisions of section 84 of the *Crime and Disorder Act 1998* which made similar changes in relation to breach of restriction orders. The effect of these provisions would be to provide the same penalties for breaches of DFBOs as for IFBOs, and the same powers of arrest.

C. Indecent or racist chanting [clause 9]

The proposal in the *Review of Football-Related Legislation* to make it an offence for an individual to make racist or indecent chants at a football ground by himself, as well as in concert with others, apparently received virtually unanimous support from the respondents.⁸⁰ This is the intended effect of clause 9 of the Bill.

D. Ticket touting [clauses 2(2) and 10]

Clause 2(2) of the Bill includes a provision which is intended to add ticket-touting for football matches to the list of football-related offences in the *1989 Act*. This, in connection with other provisions of the Bill, would have the effect of allowing IFBOs or DFBOs to be imposed on those convicted of such an offence (if the court had reasonable grounds for believing that this would help to prevent violence or disorder at or in connection with designated football matches).

⁷⁹ Home Office, *Review of Football-Related Legislation*, November 1998, para. 3.2

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

Clause 10 of the Bill is designed to allow orders to designate matches outside England and Wales which could be covered by the ticket-touting offence in section 166 of the *Criminal Justice and Public Order Act 1994*. If such orders were made, it would be an offence to resell tickets in England and Wales for specified matches outside England and Wales. However, it has been suggested that any such legislation would be very much more effective if it were done in parallel with similar legislation in other countries - a principle that was embodied in the 1985 *European Convention on Spectator Violence at Sports Events and in particular at Football Matches*.⁸¹

⁸¹ Cmnd 9649, November 1985 (Treaty Series No. 57 (1985), Strasbourg, 19 August 1985)