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CC HB 2



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Prime Minister:

The Home Secretary  
proposes on legislation on  
alcohol are set out here.  
I can't see the Opposition  
dissenting.

Lord President

FOOTBALL VIOLENCE: LEGISLATION ON ALCOHOL

At her meeting with Ministers yesterday following the Brussels disaster, the Prime Minister asked that legislation should be brought forward this session, if at all possible, to control the sale of alcohol at football grounds and on transport to grounds. We had originally announced our intention to introduce such legislation in England and Wales, along lines that have been successful in Scotland, following the Prime Minister's meeting with the football authorities on 1 April. It was intended that this should be enacted as part of next session's Public Order Bill, but the scenes in Brussels have made more urgent action necessary.

Indeed, it is very desirable that the legislation should be on the statute book by the beginning of the next football season, in mid-August. Providing Parliamentary Counsel can be made available, I can bring forward legislation this session, aiming at introduction in three weeks and Royal Assent before the summer recess. I appreciate however that a timetable of this kind will present severe problems both for you and for John Biffen, and it is of course for you both to say whether or not this is a practical proposition, given the weight of other legislative business.

My purpose in now writing to you, with copies to the Prime Minister and colleagues in H and Legislation Committee, is to seek policy and drafting

/authority so that

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authority so that we can ask Parliamentary Counsel to draft the Bill. I am sorry to have to ask for authority in this unusual way but in the circumstances I see no alternative.

... I attach a paper setting out my proposals for enacting the Scottish legislation in England and Wales. In brief I propose very largely to follow the Scottish model, but there are two particular variations of substance:-

(i) Instead of a blanket ban on the sale of alcohol inside grounds to members of the public, which is the practical effect of the Scottish legislation, I propose, first, to seek to make it an offence to be in possession of alcohol on the terraces or in the stands. But secondly, the police would have a power to close bars whenever they consider it necessary on public order grounds.

*Blanket ban on sale inside football grounds or on designated grounds on designated days not*

(ii) I propose to make it an offence to be drunk in any part of a designated sports ground during a designated sporting event. (The equivalent Scottish offence is more limited.)

The reasons for these proposed variations are set out in the attached paper.

In addition, at the Prime Minister's meeting on 28 March it was decided that the legislation should similarly ban alcohol on trains going to football grounds.

I see no difficulty in extending the Scottish legislation on special football coaches to include also special football trains.

/The legislation

*Why?  
Surely this is the best way to do it  
Do not have the sale of alcohol on the terraces  
The need for the police to be given power before  
Drinks  
I have checked  
alcohol is required since then not*

The legislation I am proposing would be England and Wales legislation, but I hope that George younger will agree that the legislation on trains should also extend to Scotland.

In the light of recent events I also intend to ensure that the legislation extends to coaches and trains travelling within this country and from matches abroad.

The Bill should amount to 10-12 clauses. It will of course be crucial that it should not arouse significant opposition, and that it should, if at all possible, command all-party support. Given the Scottish precedent and the events of the last part of the football season I believe that these conditions will be met.

I should be grateful for comments from colleagues on H by 7 June. I would hope that we can clear any points raised in correspondence. As to the Parliamentary aspects, I hope that we can have at least a preliminary discussion in Legislation Committee about this next Wednesday.

I am copying this to all members of H and simultaneously to all members of L Committee. Copies also go to the Prime Minister, Geoffrey Howe, Nigel Lawson, John Wakeham, Sir George Engle, and to Sir Robert Armstrong.

L. B.

5/ May 1985

PROPOSED LEGISLATION ON ALCOHOL: ENGLAND AND WALES

NOTE BY THE HOME SECRETARY

In her letter to the football authorities of 4 April, the Prime Minister said that "legislation will be introduced to control the sale of alcohol at grounds and on transport to grounds, along lines that have been successful in Scotland. These powers would be used selectively". A copy of the relevant Scottish legislation - Part V of the Criminal Justice (Scotland) Act 1980 - is attached at Annex A. As will be seen, this Part of the Act consists of 10 sections :-

Section 68 which enables the Secretary of State to designate sports grounds and sporting events for the purposes of Part V of the Act.

Section 69 which, in effect, makes it an offence to be drunk or in possession of alcohol on a football bus or coach going to or from a designated sporting event. The hirer (if any) is also guilty of an offence if alcohol is carried.

Section 70 which, in the circumstances mentioned in section 69, makes it an offence for the owner of the vehicle, or his employee or agent, to permit the carriage of alcohol.

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Section 71 which provides that it shall be a defence for hirers charged under section 69 or any person charged under section 70 to prove that alcohol was carried without his consent or connivance, and that he did all he reasonably could to prevent such carriage.

Section 72 which makes it an offence to be in possession of a "controlled container" (bottles, cans etc) which might be used as a missile, either in the "relevant area" (discussed below) of a designated ground or when seeking entry to such ground.

Section 73 which makes it an offence to be in possession of alcohol in the relevant area of a designated ground, or when seeking entry to such ground.

Section 74 which makes it an offence to be drunk in the relevant area of a designated ground or when seeking entry to such ground.

Section 75 which creates police powers of enforcement.

Section 76 which places on the defence the onus of proving that the contents of a container were not the same as on the label.

Section 77 which provides definitions.

At Annex B is a table showing the use made of the Scottish legislation by the police and the courts. It should be noted that the legislation has been applied, by designation, to all Scottish league grounds (and indeed to Highland League grounds and to international rugby matches at Murrayfield). The Government intends to designate more selectively in England and Wales.

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2. Discussions at official level and with the police have confirmed that there would be advantage in incorporating most of the Scottish offences into the law of England and Wales. In particular there is general agreement among those consulted that it would be helpful to make it an offence to be in possession of alcohol on football coaches, or on seeking entry to the ground. There is also general agreement that there would be advantage in an offence, on Scottish lines, directed at containers which could be used as missiles.

3. It is therefore proposed that the broad structure of Part V of the Scottish Act should be adopted in England and Wales and that, in particular, the offences in sections 69, 70 and 72 should be enacted in England and Wales (with necessary amendments reflecting the different legal backgrounds of the two jurisdictions). However the Scottish legislation relating to the possession of alcohol inside grounds (section 73(a)) and drunkenness inside grounds (section 74(a)) is considered inappropriate for England and Wales. It is proposed to make two variations of substance in these provisions.

*Why?*

(i) Alcohol inside grounds

3. Under section 73 (a) of the Scottish Act any person who "is in possession of alcohol in the relevant area of a designated sports ground during the period of a designated sporting event, shall be guilty of an offence...". The "period of a designated sporting event" extends from two hours before a match until one hour after it has ended; "relevant area" is defined so as to cover all areas inside the ground except private areas (board room, dressing rooms etc) which are out of sight of the pitch. In effect, section 73(a), as applied by the designation order, bans the sale of alcohol to members of the public inside Scottish football grounds, but not within board rooms

4. The police in England and Wales consider that such a wide ban as this is not necessary, and indeed would have operational disadvantages. They strongly support the Scottish offences which are aimed at alcohol on football coaches, and at barring those who seek entry to grounds while drunk or in the possession of alcohol. This is

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because they see the main alcohol problem as being those who come already "tanked up". They do not consider that the sale of drink inside grounds presents a problem.

5. Indeed, the police/<sup>fear</sup>that if a ground is "dry" the fans will go elsewhere for a drink, and will not arrive until just before the kick-off. They strongly take the view that it is in the interests of the police to get fans into a place where they are controllable (ie into the ground) rather than having them dispersed in search of places to obtain alcohol. At a match this season in Manchester involving Glasgow Celtic the police arranged with the Manchester United authorities for the ground to be "dry" because of the notorious alcohol record of Scottish supporters; but in retrospect they think that this was a mistake because it did not prevent the fans from obtaining alcohol elsewhere and had the dispersal effect outlined above.

6. The police also fear that if football coaches are "dry" (as they want and support) and the fans know that the ground is dry, they will not use football coaches, but travel either by scheduled services or their own private transport. This again would not be in the interests of the police because it would disperse the problem and make it less controllable. As it is, the police are able to make arrangements with the coach operators as to the time and place of arrival, and this assists them in managing the situation.

7. It is also the case that a ban on alcohol inside football grounds, on Scottish lines, would have a serious effect on clubs' finances, and would prevent many respectable spectators from obtaining a drink. Many clubs, including those with good records on crowd behaviour depend heavily on income from catering contracts, private boxes and restaurants, and sponsors (which include a number of breweries). I understand this has not been the case in Scotland. At a time when the government want to encourage clubs to spend more on crowd safety, it is desirable to avoid taking money out of the game, so far as possible.

8. Accordingly, in place of a broad ban on alcohol inside grounds, on Scottish lines, it is proposed that the police should be given power to close bars inside the grounds when they consider such action necessary on public order grounds. In general the football authorities are co-operative, but the police think it would be useful to have a reserve power to prohibit the sale or distribution of

alcohol on all or part of a designated sports ground during a designated sporting event. This would be a power which could be exercised, either in advance or on the spot, where the police think it necessary in the interests of maintaining or restoring public order. Failure to comply with a direction prohibiting the sale of alcohol in these circumstances would be an offence.

9. In addition it is proposed that it should be made an offence to be in possession of alcohol in the terraces or on the stands. (In effect this would confine public drinking to behind-stand areas.) The police would like such an offence because the possession of alcohol on the terraces gives rise to arguments and disorder. It is therefore proposed to create an offence which bans the possession of alcohol in areas from which the pitch can be viewed directly. Private boxes and restaurants would be protected by excluding from the offence areas from which the pitch is viewed from an enclosed room.

10. These measures would give the police all the powers they need and want to control the sale of alcohol inside grounds, without doing serious damage to clubs' finances. They would also minimise adverse effects on respectable supporters.

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(ii) Drunkenness inside grounds

11. Section 74 of the Scottish Act makes it an offence to be drunk in, or while attempting to enter, the relevant area of a designated sports ground during the period of a designated sporting event. The maximum penalty is a fine of £100. In England and Wales this would add nothing to the existing general law on drunkenness, save that the maximum penalty would be higher.

12. Section 12 of the Licensing Act 1872 provides that: "Every person found drunk in any highway or other public place, whether a building or not... shall be liable to a penalty not exceeding level 1 on the standard scale /ie a fine of £50/". Under section 8 of the the Licensing Act 1902 "public place" includes any place to which the public have access, whether on payment or otherwise". In 1976, in *Cawley v Frost*, the Divisional Court considered what parts of a football ground should be regarded as a "public place". Lord Widgery said that:-

"An establishment which was set up to provide for the public, such as a football ground, ought to be approached on the footing that it was a public place in its entirety. Prima facie the whole establishment should be considered and the Court should not be deterred from that course merely by finding that access to certain portions of the establishment had been denied to the public".

Although *Cawley v Frost* was not an alcohol case, this would seem to establish that it is already an offence to be drunk anywhere inside a football ground (and certainly it would be an offence to be drunk outside a ground, while seeking entry).

13. Given the Scottish precedent, and in view of the higher penalties, it is proposed to make it an offence to be drunk in, or on seeking entry to, designated grounds in England and Wales. However, if the drunkenness offence inside the ground were to be limited to "the relevant area" as in Scotland, this would be narrower than the

case law as in *Cawley v Frost*. It is therefore proposed that this offence should be capable of being committed in any part of a designated sports ground during the period of a designated sporting event.

#### Minor/technical changes

14. Translation of the Scottish legislation into the law of England and Wales will necessitate amendments reflecting the different legal backgrounds and legal languages. Such adjustments as we have identified to date are set out in Annex C.

#### Trains

15. At the Prime Minister's meeting on 28 March it was decided, at the suggestion of the Secretary of State for Transport that "legislation should . . . similarly ban alcohol on trains going to football grounds".

16. The railway byelaws already prohibit any person from taking or attempting to take alcohol onto a train where reasonable notice has been given that alcohol has been banned on that train. The maximum penalty is a fine of £200. The byelaws also state that "no person who is in an unfit or improper condition to travel by passenger train" (which would include someone who is drunk) shall enter or remain in any railway vehicle. The maximum penalty is a fine of £50. The railway byelaws therefore already cover the possession of alcohol on football specials (providing the appropriate notice has been given) and drunkenness on all trains. They do not however contain a provision similar to sections 69(b) and 70 of the Scottish Act which are directed at coach owners, their employees or agents and hirers. Nor are the maximum penalties under the railway bye-laws as high as those relating to the possession of alcohol and drunkenness on football coaches under subsections (a) and (c) of section 69.

17. Because of the higher penalties and because of the offences directed at owners, their employees or agents and hirers, there would be advantage in extending section 69 of the Scottish Act, relating to football coaches, to football trains, even though there would be a

degree of duplication with the railway byelaws. The easiest way of doing this would be to add "passenger trains" to section 69 when enacted in England and Wales. It is proposed that a provision should be included accordingly.

(3) Where the whole or part of the amount awarded by the order remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—

PART IV

- (a) if it is for an amount not exceeding the amount unpaid under the order, shall not be enforced; or
- (b) if it is for an amount exceeding the amount unpaid under the order, shall not be enforced except to the extent that it exceeds the amount unpaid,

without the leave of the court.

## PART V

## SPORTING EVENTS: CONTROL OF ALCOHOL ETC.

68.—(1) The Secretary of State may for the purposes of this Part of this Act by order designate—

- (a) a sports ground or a class of sports ground ;
- (b) a sporting event, or a class of sporting event, at that ground or at any of that class of ground :

Designation  
of sports  
grounds and  
sporting  
events.

Provided that a sporting event at which all the participants take part without financial or material reward and to which all spectators are admitted free of charge shall not be subject to an order under this section ; but this proviso is without prejudice to the order's validity as respects any other sporting event.

(2) The power to make an order under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

69. Where a public service vehicle is being operated for the principal purpose of conveying passengers to or from a designated sporting event, then—

- (a) any person in possession of alcohol on the vehicle shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding £200 or both ;
- (b) if alcohol is being carried on the vehicle and the vehicle is on hire to a person, he shall, subject to section 71

Alcohol on  
vehicle  
travelling to  
or from  
sporting  
event.

## PART V

of this Act, be guilty of an offence and liable on summary conviction to a fine not exceeding £200 ; and

- (c) any person who is drunk on the vehicle shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.

Liability of  
vehicle  
operator and  
his employees  
and agents.  
1976 c. 66.

70. Notwithstanding section 92 of the Licensing (Scotland) Act 1976 (restriction on carriage of alcoholic liquor in crates on contract carriages), but subject to section 71 of this Act, if the operator of a public service vehicle which is being operated as mentioned in section 69 of this Act, either by himself or by his employee or agent permits alcohol to be carried on the vehicle, the operator and, as the case may be, the employee or agent shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

Defence in  
connection  
with carriage  
of alcohol.

71. Where a person is charged with an offence under section 69(b) or 70 of this Act, it shall be a defence for him to prove that the alcohol was carried on the vehicle without his consent or connivance and that he did all he reasonably could to prevent such carriage.

Possession of  
container at  
sporting  
event.

72.—(1) Any person who—

- (a) is in possession of a controlled container in ; or  
(b) while in possession of a controlled container, attempts to enter,

the relevant area of a designated sports ground at any time during the period of a designated sporting event, shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding £200 or both.

(2) In subsection (1) above, the term "controlled container" means any bottle, can or other portable container, whether open or sealed, which is, or was in its original manufactured state, capable of containing liquid and is made from such material or is of such construction, or is so adapted, that if it were thrown at or propelled against a person it would be capable of causing some injury to that person ; but the term does not include a container holding a medicinal product for a medicinal purpose.

(3) In subsection (2) above, "medicinal product" and "medicinal purpose" have the meanings assigned to those terms by section 130 of the Medicines Act 1968.

**73. Any person who—**

- (a) is in possession of alcohol in ; or
- (b) while in possession of alcohol, attempts to enter,

the relevant area of a designated sports ground at any time during the period of a designated sporting event, shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding £200 or both.

PART V  
Possession  
of alcohol  
at sporting  
event.

**74. Any person who—**

- (a) is drunk in ; or
- (b) while drunk, attempts to enter,

the relevant area of a designated sports ground at any time during the period of a designated sporting event shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.

Drunkenness  
at sporting  
event.

**75. For the purpose of enforcing the provisions of this Part of this Act, a constable shall have the power without warrant—**

- (a) to enter a designated sports ground at any time during the period of a designated sporting event ;
- (b) to search a person who he has reasonable grounds to suspect is committing or has committed an offence under this Part of this Act ;
- (c) to stop and search a vehicle where he has reasonable grounds to suspect that an offence under section 69 or 70 of this Act is being or has been committed ;
- (d) to arrest a person who he has reasonable grounds to suspect is committing or has committed an offence under this Part of this Act ;
- (e) to seize and detain—

- (i) with its contents (if any), a controlled container as defined in section 72(2) of this Act ; or
- (ii) with its contents, any other container if he has reasonable grounds to suspect that those contents are or include alcohol.

Police  
powers of  
enforcement.

**76.—(1) For the purposes of any trial in connection with an alleged contravention of any provision of this Part of this Act, any liquid contained in a container (sealed or open) shall, subject to subsection (2) below, be presumed to conform to the description of the liquid on the container.**

Presumption  
as to contents  
of container.

PART V  
1976 c. 66.

(2) Subsections (3) to (6) of section 127 of the Licensing (Scotland) Act 1976 (right of accused to challenge presumption as to contents) shall apply in relation to subsection (1) above as they apply in relation to subsection (2) of that section.

Interpretation  
of Part V.

77. In this Part of this Act, unless the context otherwise requires—

1976 c. 66.

“advertised” means announced in any written or printed document or in any broadcast announcement;

“alcohol” means alcoholic liquor as defined in section 139 of the Licensing (Scotland) Act 1976;

“designated” means designated by the Secretary of State by order under section 68 of this Act;

“period of a designated sporting event” means the period commencing two hours before the start and ending one hour after the end of a designated sporting event, except that where the event is advertised as to start at a particular time but is delayed or postponed it includes, and where for any reason an event does not take place it means, the period commencing two hours before and ending one hour after, that particular time;

1980 c. 34.

“public service vehicle” has the like meaning as in Part I of the Transport Act 1980 and “operator” in relation to such a vehicle means—

(a) the driver if he owns the vehicle; and

(b) in any other case the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do work);

“relevant area” means any part of a sports ground—

(a) to which spectators attending a designated sporting event are granted access on payment; or

(b) from which a designated sporting event may be viewed directly;

“sporting event” means any physical competitive activity at a sports ground, and includes any such activity which has been advertised as to, but does not, take place; and

“sports ground” means any place whatsoever which is designed, or is capable of being adapted, for the holding of sporting events in respect of which spectators are accommodated.

CRIMINAL JUSTICE (SCOTLAND) ACT 1980

1981	Persons			Persons with charge proved			Absolute Discharge	Prison
	Offences Recorded	Proceeded Against	Charge Proved	Fine	Admonished	Caution		
Section 69 & 70	17	8	8	8				
Section 72 & 73	179	75	75	64	10	1		
Section 74	<u>231</u>	<u>153</u>	<u>149</u>	<u>140</u>	<u>9</u>	<u>—</u>		
Total	427	236	232	212	19	1		
1982								
Section 69 & 70	9	10	3	3				
Section 72 & 73	241	168	164	143	17		2	2
Section 74	<u>236</u>	<u>183</u>	<u>182</u>	<u>173</u>	<u>7</u>	<u>—</u>	<u>2</u>	<u>—</u>
Total	486	361	349	319	24		4	2
1983								
Section 69 & 70	29	15	10	10				
Section 72 & 73	230	132	127	116	9	1	1	
Section 74	<u>263</u>	<u>170</u>	<u>165</u>	<u>159</u>	<u>6</u>	<u>—</u>	<u>—</u>	<u>—</u>
Total	522	317	302	285	15	1	1	
1984								
Section 69 & 70	32	31	18	18				
Section 72 & 73	236	92	90	82	7	1		
Section 74	<u>324</u>	<u>160</u>	<u>151</u>	<u>140</u>	<u>8</u>	<u>1</u>	<u>2</u>	<u>—</u>
Total	592	283	259	240	15	2	2	

NOTE: Figures for 1984 are provisional



ADJUSTMENTS TO PART V OF THE CRIMINAL JUSTICE (SCOTLAND) ACT 1980  
WHICH WILL BE REQUIRED FOR ENGLISH LEGISLATION

1. Section 69 of the Act creates offences connected with the possession of alcohol on a vehicle travelling to or from a designated sporting event. It will be necessary to ensure, when drafting a comparable English provision, that coaches travelling across the Scottish border fall within the scope of the offence when they are in England and Wales.
2. Section 70 of the 1980 Act disapplies section 92 of the Licensing (Scotland) Act 1976 which restricts the carriage of crates of alcohol on coaches but permits lesser amounts to be carried: there is no comparable provision in English legislation.
3. Section 71 of the 1980 Act provides a defence to the offences in section 69(b) (liability of the person who hired a vehicle travelling to or from a designated sporting event for possession of alcohol on it) and section 70 (liability of vehicle operator and his employees and agents if they permit alcohol to be carried on the vehicle). It is proposed to include a suitable similar defence in the England and Wales legislation, and to apply it to section 69, but it is doubtful whether it needs to be applied to section 70 since "permitting" is generally held by the courts in England and Wales to import mens rea and it is accordingly difficult to see how a person who permits alcohol to be carried can claim that he took all reasonable precautions to prevent it being carried.
4. Section 76(2) of the 1980 Act applies a provision in the Licensing (Scotland) Act 1976 - which provides a right for an accused person to challenge the presumption as to contents - to section 76(1) which provides that at any trial for an alleged offence under Part V of the 1980 Act any liquid in a container shall be presumed to conform to the description on the container. There is no comparable provision in the Licensing Act 1964 and this right may therefore need to be created specifically for the English offences.

5. Alcohol is given (in section 77) the same meaning as in section 139 of the Licensing (Scotland) Act 1976. In England and Wales a similar definition is contained in section 201 of the Licensing Act 1964.

6. Section 77 also defines public service vehicle and gives it the same meaning as in Part I of the Transport Act 1980; this Act has largely been repealed and reference will now need to be made to the definition in the Public Passenger Vehicles Act 1981.