PROPOSED FOOTBALL ACT (REPEAL) (SCOTLAND) BILL

JAMES KELLY MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. An analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament’s Non-Government Bills Unit (NGBU). Section 4 has been prepared by James Kelly MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website www.scraptheact.com.
SECTION 1: INTRODUCTION AND BACKGROUND

James Kelly MSP’s draft proposal, lodged on 27 July 2016, is for a Bill to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (“the Act”).

The Act was brought forward in response to a number of controversial incidents, mostly associated with Rangers or Celtic during the 2010-11 football season. The Scottish Government’s initial plan was for legislation to be in place before the start of the 2011-12 football season and it sought to achieve this by recourse to emergency legislation procedures. However, concerns were raised about this procedure and about the need for greater consultation on the Bill. When the Bill was passed on 14 December 2011, it was supported by SNP members but opposed by members of all other parties. The Act came into force on 1 March 2012.

According to the Policy Memorandum for the Bill, the “primary but not sole motivation” concerned football and a perceived need to tackle sectarian and other offensive behaviour associated with the game. It referred in particular to problems during the 2010-11 football season which had reached “an intolerable level” and included “misconduct from players and managers, death threats, and live ammunition and bombs sent to prominent figures directly and indirectly associated with football”.

The Act makes provision for two new criminal offences, one involving “offensive behaviour at regulated football matches” (section 1), and one involving “threatening communications” (section 6).

James Kelly has proposed repeal of the Act on the basis that the legislation is (in his view) flawed on several levels, including its illiberal nature and its failure to tackle sectarianism, and the fact that there is already pre-existing legislation in place to deal with the behaviour covered by the Act.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament’s website, from where it remains accessible: [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/99956.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/99956.aspx)

The consultation period ran from 1 August to 23 October 2016.

NGBU understands the consultation document was issued to various organisations, including all the football clubs in the Scottish Professional Football League, 14 football supporters’ clubs and 19 faith and equalities groups.

An event to launch the consultation was held at Fernhill Community Centre on 1 August 2016, and five public meetings to promote the consultation took

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1 Offensive Behaviour at Football and Threatening Communications (Scotland) Bill as introduced (SP Bill 1, Session 4 (2011)) and accompanying documents.
place over September and October 2016, one each in Coatbridge and Motherwell and two in Glasgow.

The consultation exercise was run by James Kelly’s parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member’s Bill. Further information about the procedure can be found in the Parliament’s standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament’s website:

- Standing orders (Chapter 9):
  [http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx)
- Guidance (Part 3):
SECTION 2: OVERVIEW OF RESPONSES

In total, 3,261 responses were received and the vast majority were submitted via “Smart Survey” (an online survey which allows responses to be completed and submitted online). Only six responses were received by other formats (direct to the member via email or in hard copy).

There were 1,493 (46%) anonymous submissions and 378 (12%) submissions where confidentiality was requested.

There were 33 responses from organisations and 3,228 (99%) from individuals.

The responses can be categorised as follows:

Organisations
- 2 from public sector bodies (Crown Office and Procurator Fiscal Service (COPFS), Glasgow City Council)
- 2 from commercial organisations (Celtic Football Club and one other)
- 2 from representative organisations (The Celtic Trust, Unite Scotland Young Members Committee)
- 7 from the third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- 20 from other categories (e.g. supporters’ clubs, local group, group of individuals, etc.)

Individuals
- 33 from politicians (MSP, MP MEP or Councillor), 233 from professionals with experience in a relevant subject, 59 from academics with expertise in a relevant subject and 2,903 from members of the public).

Because of the volume of responses received, an index of all individual respondents has not been prepared – where these are referred to in the summary, the identity number generated by “Smart Survey” has been included and the respondent’s name, or “anonymous”, indicated. A list of organisations who responded is set out in the Annexe to the summary.

There were two late responses – from the Law Society of Scotland, and from Liberty. These have not been included in the analysis below, but are available on the member’s website.

A majority of respondents were fully or partially supportive of repeal, both of the provisions in the Act relating to offensive behaviour at football (73% –

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2 Five of the confidential responses were from people claiming to speak for un-named organisations.
3 This category includes an organisation which wished its response to be confidential.
4 The number in this category includes two responses received from Fair City Unity, four from Club 1872 and one from an un-named organisation.
Question 1), and of the provisions relating to threatening communications (69% – Question 4).

The numbers of respondents who (in their answers to Questions 1 and 4) supported repeal are set out below. It should be noted that some respondents appear to have misread or misunderstood the relevant questions and answered “opposed” (to repeal) when their later comments make clear that what they opposed was the Act, and that they were in fact supportive of repeal. The exact number of respondents who answered in this way is unknown.

This issue came to light when a few individual respondents contacted the member, having realised their mistake, to request that their submissions be changed. This prompted the member’s office to check other submissions for similar mistakes that may have been made. Where these were identified, the respondents were contacted and asked whether they wished to amend their submissions. No submissions were changed without the respondent’s express consent. NGBU is aware of 32 responses where the respondent’s submission was altered as a result of this process.

It should also be noted that there was a significant degree of replication in the responses to different questions, with a number of themes recurring throughout.

The main arguments in support of the proposed Bill and the repeal of sections 1-5 of the Act (relating to offensive behaviour at football matches) included:

- The lack of time for adequate scrutiny of the 2012 Act during its parliamentary passage, and consequent flaws in its drafting.
- The lack of clarity in defining “offensive behaviour” and the criticism that the Act was consequently illiberal and unfair and arbitrary in its application.
- The targeting of football matches and the criminalisation of football supporters by contrast with other sports or events which might equally be viewed as involving anti-social or sectarian behaviour.
- The possible infringement of human rights and freedom of speech issues.
- The disproportionate impact on men aged 16-20 years and that the Act therefore discriminated against young men in particular.
- The need for the Act when there was already legislation in place to address the behaviour in question.
- The negative impact of implementation of the Act on police/football supporter relations.
Those opposed to the repeal of sections 1-5 of the Act and therefore unsupportive of the proposed Bill presented views such as:

- The Act was effective in challenging anti-social and sectarian behaviour and therefore should be retained.
- It provided a powerful message that such behaviour was not acceptable at football matches its repeal would give the impression that such behaviour was permissible.
- There was no alternative proposal to take the Act’s place.
- As an alternative to repeal, the Act could be amended to address any weaknesses.

Arguments in favour of the repeal of sections 6 – 9 (relating to threatening communications) were similar to those supporting repeal of sections 1 – 5 in terms of: the lack of clarity of the provisions, human rights and freedom of speech issues, and the fact that legislation already existed which would cover the majority of cases.

Those opposed to repeal of these sections argued that there was no adequate provision in existing law and that the provisions provided additional protection regarding online threatening communications.

*Crown Office and Procurator Fiscal Service submission*

The Crown Office and Procurator Fiscal Service (COPFS) submitted a written response “to provide some factual information … with a view to informing consideration of the issues raised in the consultation document”. It was stated that “it would not be appropriate for COPFS to engage in detail with the policy questions raised by the consultation”. The submission included reference to:

- Scottish Government statistics in the last reporting year (2015/16), and since the Act came into force, of charges reported to COPFS under section 1 of the Act and the view that “the statistics perhaps do not present the full picture … because the statistical reports represent only the main disposal or outcome in a case. It is very common that, in addition to the main disposal, a Football Banning Order (FBO), preventing the offender from attending games, will be imposed by the Court in addition to the main disposal. Many of these FBOs are not reflected in the numbers published; but the imposition of these orders nevertheless plays a role in deterrence, preventing reoffending and providing a safe atmosphere in which people can travel and support their team.”

- the Lord Advocate’s Guidelines which were published when the Act was passed and some of the features to help explain the approach taken by the police and prosecutors;
• a number of key written judgements on the legislation;

• the extraterritorial effect of the legislation and the observation that, in relation to the case of *Procurator Fiscal, Glasgow v Jordan Robertson*, “had the Act not been in force … the behaviour in that case could not have been prosecuted”;

• the fact that “some behaviour which may be prosecuted under section 1 which would not be capable, or would not be securely capable, of being prosecuted under any other provision”, and similarly that “the principal potential alternative to a charge under section 6 would be a charge under section 127 of the Communications Act 2003, but that offence is triable only on summary complaint, whereas a charge under section 6 may be prosecuted on indictment if the circumstances are sufficiently serious”.

SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out an overview of responses to each question in the consultation document.

Offensive behaviour at football (the section 1 offence)

The section 1 offence is defined so as to include a number of separate elements. One is that the offending behaviour is “in relation to a regulated football match”. The second element of the offence is that it involves behaviour that is or would be “likely to incite public disorder”.

Thirdly, the behaviour must be at least one of the following:

- behaviour “expressing hatred of, or stirring up hatred against”, a group of persons based on their religious affiliation or a group defined by reference to their colour, race, nationality, ethnic or religious origins, sexual orientation, transgender identity or disability – or against any individual member of such a group,

- behaviour motivated by hatred of such a group,

- behaviour that is threatening, or

- other behaviour that a reasonable person would be likely to consider offensive.

The proposed Bill would repeal the section 1 offence, and sections 2-5 which make related provisions.

Question 1: “Which of the following best expresses your view of the proposal to repeal sections 1 to 5 of the 2012 Act: fully supportive; partially supportive; neutral (neither support nor oppose); partially opposed; fully opposed; unsure? Please explain the reasons for your response.”

Of the 3,263 who responded to this question, 2,320 (71%) were fully supportive of the proposal to repeal sections 1 to 5; 70 (2%) were partially supportive; 13 (0.5%) indicated that they were neutral; 41 (1%) were partially opposed; 799 (24%) were fully opposed; and 20 (0.5%) were unsure.

Many of the issues raised in responses to this question were also relevant to other questions.

Support for the repeal of sections 1 to 5

The main arguments presented by supporters of the proposal to repeal sections 1 to 5 were encapsulated to a large extent in the following extract from the submission from the Celtic Trust:
“This Act was and is completely unnecessary, discriminatory and flawed in so many ways. It is claimed that it was introduced to deal with sectarianism yet that word does not appear anywhere in the wording of the Act and in fact there is ample pre-existing legislation in place to tackle the problem of sectarianism. By singling out football it compounds the myth that sectarianism is limited only to football when all the evidence points to the fact that this a problem deeply embedded in Scottish society. It is also discriminatory in that actions become criminal only in the context of football while being perfectly legal in any other situation. The Act was introduced in a blatant attempt to gain party political capital and is so badly drafted that it has been heavily criticised and deemed unworkable by many in the legal profession including Sheriffs. It has completely destroyed any trust between the Police and football supporters and the concept of policing by consent has disappeared in this context. As the primary targets for police action under this Act are young male supporters we now have a whole generation of young people who have no respect for or trust in our police force and the implications of this for society in general is very worrying.”

Similarly, Glasgow City Council commented that it was:

“fully supportive of the proposal to repeal sections 1 to 5 of the 2012 Act. We believe that the act discriminates against football fans and is an unjustifiable attack on their rights to political expression and freedom of speech. Indeed, we are concerned at the number of young men in particular that are being criminalised by the legislation. It is also deeply concerning that there is a lack of clarity associated with Section 1 of the act, something which legal professionals have identified as an issue. We very much share the views expressed by Scottish civic society, football fans, academics and lawyers regarding the Act and fully support the efforts of all those fighting to repeal the act.”

Parliamentary passage of the 2012 Act
Those in favour of repeal argued that the events that led to the introduction of the Bill that became the 2012 Act – events in the 2010-11 football season – led to the Bill being drafted in haste and rushed through the parliamentary scrutiny process. Respondents suggested that the Act was, as a result, poorly thought through and flawed in its drafting.

Reference was made to the Act as a “knee-jerk reaction”, illustrated by one respondent (ID 42322200 – anonymous), who stated that:

“The Act was brought in after the so called "shame game". A game with a few minor scuffles and a few dozen arrests. Football was apparently going to be sorted out by the new bill. What was to be sorted? The level of arrests to crowd numbers in Scottish football is tiny. I don't see any new laws to tackle TiTP [T in the Park] where deaths due to drug taking are a yearly occurrence, where rape and assaults are common and drug taking and dealing is out in the open and unopposed. There were more
arrests of drunken middle aged women at the Take That concerts than at the "shame game" but I see no legislation to counter that behaviour. Football fans have been banned from the simplest of things not because there is a problem but because there is a perception of a problem which is not backed up by numbers.”

Criminalisation of football fans where acceptable behaviour in other situations
There were views presented in response to this and other questions in the consultation that the Act discriminated against football fans because behaviour which was considered acceptable elsewhere could be considered “offensive” at a regulated football match, for example:

- ID 42315985 (anonymous) commented that: “with this law, football fans and rugby fans can sing the same song on the same train on their way to a match, but only the football fan is committing an offence”.

- Angus-John Macleod (ID 42352106) highlighted that: “with regards to many of the songs deemed offensive, these songs can be sung legally in pubs, social clubs, purchased on iTunes, and even enter the UK top 40 chart, yet are deemed too offensive to be heard at or near a football stadium”.

- ID 42702537 (anonymous) thought that: "if being offensive is to be against the law, it should be against the law for everyone".

Discrimination against young supporters
There was a prevailing view that, as the highest proportion of people charged were men aged 16-20 years, the Act further discriminated against young men in particular. The disruption and cost to these young men’s lives were also commented on. (This aspect is expanded further on in relation to responses to question 12 which relates to personal experience of the Act in practice.)

Freedom of speech and human rights issues
Following on from the theme of discrimination against young men, the theme of the apparent attack on free speech was highlighted: “They are being told what they can and can’t say or in some more extreme cases, how they should think. This sounds like something from a George Orwell novel rather than 2016 in Scotland”. (ID 46053443 – anonymous)

There were also references to a perceived incompatibility with the European Convention on Human Rights and that, if the Act was to be challenged judicially, it would:

“fall on the grounds of incompatibility with article 10 of the ECHR. The Scotland Act 1998 prohibits legislation of the Scottish Parliament that is contrary to the ECHR from being enacted. The act violates our rights to freedom of expression and cannot be justified under the proportionality test. I also believe that it fails under the procedural aspect of article 10 as there is insufficient legal certainty. The scope of the act is ambiguous and far reaching. It is not clear what constitutes offensive behaviour and
therefore there is no certainty over what you can or cannot do. Thus, it does not provide the necessary safeguards to avoid it being used arbitrarily by the Police”. (Daniel Byrne - ID 46694578)

**Existing legislation**

The consultation document set out the legislation in place to deal with negative behaviour at a football match before the Act was passed.

Many respondents argued that this existing legislation was adequate to deal with all the types of behaviour and that the Act did not provide any meaningful additional provision.

A significant number of comments were similar to those made by John Cawley (ID 42351052):

“I consider the OBFA to be an unnecessary, illiberal and inefficient piece of legislation which seeks to regulate conduct already covered by existing legislation related to anti-social behaviour and laws outlawing discriminatory behaviour such as racism and sectarianism.”

Christopher Judson (ID 46625575) felt that repeal: “should be coupled with review and rationalisation of the relevant piecemeal legislative provisions”.

**Definition of “offensive” and “reasonable person”**

Some contended that the focus on “behaviour which was offensive to a reasonable person” was too vague to provide clarity for all those involved, including football supporters, the police and those involved in the criminal justice system. James Moore (ID 42407603) set out his experience:

“As a solicitor trying to advise on such matters, it is almost impossible to advise clients as to how any particular sheriff will interpret it. It is fundamental to the rule of law that citizens should know with certainty and precision what is required of them under the law.”

It was felt that it was often individual police officers who decided what was “offensive”. Jordan Swanston (ID 42298110) suggested the Act is “so vague and the scope of the Act allows the police to “pick and choose” what they deem as offensive” and ID 42317790 (anonymous) stated that:

“This means that people are being arrested, charged and potentially imprisoned based on fictional public disorder that is being judged to be possible in the view of a single police officer. This confers too much power on the police and undermines public confidence in policing, and also leaves members of the public unclear as to whether they are committing an offence as one officer may consider it to be an offence and another may not.”
**Impact on police/football supporter relations**

A significant number of respondents criticised the negative impact the Act had had on football supporters’ relations with the police. The intrusive nature of filming fans, searches and “kettling” was described in many responses, for example:

- Andrew Harbison (ID 42319380): “the police have become heavy-handed, almost overstepping the mark”.

- Jeanette Findlay (ID 42294401): “we are filmed, followed, searched and monitored in a quite repressive and unwarranted way.”

- ID 42291957 (anonymous): “As a football fan, I see evidence at every game of a complete lack of respect by Police Scotland towards football fans. I feel that this has happened because of the implementation of the act and the need by supporters of the Act to see ‘results’ however they are obtained. Football fans are treated as second class citizens and this act simply reinforces this view.”

- Darren Park (ID 42304906) wrote about “the vindictiveness I have seen shown by some officers using this bill as their back up is quite alarming and has bred a distinct element of distrust and dislike from young people/football fans towards the police.”

Some argued that the lack of clarity about what might constitute offensive behaviour, together with what could be perceived as some over-zealous policing, had led to some supporters ceasing to go to football matches. Benny Logue (ID 42337167) described himself as:

“a 58 [year old] who has been supporting my Club since the age of 6, I have never felt more uncomfortable attending football matches and being searched, cameras thrust in my face continually, when asking questions of Police as to why I should have this happen I'm either told (on numerous occasions) to [expletive deleted] or being told I'd be arrested if I didn't move. I attend the football with my 2 sons, brother and daughter and would like to take my Grandsons but not with this act in place.”

**Level of convictions**

Glasgow City Council referred to the small number of convictions under the Act:

“We note the Scottish Government’s own Report entitled the ‘Criminal Proceedings in Scotland 2014/15’ which stated that only a ‘very small’ number of people have actually been convicted through the legislation – a total of 79 convictions last year, compared with 15,000 breach of the peace convictions. On that basis, repeal of the Act has the potential to result in advantages to the police and justice system.”
Some respondents highlighted cases where friends or family members had reportedly been charged under the Act, and described the significant impact this had made to their lives, even though charges were eventually dropped or they were acquitted after trial. One anonymous respondent shared his family’s experiences (ID 42317826):

“My brother was charged under the Act at Inverness. My family spent hundreds of pounds on legal fees, travel and accommodation whilst the trial was postponed on two occasions. Eventually charges were dropped. A total waste of time.”

Ineffective means of addressing the causes of anti-social behaviour and sectarianism
There was a strong emphasis on the possible link between the Act and its use as an ineffective tool to address anti-social and, in particular, sectarian behaviour.

There was a general view that the problem of sectarianism was much wider than that which overflowed at football stadia: “the issues the Act was set out to counter are not football issues. These are issues for the wider Scottish community and it’s there they should be dealt with.” (ID 42349655 – anonymous)

A large number of respondents argued that the Act had led to a misunderstanding about much of the culture associated with a significant proportion of football fans in the west of Scotland with an Irish background and Celtic football club, in particular. Many alleged that this had led to a legitimate political expression of support for Irish republicanism and culture being misunderstood as sectarianism. As Kristofer Kujawa (ID 42632293) stated:

“This has led to the criminalisation of people for having political opinions (eg Irish Republicans) due to a lack of education on very complex matters. Simply put, being a pro-Irish Republican does not equate to being a pro-IRA sympathiser.”

It was further claimed that other expressions of religious culture primarily made outwith a regulated football match – such as parades – were generally deemed to be more acceptable. ID 42332236 (anonymous) felt that: “Yes, there is a sectarian issue in modern day Scotland, but targeting sectarian organisations, such as parades, as opposed to those attending the national sport, is the way forward”.

Working towards a solution
The Scottish Football Supporters Association (SFSA) called on the Scottish Government to work with them, “to show leadership, to look beyond this specific legislation and to produce a far reaching innovative long term solution that puts football supporters at the heart of the game. Now is the time to
bypass the many divisions that we supporters currently have to endure, by creating a different positive landscape that helps attract fans to our grounds.”

_Extraterritorial effect of the legislation_
The difficulties arising with application and enforcement of the legislation outwith Scotland were referred to by Celtic Football Club.

_Opposition to the repeal of sections 1-5_

Some of the arguments in favour of retaining sections 1-5 of the Act are highlighted below.

_Addressing sectarianism_

There was a view throughout many of the responses which opposed the member’s proposal to repeal sections 1-5 that action was required to address the issue of sectarianism in Scotland, and the Act could be a step in the right direction.

Some argued that the section 1 offence should be retained because it was successfully challenging sectarian behaviour. One respondent, Robert Donald (ID 42309350) indicated that he “regularly attends fixtures as a supporter of one of the teams more affected by the Act and it has changed behaviour for the better”.

There was an assumption amongst others that sectarian behaviour would increase at football matches, if sections 1-5 were repealed. For example, Alex Rough (ID 42308471) said:

“Scotland has a huge sectarian problem and football matches are the only environment in which sectarian comments are deemed acceptable as part of the ‘banter’. To repeal this act would encourage the sectarian idiots and ensure that another generation of Scottish football fans are subjected to songs about religious battles from centuries ago. I don't want my kids to bear witness to this moronic behaviour and I wouldn't wish it on anyone else.”

One view was that the Act sent out a powerful message to Scottish football supporters that offensive and sectarian behaviour at football matches was not acceptable. ID 42309311 (anonymous) argued “sectarian hatred is such a problem in Scotland and repealing this Act sends entirely the wrong message to people that sectarianism is acceptable”.

_Lack of evidence_

One respondent (ID 42421654 – anonymous) argued that there was a lack of evidence that the Act was not delivering what it was intended to do:

“There is no evidence that it isn't working – there are no systematic academic studies that have shown this and I note that none have ever been quoted by campaigners or journalists – there is a simple principle objection (which is fine as long as it is honestly stated) and the
assertions of campaigners. As I understand it the official independent evaluation says that attitudes have changed and behaviour has improved.

I am unsure if this current proposal to repeal the law is based a) on an understanding that there is no problem of offensive behaviour at football to be solved, or b) that there is a problem but the law is the wrong solution. If it is a) – then evidence shows that Scots and football fans disagree (the campaign group petition included a very small number of signatories), and if it is b) then I think it needs to be clearly stated that there is a problem, and also the proposal of an alternative solution.”

No alternative proposed
A number of respondents opposed the repeal on the basis that there was no alternative proposal to tackle sectarianism in football. Alan Young (ID 42308713) commented “until a better way to deal with sectarianism in Scottish football is found, this law must stay in place” whilst ID 42314565 (anonymous) believed that, whilst “this law is not perfect, it is better than the nothing that is proposed to take its place”.

Domestic violence
There was a supposed link made to the number of domestic violence incidents after football matches:

“Domestic violence increases after high profile football matches: while the emphasis of the legislation is not on the impact on families, I think keeping the legislation would help to send a message about acceptable behaviour.” (Ann McCulloch - ID 45762267)

Amend current legislation
Some also highlighted that, instead of repeal, the Act should be amended to address some of its weaknesses.

Review of implementation and impact
Some felt that: “an outright repeal of the Act may send a worrying message that prejudiced based and threatening behaviour at football is acceptable, even where other legislation could also apply” (Stonewall Scotland) and that four years after the Act came into force:

“it would be appropriate for the Scottish Government to conduct a detailed review of its implementation and impact in tackling prejudiced based incidents in relation to football and threatening communications. This review should be conducted with the view to improving implementation, and where appropriate reforming the Act to ensure that it is both effective in reducing instances of threatening and offensive behaviour and consistently enforced across different prejudiced based behaviours.”

A similar view was echoed by the Equality Network, who felt that the Act did not appear to have been used effectively to address homophobic behaviour –
statistics were quoted in relation to charges reported under the Act from ScotCen Social Research which brought “into question how effectively the Act is being used to address this behaviour [which appeared] to be an implementation problem rather than a fault in the legislation”. The Network believed that repealing the Act:

“would condone expressions of prejudice and hatred at football matches, as well as suggesting that this behaviour is being decriminalised. We therefore believe that ... instead, in our view, the scope of section 1 should be reviewed, and potentially amended. The review should acknowledge and bear in mind that homophobia, biphobia and transphobia are a significant problem within football, that this is unacceptable, and that more needs to be done to combat it”.

**Advantages and disadvantage of repeal**

**Question 2: “In your view, what would be the advantages and disadvantages of repeal to: (a) the police and justice system; (b) football clubs; (c) football supporters?”**

There were 2,437 responses to this question.

**(a) Police and the justice system**

Comments on the advantages of repeal to the police and justice system included:

- There would be an improved relationship between the police and the justice system with football fans. Richard Swan (ID 42343532) suggested that: “Some degree of trust could be regained by the country’s youth in the police and justice systems, as at the moment this group of society is being routinely and unfairly criminalised for actions that anyone else in society can freely take”. ID 46053443 (anonymous) described the Act as having created an “almost irreparable relationship” between young people and the police.

- ID 46219104 (anonymous) contended that the Act had brought the police into disrepute and contained “too many grey areas”, adding that “there is not one police [officer] I know who likes this legislation”.

- The “subjectivity” of policing the Act was referred to (ID 46415861 - anonymous) and BEMIS Scotland contended that “individual Police Officers do not have sufficient socio-cultural knowledge to implement the Act without unintended prejudice”. Fans Against Criminalisation argued that the Act had given the police “far too extensive powers and a degree of discretion in defining offensiveness which is dangerous”, adding that it has “made their work more difficult” due to the level of distrust created with sections of the community.
• There would be fewer prosecutions against football fans that were either later dropped or led to acquittals. Richard Swan (ID 42343532) further argued that “the justice system would also benefit from not having extensive time wasted by cases that are routinely dismissed due to their faulty basis”. Some respondents (for example, ID 45270110 - anonymous) argued that fewer police officers would be required at football games.

• FoCUS (Football Coordination Unit for Scotland) would be disbanded and this should free up resources for use elsewhere in justice system:

  “Whilst it may be argued that FoCUS would be required regardless of this Act, the Act was sold to us as an anti-sectarian initiative. Indeed, I understand money allocated towards Anti-sectarian initiatives is directed towards FoCUS instead. This Act does nothing to combat sectarianism. Nor does FoCUS. I am convinced that were this money to be reallocated to educating people, the justice system and society generally would benefit from fewer sectarian related crimes.” (James Walsh - ID 44769199).

• There would be a return to using pre-existing legislation to target sectarian and other offensive behaviour.

• It would bring greater clarity to the justice system and “should also remove an unnecessary obstacle between young males and the police. Further I think it allows the police to be clear what people are being charged for rather than have a catch-all “offensive behaviour” law.” (ID 44755635 – anonymous)

Disadvantages of repeal to the police and justice system included that it would be more difficult to prosecute offensive behaviour if the Act was repealed.

In its submission, the COPFS drew attention to successful cases brought under the Act which had resulted in individuals being brought to justice who could not have been prosecuted under other legislation (such as breach of the peace and section 38 of the Criminal Justice and Licensing (Scotland) Act 2010).

(b) Football clubs

Comments on the advantages of repeal to football clubs included:

• Clubs would benefit in general as: “currently they are stuck in the middle. They have to maintain a relationship with the police but are also reliant on their supporters for keeping the clubs going. A lot of clubs had done some great community work and had been tackling societal issues that are quite frankly nothing to do with the game of football” (The Celtic Football Trust).
• Football fans who had stopped attending matches due to seemingly intrusive policing under the Act would feel more comfortable returning to watch matches.

• There would be a better atmosphere within stadia during matches.

• There would be a possible increase in income as attendance improved and an increase in income which would allow clubs to spend more on players.

• There would be greater opportunities for working with fans to tackle any problems and allow clubs to work constructively with supporters to tackle sectarian behaviour. One anonymous respondent (ID 46371189) argued that repeal would allow clubs to work with stewards and police to create a safe environment for fans, tackling threatening and dangerous behaviour, racism, sexism and homophobia, “without worrying about the stupidity of the Act”.

• Some respondents (such as ID 45196249 – anonymous) argued that repeal would lead to clubs saving money currently spent on policing at matches.

• A number of respondents (for example, ID 47061518 – anonymous) suggested that repeal could help address a developing culture of suspicion between fans and clubs due to clubs disclosing supporters’ personal details to police.

Comments on disadvantages of repeal to football clubs included:

• There would be a possible increase in offensive behaviour at football stadia.

• It would lead to a possible decrease in attendance as more supporters avoided exposure to offensive behaviour. ID 42352067 (anonymous) thought that “the disadvantage of repeal to the football clubs would be financial. Families, women and children would stop attending again as the environment would be seen to be unsafe and unsavoury”.

• There would be a loss of effective legislation to charge people with offensive behaviour.

• Repeal would send a signal that offensive behaviour was acceptable in Scottish football – ID 42351249 (anonymous) argued that “it would send a signal to the world that Scotland is a regressive nation which tolerates bigotry in public”.

•
• One anonymous respondent (ID 46238566) expressed concern that repeal may actually cause clubs to take “a back seat” rather than “taking the lead” on dealing with offensive behaviour.

(c) Football supporters

Comments on advantages of repeal to football fans included:

• Glasgow City Council believed that the Act:

  “unfairly discriminates against football fans. The advantages would be that their rights to freedom of speech and rights to political expression would no longer be under attack by this unfair legislation if it was repealed. As a Council we believe that all citizens have the right to live their lives free of discrimination and the same applies in this instance to football fans attending a football game”.

Other respondents (for example, ID 45240311 – anonymous) considered that repeal would allow football fans the same rights as followers of other sports such as rugby, with some arguing it to be inappropriate that a separate law should exist for football (for example, Gregory Higgins – ID 45303322). One anonymous respondent (ID 46899716) argued: “you criminalise innocent people, you get a backlash”.

• Several respondents (such as ID45297722 – anonymous) argued that the Act was criminalising young (and, some argued, working class) people who would otherwise not be in trouble with the police. Thomas Anderson (ID 46405620) argued that repeal would mean fans no longer having to “live in fear of offending an imaginary person and suffer prosecution as a result”.

• The resultant symbolism of supporters being treated in the same way as fans of other sports was raised by a number of respondents. For example, one (ID 42289179 – anonymous) suggested that fans “can expect to be treated under the same laws as all other citizens.”

• Those football fans who had stopped attending matches due to intrusive policing under the Act would feel more comfortable returning to watch matches.

• Supporters with children would feel more comfortable taking them to watch matches.

• A number of respondents referred to the way some supporters had reportedly been arrested by the police (such as by raids on domestic properties or at work) and to an often lengthy and delayed court process, which had caused financial and emotional worries. For them, repeal of the Act would remove or address some of these criticisms.
Disadvantages of repeal to football fans:

- A potential increase in offensive behaviour at football stadia. For example, Ian Stewart (ID 45278025) contended that repeal might lead some fans to continue with sectarianism, believing themselves to be “untouchable”.

- One view was that the Act was better than nothing (ID 45411098 - anonymous) argued that, should it be repealed, then “society takes many steps backwards and the bigots on both sides think they have won”.

- There could be a further decrease in attendance numbers as more people stayed away to avoid exposure to offensive behaviour.

Question 3: “Leaving aside the issue of whether sections 1 to 5 of the 2012 Act should be repealed, what do you think needs to be done to reduce offensive behaviour at football matches (including, for example, by politicians, the police and the wider justice system, clubs, fans and other interested parties)?”

There were 2,479 responses to this question and a wide range of views expressed about what could be done to reduce offensive and anti-social behaviour at football matches.

Definition of “offensive behaviour”
As demonstrated earlier in this summary, many argued that the decision to define what constituted offensive behaviour as what “a reasonable person would be likely to consider offensive” was a fundamental weakness of the legislation. It was contended that this left too much to subjective, personal interpretation, often of one person. It was also argued that this created a level of confusion, as what one reasonable person considered to be offensive might not be considered offensive by another reasonable person.

The Celtic Trust commented on the core issue of interpreting what was meant by “offensive behaviour”:

“It is impossible to define or quantify offensive behaviour and that is what makes this Act so unacceptable and wrong. No one has a right not to be offended as what offends one person may be perfectly acceptable to another. Offensive does not equate with criminal as this suggests. If any behaviour in a football context is criminal then there is a whole set of existing legislation to deal with this. Under this Act individual police officers can decide that that he/she is ‘offended’ and can use its terms to pursue a citizen under the code of criminal law.”

Continuing on the theme of greater clarity of what was acceptable, a number of respondents felt that there was a need for more detailed information about what fell within the definition: Kenneth Wright (ID 44733670) suggested: “a
set of rules produced or republished by our legislators and enforced by our police for what is acceptable or not, to be widely published to clean up the behaviours of the minority of football fans, clubs and associates.” Similarly, Joe Sherry (ID 44741892) felt that there might be a need for:

“a list of songs etc that are deemed unacceptable. …. The simple solution is to communicate to the fans what is acceptable and what is unacceptable and deal with any instance of abuse using pre-existing laws. I do accept that there is freedom of speech and rights to express political views and opinions which complicates things somewhat. That is why there needs to be clear guideline for society as a whole.”

Others, such as ID 46053864 (anonymous), argued that the term “offensive behaviour” is so vague that it is essentially meaningless.

Strengthen the 2012 Act
A number of respondents argued that, rather than repealing the Act, it should be strengthened and more effectively enforced. Increasing numbers of police officers at games or strengthening the sanctions available were common recommendations. One anonymous respondent (ID 42308837) argued that:

“This legislation should not be repealed, it is useful and it is effective. …. I don’t want this legislation repealed and any further measures to reduce offensive behaviour should be seen as enhancements to this legislation and not a replacement of it.”

The role of education
A significant number of respondents highlighted the need for greater education of children and young people about offensive behaviour and the issues of sectarianism, as illustrated in one anonymous response (ID 42310689) which stated:

“Education is the key to tackling the majority of these kinds of issues. By educating and enlightening the public about why this kind behaviour is unacceptable will allow us as a nation to move forward. I think this could be done more prominently at football matches, especially at fixtures where sectarianism has been a problem historically. […]

It should also be taught at schools in the same way children are taught that racism and discrimination are wrong. By showing the children why this is wrong they may be able to influence their parents’ views and also those of their future family to help create a better society”.

Glasgow City Council believed that education was key to tackling the issue and provided details of the initiatives it had implemented within schools and from a community safety perspective. It was believed that: “these initiatives play an important role in tackling the issue of sectarianism and similar approaches should be adopted at a national level".
In highlighting the role of education, several respondents referred to the existence of denominational schooling. For example, Ian McLean (ID 46335598) argued:

“Fundamentally, sectarianism is reinforced by splitting children up at age 5 and sending them off to separate schools. In the 21st century, Scotland needs to throw off the shackles of an outdated, antiquated education system”.

In respect of changing attitudes, ID 47161072 (anonymous) argued for a comprehensive education programme, pointing out that, 30 years ago, drinking and driving was widespread and that those caught were “often considered unlucky victims of an overzealous system”. The respondent asserted that this showed that attitudes could change over time, if a comprehensive approach is adopted.

**Role of fans**
There was a view that individual fans needed to do more to change their own behaviour at football matches and recognise themselves that some of their actions were unacceptable – anonymous respondent (ID 42388414) suggested that:

“Fans themselves need to take a good, hard look at how they conduct themselves on a match day. The only reason you should be inside the stadium is to support your club and the team on the park. There is no need for political views, songs of hatred or bigotry or physical/verbal abuse of stewards or police.”

The introduction of supporters liaison officers was seen as effective in other countries (for example, in Sweden), and should be introduced in Scotland (Michael McKeown – ID 46012474).

ID 47220698 (anonymous) advocated clubs inviting young fans to focus groups and encouraging them to be ambassadors for their clubs.

**Role of politicians**
There was a view that politicians might have “limited knowledge of the game and its followers [and] should cease interfering in how it is organised” (Alex Jones – ID 43592065) and that there was a need to legislate beyond the realms of football:

“Politicians need to promote a unified message on this issue and have legislation that can combat real crimes effectively, rather than victimise what are often innocent football supporters. Only prosecute those who deserve it and stop choking Scottish Football and allow it to flourish.” (ID 43835467 – anonymous)

There was also view that politicians should leave tackling these issues to the clubs, fan groups, police, charity and other relevant bodies.
Role of the media
Criticisms were levied at the role of the media, as illustrated by the following submissions:

“The press must accept responsibility for their role in continually stoking tensions with stories and headlines designed to elicit negative emotions.” (ID 43834891 – anonymous)

“Sectarianism happens in relation to how people are brought up. Bigots will always exist in Scotland whether we have football teams or not. The media also try to drum up the rivalry in the run up to big games between the two sets of fans and then reap the rewards if there is violence. They seem to escape the same scrutiny as the players and clubs.” (Andrew Peden - ID 43264703)

“Media in Scotland have a responsibility and duty of care regarding reporting of issues not connected to football, police are way too intimidating to away fans regardless of club.” (ID 45001271 – anonymous)

Role of football clubs and SFA in tackling anti-social and sectarian behaviour
Some respondents argued that individual clubs, led by the Scottish Football Association (SFA), should do more to tackle offensive behaviour by their fans and within their stadia. Stuart Gray (ID 42309668) believed that:

“Clubs need to make a genuine effort to identify individuals and to ban them in the future. For decades they’ve paid lip service to be seen doing the right thing but with little action to back it up. This needs to change. Investment in face recognition technology should seriously be considered for the largest football grounds in the country. Clubs should be responsible for creating advertising/marketing material to create awareness of unacceptable behaviour and its consequences.”

There was a degree of criticism of the SFA for not doing more. Ian Lowe (ID 42730982) put forward the view that:

“The SFA … has been complicit in sectarianism and offensive behaviour for years. They have made lukewarm gestures towards the problem, but not acted decisively. They could, and should, dock points for sectarian behaviour by fans. If singing of sectarian songs caused the team to lose the points for a match, it would not take long before players and genuine fans would revolt and demand the silence of the bigots.”

The option of penalising football clubs for their fans’ offensive behaviour was raised in a number of responses. (This is discussed in more detail at the section on question 6 of the consultation.)

Policing tactics
It was suggested that Police Scotland should change its policing policies for football matches to move away from what were considered “intrusive” policing
methods, such as filming large numbers of fans, routine searching of fans and “kettling”, to develop a more constructive relationship. David Conway (ID 42364320) presented the view that:

“Some of the officers could do with training to address their attitude towards fans. I regularly see Police officers interacting with the fans in a relaxed manner and they deserve the praise for the work they do. Others, especially those with the yellow caps and wearing the cameras, why do they feel the need to stand and hold cameras in the face of young adults. There are enough cameras around and inside the grounds to capture images-there is no need to provoke young supporters.”

Other respondents argued that there should be stricter stewarding and greater training should be provided to deal effectively with offensive behaviour.

*Freedom to express cultural or political beliefs*

Some respondents suggested that the Act itself might be sectarian, citing the interpretation of what some fans considered to be legitimate expressions of cultural or political beliefs as offensive behaviour. Some respondents alleged that, in judging these expressions of cultural or political beliefs to be offensive behaviour, the Act legislated for a cultural or political bias against Catholics or supporters of Irish republicanism. One anonymous respondent (ID 42464611) argued that:

“There needs to be a proper discussion about what the actual issues are and a large issue is anti-Catholicism. There will constantly be attempts to repeat the “both as bad as each other” mantra but that is not the reality. There are people who will find *The Soldiers Song* or *The Fields of Athenry* “offensive”, but those songs should in no way be illegal. This should not be viewed as the equivalent of *The Billy Boys* or *The Famine Song*, but they often are to avoid the appearance of targeting one group of fans and not the other.”

Gavin McQueen (ID 43833696) suggested providing training to assist police officers to determine what should be considered an expression of sectarianism and what should be considered a cultural or political expression, so that they would “be able to differentiate between properly criminal behaviour and a mere free expression”.

*Target tackling sectarianism across wider society, rather than just at football*

Continuing on the theme of sectarianism, many argued that offensive behaviour associated with football was a symptom of sectarianism and that the most effective way to tackle it was to address the broader causes of sectarianism in Scotland. Donald Graham (ID 42665925) argued that: “if we concentrate on sectarian behaviour, there are many more examples of this behaviour in wider society than at football grounds and by tackling that particular problem in wider society we will affect how fans behave at football grounds.”
A recurring theme was about behaviour which could be considered offensive under the Act being permissible outwith the confines of a football match (such as singing certain songs on parades and marches). Some respondents suggested that it would be more effective, and more equitable, to focus equally on this sectarian behaviour rather than focusing on offensive behaviour at football matches. ID 46371189 (anonymous) argued that:

“A good place to start would be banning the sectarian parades that blight our towns and cities all year round”.

Another view was that politicians, faith leaders, officials and players should come together to address these issues:

“This is a long term problem which requires a long term approach to solving it. Politicians of all parties, religious leaders of all faiths as well as players and officials of all clubs should work together to engage with young people in all schools across Scotland’s communities. Sectarianism does not just take place for ninety minutes on a Saturday afternoon. It is a mindset which has been learned and needs to be replaced. The narrow focus on football does not do this”. (ID 46450182 – anonymous)

Glasgow Youth Council argued that existing initiatives such as “Sense over Sectarianism” and “Stand up to Sectarianism” helped to address the issue and, in particular, highlighted the use of the creative arts through “The Divided City” project to tackle sectarianism.

There was a view that more funding should be made available to relevant organisations to highlight and address these issues.

**Alcohol and football supporters**

A significant number of respondents raised the issue of the availability of alcohol around football matches. One view was that alcohol should be made more available as it would help create a more sociable atmosphere, with some respondents giving the example of alcohol at rugby matches. However, an alternative view was that excessive alcohol consumption was responsible for much of the offensive behaviour on match days.

**Making football stadia more family-friendly environments**

Encouraging a more family-friendly environment in football stadia was promoted as a means of prompting improvements in supporter behaviour. Suggestions included changes to seating arrangements and policies to encourage women and children to attend matches.

Similarly, one respondent (ID 42350374 – anonymous) suggested that clubs should:

“slowly introduce mixed seating as I think this and this alone is the reason Rugby is so well policed, the fans do it themselves. This would need to be phased in with trial areas in each ground but once it was fully
embedded, the "them and us" tribal mentality would dissipate and the animosity along with it. The culture of Scottish football has changed over the years but it still needs work to get us away from the point where someone can experience abuse purely because of what team they support.”

Andrew Hall (ID 46797257) was supportive of a more creative solution, in line with other European countries in respect of supporter areas:

“Safe standing and the separation of supporters into standing and singing, standing, occasionally standing, sitting, child, OAP and [VIP] sections. Each managed to keep volatile sections apart. Each with their own code of conduct and enforced rules (ie no prolonged standing in seated sections).”

It was felt that a less “men only” environment at football stadia would discourage some negative behaviour – Alan Keegan’s (ID 42397657) suggestion to clubs was to “encourage more women and children and the fans will police themselves”. Another respondent said: “I think embracing new audiences is key – making women, children and minorities feel more comfortable.” (ID 42421654 - anonymous)

**Change the day and time of matches**

Another view (ID 42328429 - anonymous) was that changing the date and time of football matches might reduce offensive behaviour:

“Play games on a Friday night and Sunday at mid-day would be the easiest way to avoid the majority of issues. Sundays would be the preferred option, mid-day the optimal time. Above all, the proven commercial fact is [that] games played on a Sunday, especially in the lower leagues, attract bigger and better behaved crowds.”

Elsewhere, it was suggested that Saturday matches could be held in the morning, or at least before 1pm (ID 46233458 - anonymous).

**Extent of the problem**

There were some challenges to the view that there was a significant amount of offensive behaviour at football matches that needed to be reduced and it argued that the extent of the problem had been exaggerated. For example, one anonymous respondent (ID 42291957) argued that:

“I have been a season ticket holder for over 30 years. The behaviour at football grounds is, on the whole, nothing to be concerned about - certainly a vast improvement from when I started going. This act appeared to be brought in because two managers had a go at each other and a couple of players responded. It was grandstanding by politicians and was nothing whatsoever to do with fan behaviour. The Police can (and have) interpreted ‘offensive behaviour’ as pretty much anything – even cases of fans with Palestine flags or t-shirts being cited as in breach of the act!! So, in short, the ‘offensive behaviour’ is largely
in the heads of people that don't go to football matches being told what to believe by compliant politicians and media."

**Threatening communications (the section 6 offence)**

Sections 6-9 of the Act relate to the criminalisation of behaviour which threatens or incites serious violence and threats which incite religious hatred. The offence is committed where communication would cause a reasonable person to suffer fear or alarm and the accused either intended to cause fear and alarm, or was reckless as to whether the communication of the material would cause fear and alarm. The offence would apply to text, images, video and recorded sound, communicated by any means (by post, on leaflets or posters or posted on the internet).

**Question 4:** “Which of the following best expresses your view of the proposal to repeal sections 6 to 9 of the 2012 Act: Fully supportive; partially supportive; neutral (neither support nor oppose); partially opposed; fully opposed; unsure? Please explain the reasons for your response.”

Of the 3,132 who responded to question 4, 2,027 (64%) were fully supportive of the proposal to repeal sections 6-9; 155 (5%) were partially supportive; 105 (3%) were neutral, 51 (2%) were partially opposed, 689 (22%) were fully opposed; and 105 (3%) indicated that they were unsure.

There were also a significant number of responses where there was an apparent misunderstanding of the context of the provisions of threatening communications, and a linkage made to earlier provisions of the Act and specifically to football.

Some of the arguments presented in response to question 4 are also covered by the material which appeared in responses to question 5 on action to tackle threatening communications.

**Support for the repeal of sections 6 to 9 of the 2012 Act**

**Lack of clarity of provisions**

Those in favour of repeal commented on the lack of clarity of the provisions – the Celtic Trust, for example believed that:

“It is simply a very bad and unfair law. Let’s repeal it and if further legislation is needed to ensure there is no criminal activity relating to the ever increasing electronic world then this should be carefully considered and drafted.”

**Human rights and freedom of speech**

The issue of human rights and freedom of speech was raised in a number of responses, including comments such as: “This Act seriously threatens civil liberties and freedom of expression” (Kevin McSherry - ID 42312473) and
“You cannot deny a human being his basic human rights to say as he desires”. (ID 42614235 – anonymous)

**Existing legislation**
One respondent was of the view that:

“First, the section 6 offence appears to be largely unnecessary. According to section 6 of the consultation paper, The Scottish Government itself acknowledged in 2015 that existing legislation already covers the majority of such cases. The charges statistics in Tables 7a and 7b on page 11 of the consultation paper tend to bear this out: the Tables show only a small number of charges, even fewer cases proceeding to court, and only one conviction to date.” (ID 46625575)

**Opposition to the repeal of sections 6 to 9 of the 2012 Act**

**No adequate provision in existing law**
A number of respondents felt that section 6 should be retained on the basis that the offences were not adequately provided for in existing law.

**Online threatening communications**
Those who were in not in favour of repealing sections 6 to 9 contended that to repeal these sections would allow people to continue to issue threatening messages while hiding behind social media, as illustrated by one respondent’s comments:

“I’ve seen enough of the hatred fuelled by the use of social media to know that repealing this section would have the worse effect. Social media is where those [who] choose to hide do so, making their hatred known in the belief that they are untouchable. We’d only serve to open the floodgates if we were to let this be repealed.” (ID 42308563 – anonymous)

Another respondent put forward the case that there should be no difference between physically threatening somebody “in person” and threatening a person via social media:

“People need to be protected from threatening behaviour. There should be no difference between shouting threatening behaviour into a person’s face on the street and shouting it into their twitter or facebook page. This is not an issue of freedom of speech but of offensive behaviour.” (ID 42312357 – anonymous)

Others referred to the issue of threats being delivered by post and to incidents which occurred when the Celtic manager and certain politicians were targeted:
As this Act came into place following the mailing of bullets to the then Celtic manager I believe it would be madness to repeal this.” (Alex Rough - ID 42308471)

“Given the past events such as letter bombs to politicians and football people, this part of the Act should stay.” (ID 42318448 – anonymous)

**Parity across all protected characteristics**

A number of submissions referred to the need to have parity of treatment for all protected groups: Stonewall Scotland had raised concerns previously that Condition B of the Section 6 offence related only to material that was threatening and was communicated with the intention of stirring up religious hatred and that:

“singling out religious hatred in this way is out of step with other recent advances in equalities legislation which aims to create a parity of protection across relevant characteristics …. Stonewall's research suggests that a quarter of lesbian, gay and bisexual young people have experienced cyber bullying, and one in ten have been bullied via text messages (2012). It is therefore important that threatening and abusive communications are treated with parity across all protected characteristics.”

Similarly the Equality Network stated that:

“When we gave evidence to the Justice Committee in 2011, our key concern in relation to the second half of the Bill was that the condition B offence under section 6 only covers religious hatred and does not cover disability, sexual orientation or transgender identity (stirring up hatred on the grounds of race was already covered by other legislation).”

**Need for review**

In view of the continuing increase in threatening communications online, some respondents suggested that there should be a review of these sections in terms of their use and effectiveness, possibly resulting in amendments to the Act if necessary.

**Question 5:** “Leaving aside the issue of whether sections 6 to 9 of the 2012 Act should be repealed, what do you think is the most appropriate way of tackling threatening communications while upholding freedom of expression (for example, use of other legislation)?”

There were 1,855 responses to this question.

**Existing legislation**

There was an argument that there was already existing legislation in place which would cover the offence of threatening communications, such as section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, Part III of the Public Order Act 1986 (incitement of racial hatred), section 74 of the
Criminal Justice (Scotland) Act 2003 and section 96 of the Crime and Disorder Act 1986. Glasgow City Council stated that:

“We note that many have argued against the need for such legislation related to tackling threatening communications. We therefore believe that other legislation which is already in existence would be the most appropriate way of tackling threatening communications while upholding freedom of speech.”

Education

Education was seen as a means of tackling threatening behaviour. Comments included:

"primarily teaching the young at school why sectarianism/bigotry are bad alongside why it’s wrong to behave irresponsibly online with consequences." (ID 2290500 – anonymous)

“It has to be education again. People who are using such threats etc. have these views, views which are deeply rooted in the west of Scotland and beyond, arresting people will be a short-term solution and in some cases teach a lesson, however on a large scale it will not end the hatred.” (ID 42296267 – anonymous)

“Education of why some language is offensive. Much better to be sent on an education course than be banned from the football for 9 months to only be found not guilty.” (Jack O’Neill - ID 42291871)

“Holding football clubs responsible, more communication from the clubs warning supporters and a campaign that would take this to schools. Clear guidelines and consistency with police when dealing with these issues.” (Patrick Harrold - ID 42293391)

Social network providers

There were references to the need for social network providers to be held to account: “For social media platforms, such as Twitter and Facebook, I believe either the platform providers and ISPs should be compelled in law (Potentially as part of a ‘warrant’ or for active cases) to provide all information possible for the account holder such that people are held to account.” (ID 46186579 – anonymous)

Other comments

Some felt that it was inappropriate to have the provisions of the earlier sections of the Act on offensive behaviour at football and those relating to threatening communications set out in one Act:

“Whilst I do believe cyber-bullying and certain communications need some means to deal with the individuals involved, often those posting such material (generally youngsters) are completely unaware of the effects of what they are doing and certainly in no way intend to carry out any threat, or perceived threat. The linking of the 2 separate types
of legislation (football/communications) in one Act strikes me as bizarre and amateurish. In all honesty, I do not know enough about this aspect of the Act to make a particularly informed comment, but the fact it is attached onto possibly the worst piece of legislation in this country in living memory leaves me with an entirely negative view, and no faith that it will be implemented in a fair, transparent and intended manner.”  (ID 43533164 – anonymous)

Another felt that there should be a special unit to deal with the issue:

“The police should move with the times and have specialist departments for this type of behaviour. The Scottish Government should also set aside funds specifically for this task. In conjunction with the social media sites as a lot of the law governing these sites is not UK law but US law.”  (Rayleen Kelly - ID 43359622)

Measures to penalise clubs for offensive behaviour by supporters

The consultation document referred to the Scottish Government’s indication that a form of "strict liability" could be a way to crack down on "unacceptable conduct" 5, and this had been considered by the Advisory Group on Tackling Sectarianism in its final report  Tackling Sectarianism and its Consequences in Scotland (April 2015).

Under the strict liability rule, UEFA member associations and clubs are responsible for any violation of UEFA regulations committed by any of the people concerned, regardless of fault. This strict liability imposed on member associations and clubs means that even if they have committed no fault, the member association and club are responsible for the misbehaviour of their supporters. Once it is established that such incidents have occurred, the club is automatically held responsible and punished accordingly.

Question 6: “Would you support measures to penalise football clubs for offensive behaviour by their fans?  If so, should it be necessary to show that the club was at fault (for example, by failing to take reasonable steps to control fans’ behaviour) – or should “strict liability” be applied?”

Of the 3,083 who responded to this question, 1,150 (37%) supported measures to penalise football clubs for offensive behaviour by their fans, and 1,352 (44%) opposed such measures.  581 (19%) indicated that they were unsure.

Support for penalising clubs (including by strict liability)

Some respondents supported penalising clubs as an effective way of tackling offensive behaviour at football matches on the basis of strict liability; others

5 Matheson ultimatum to football chiefs over cup disorder, BBC News, 1 June 2016.
expressed qualified support, believing that holding clubs responsible for fans’ behaviour was an appropriate measure but that, for example:

- It should only apply to behaviour within the stadium.
- Recovery of costs should be pursued by clubs from individual fans.
- If a club could demonstrate that it had followed measures to address fans’ behaviour, then it should not be held accountable.
- An independent body should be the ultimate authority to oversee strict liability procedures.
- It should only apply where it could be proved that the offending supporters had club allegiances.
- Penalties should be a matter for the football authorities and not for the government or police.
- Clubs could encourage positive behaviour, not just penalise negative behaviour and lead by example.

One respondent (ID 46104109 – anonymous) felt that decisions regarding strict liability should be taken out of the hands of clubs:

“Turkeys will not vote for Christmas … and if fans step out of line then the club should suffer, this will soon force the clubs to take action against their own fans and also encourage fans to examine their own behaviours”.

Another view was that strict liability rules were already applied to UEFA competitions and so should also apply to SFA and SPFL competitions: “This will not fix everything but will motivate most fans to conform to behaviour that is not offensive.” (ID 44595559 – anonymous)

Other comments on strict liability and penalising football clubs for supporters’ offensive behaviour

There were divided views on the issue of whether clubs did enough to tackle offensive behaviour. One respondent (ID 42318398 – anonymous) argued that:

“While clubs cannot and should not be held responsible for individual fans, they should be able to evidence that reasonable steps are taken (continually and consistently) where any example of offensive behaviour has been brought to their attention. This also includes consistent efforts to evolve a culture [of] enjoyed, amicable, supportive yet competitive sport. In their advertising, promotional material, behaviour of players, policies and rules etc. serious, genuine and ongoing effort should be evidenced, accessible and open to scrutiny. If they cannot do this, then
they should be penalised for contributing to the problems resulting from this behaviour.”

“Offensive behaviour”

For some, the term “offensive” was again emphasised as needing a clear definition; others argued that it would be imperative for a list of all behaviours which would be considered “offensive” to be drawn up and made publicly available. This would inform fans about what behaviour they could expect to be challenged on. On the contrary, Fans Against Criminalisation thought that:

“a sensible, working definition of offensiveness would be impossible to reach … offensiveness is subjective, and we do not believe that people have the right to ‘not to be offended’. We fundamentally believe that attempts to curtail expression in this way are illiberal and infringe upon civil liberties, notably the civil liberties of citizens who also happen to be football supporters”.

A number of responses highlighted that, with many fans holding season tickets and with the extensive use of CCTV in stadia, it should be possible for clubs to identify and penalise offending supporters and thus root out offensive behaviour.

Opposition to strict liability and holding clubs responsible for fans’ behaviour

Many responded to the question by stating that they did not support strict liability - analogies were drawn with other sectors/businesses and the impact such a procedure would have on them, where they could be penalised for the actions of a customer or an individual or group of individuals, for example, in a political party or business establishment.

A prevailing view was that it would be unfair to penalise the club and all its fans on the basis of a small minority of fans’ behaviour. Indeed, Fans Against Criminalisation asserted that:

“the continued political emphasis on exaggerating the extent of the apparent misbehaviour of football fans and then attempting to create capital out of this, to be irresponsible and immature. The hysteria which now dictates the narrative when discussing the behaviour of football fans stands as a barrier to dealing with the very serious issues of hate crime, violence and prejudice.”

One respondent (ID 42300527 – anonymous) argued that: “strict liability not only punishes the clubs but also punishes the majority of supporters”.

Celtic Football Club considered that strict liability:

“is not effective; on the contrary, it is counter-productive. It can not only encourage unacceptable conduct on the part of supporters (or individuals purporting to be supporters), but it can also de-incentivise investment by clubs in best practice (if, for example, a club is going to be
financially sanctioned no matter what investment has been made). By way of example, there is no evidence that the strict liability system operated by UEFA is effective in improving supporter behaviour or reducing the number of disciplinary cases brought by UEFA”.

There was a concern that groups of fans could infiltrate the other team’s stands and deliberately behave in an offensive way in order that sanctions would be handed out. It was felt that any strict liability rule and enforcement regime would need to ensure that safeguards were in place to identify and penalise such conduct.

**UEFA model**

Reference was made in a number of submissions to the UEFA model – ID 47151003 (anonymous) was of the view that:

“If this is the model of strict liability proposed, it is fraught with difficulties in terms of implementation. Would it be the Scottish Government who would enforce it (again questions would be asked over use of public resources)? Would it be the SFA or SPFL who would enforce it (they don’t seem keen on doing so at present)? There then arises the issue of what type of behaviours would result in a club being fined or worse. For example, would St. Johnstone be in the dock for their fans flying a Palestinian flag as occurred in 2014 when they were fined by UEFA? Would other forms of political expression be stifled in football as a result of strict liability?”

BEMIS Scotland felt that “blanket punitive measures” could disproportionately affect “minority” views and remained unconvinced that strict liability in its current format in the European context “was either adequate as a punitive social instrument or fair”.

**Alternative measures**

Those against strict liability also felt that there were already/could be measures in place, or put in place, which should be sufficient to deal with problems, including: better policing and more stewards, and offending fans could be penalised by closing down sections of the grounds or preventing them travelling to away grounds. (Gerard Gatens - ID 46792357)

Celtic Football Club referred to the proposal for the development of the role of the supporter liaison officer in Scottish football: evidence suggested that such a role had “a crucial part to play in the management of, and improvement of, supporter behaviour” and considered that such developments would assist to reduce unacceptable behaviour at football matches”.

There was also an argument that clubs were already taking measures to ensure that fans behaved responsibly – the Celtic Trust, for example, stated that:

“Football Clubs are already doing what they can to ensure good behaviour by fans. Celtic for example have stadium regulations which
are a matter of public record and before every match supporters are reminded of ‘unacceptable behaviour’ I am sure other Clubs have similar policies. However a Club cannot and should not be held responsible for the actions of any individual. In a free society each individual is responsible for his/her own actions and if these are unlawful then this should be pursued in the normal manner. Holding Clubs responsible for the actions of supporters in general is open to many aspects of abuse.”

Need for wider action
It was also argued that penalising clubs did not address the fundamental causes of anti-social behaviour and sectarianism. Offensive behaviour at football could be seen as the symptom, not the cause, of sectarian behaviour in Scotland and that more should be done to tackle the cause. An anonymous respondent (ID 42291957) argued that:

“At the end of the day, you have to remember that if it’s bigotry that’s the problem being addressed, it needs addressed elsewhere. Football is a manifestation of bigotry, not the cause of it.”

A matter for the relevant authorities
There was an opinion that any decisions regarding penalising clubs were a matter for the relevant authorities. Stonewall was of the view that the decision on whether to implement a system of strict liability was one to be considered in consultation with relevant football authorities and clubs, but it did feel that all clubs had a responsibility to implement a zero tolerance approach to offensive, abusive or threatening behaviour. Glasgow City Council believed that it “should be a matter for the football Governing bodies to determine”.

Uncertainty about strict liability
Some were not clear about their support or otherwise about the question of penalising clubs or implementing strict liability. One respondent was “conflicted” about the merits of strict liability but, on the whole, thought that: “Strict Liability will be too difficult to define and administer impartially. I also do not think that current standards of behaviour at football merit this response. The regular levels of violence witnessed at grounds in Italy, Russia, Poland and some Balkan states is completely absent from Scottish football grounds so the closure or partial closure of grounds is not really merited.” and suggested that: “Perhaps ‘mild liability’ would be a goer, proportionate to our current situation and absent of the Scottish Cringe that always thinks a rush to judgement and legislation is a good thing, lest the rest of the world find us wanting”. (ID 42366350 – anonymous)

Another would wish to see: “the finer detail of what is deemed to be offensive. Before introducing measures like this all clubs would need to agree what is acceptable to all other clubs and fans given clear guidance on what is acceptable as well as the consequences to their club if rules not adhered to”. (ID 46272204 – anonymous)
Transitional arrangements

Any Bill to repeal the 2012 Act is likely to need to include “transitional provisions” to deal with any cases which may be “in the system” at the time that repeal takes effect.

Views were sought on how the Bill should deal with:

- offending behaviour committed before the date on which the repeal of the 2012 Act offence takes effect. Should the section 1 and section 6 offences be preserved for the purposes of offences committed before that date, or should no further prosecutions be capable of being brought, across the board, after that date?

- ongoing criminal proceedings for section 1 and section 6 offences at the time of the Bill’s commencement. What should happen where an individual has already been charged (and the charge is still outstanding) at the point of commencement?

Question 7: “What transitional arrangements do you think would need to be included in a Bill to repeal the 2012 Act?”

1,484 responses were received to this question.

No further action and previous convictions quashed

Some felt that cases which were currently being pursued through the courts under the 2012 Act should be dropped if the Act were to be repealed, and that all previous convictions under the Act should be quashed:

“Transitional arrangements should include at the very least a halt to any process of pursuing an individual under this flawed legislation. Repeal will mean that this law should never have been enacted in the first place and so consideration should be given to removing all record of any conviction under it while it was in force. That would be only just.” (The Celtic Trust)

Fans Against Criminalisation believed that all fans convicted under the Act should have the opportunity to appeal these convictions and that there should be a transitional arrangement to allow for such a process to take place.

All pending cases dropped

Others felt that any pending cases should be dropped should the Act be repealed:

“Any pending charges should not be pursued. There would seem little point.” (Andrew Walker - ID 42321577)

“If the act were repealed it would be logical to drop all pending charges brought under it, however at the discretion of the prosecuting
authorities alternative charges might be applied if applicable.”
(Kenneth MacKenzie - ID 42317548)

**Specified cut-off date**
Another view was that if the Act were to be repealed then no further charges could be brought after a specific date:

“I think [it] should not be possible for prosecutions to be brought after the date specified.” (ID 42424996 – anonymous)

“No further prosecutions should be capable of being brought across the board after that date.” (ID 42634916 – anonymous)

One respondent felt that there should be a six month transitional period. (ID43956233 – anonymous)

**Charges under the Act pursued**
Others felt that those cases which were “already in the system” should continue to be pursued:

“For those who have already been charged under the 2012 Act, I think the process would have to be carried out, in terms of the case going through courts etc.” (ID 42296267 – anonymous)

**No transitional arrangements – continue under existing legislation**
A number of respondents stated that, in their view, there would be no need for transitional arrangements, as there was already legislation in place which could replace the 2012 Act:

“Given there is legislation in place outside the act then no transitional arrangements would really be required”. (ID 42313278 – anonymous)

“Would there need to be a transitional phase? Ongoing prosecutions should be stopped and all offending behaviour reviewed against other relevant legislation.” (ID 42347910 – anonymous)

“There is no need for transitional arrangements we have enough suitable legislation to deal with any unlawful event carried out by football fan or any other member of society.” (ID 42370547 – anonymous)

**Replacement legislation**
One respondent felt that the Act should not be repealed until there was legislation to replace it in force. (ID 43769865 – anonymous)

**Financial implications**

**Question 8:** “Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have?”
Of the 2,990 responses to this question, 306 (10%) thought there would be a significant increase in cost; 128 (4%) felt there would be some increase in cost; 410 (14%) that it would be broadly cost-neutral; 393 (13%) that there would be some reduction in cost; 1,027 (34%) that there would be a significant reduction in cost; and 726 (24%) were unsure.

As with other questions, there appears to have been some misunderstanding by some respondents about the distinction between financial impact of the proposed Bill to repeal the Act, and the financial costs of the Act itself.

Increase in costs

Respondents who were of the view that repealing the Act would cause a significant or at least some increase in cost cited reasons such as:

- More court time would be required and there would be an increase in policing as a result of attempting to prosecute using legislation which was not fit for purpose.
- Extra stewarding and policing would be required.
- There would be an increase in social costs from increased anti-social behaviour.
- The cost of material damage to property and local businesses could be anticipated.
- An increase in medical treatment costs might result.
- There would be a loss of revenue to football clubs as a result in falls in attendance.

One respondent referred to the use of parliamentary time and resources spent on the Bill when the repeal of the Act was not required. (ID 43038893 - anonymous)

Cost neutral

Those who believed that the financial impact of the Bill would be cost neutral put forward arguments such as:

- There were already existing laws in place to deal with offences covered by the Act.
- Any costs incurred should be offset by the reduction in time and cost in prosecuting individuals.
Reduction in costs

Among respondents who felt there would be some or a significant reduction in cost if the Bill became law, by far the largest majority of comments related to savings which, they believed, would be brought about by a reduction in policing and criminal justice system costs in particular, including arguments that:

- The low conviction rate suggested that the Act had resulted in a costly and ineffective use of these systems, with “trivial things getting pushed through [the] courts.” (Carolann Guthrie - ID 42328737)

- The likely disbanding of FoCUS (the Football Coordination Unit Scotland – Police Scotland’s football crime unit) would achieve considerable savings and “proportionate and appropriate police staffing levels at matches alone should provide a significant cost saving.” (ID 42342270 – anonymous)

- “Vast amounts of money are being wasted at the moment pursuing people for 'offences' which are only offences in a football context. Stop all this and this money can be diverted to real police/justice work.” (The Celtic Trust)

- There would be savings to private individuals if they were unjustly charged in terms of legal fees and time off work.

One respondent concluded that: “The long term cost benefits will massively outweigh the initial outgoings to repeal the bill”. (Christopher Hackland - ID 44738860)

Unsure of cost implications

In terms of those who expressed uncertainty about the financial impact of the Bill, there were a number of additional comments about the focus of the Bill:

- The issue of costs was of less relevance than that of tackling antisocial behaviour: “Doesn’t matter, the point of the Bill is not financial but to combat anti-social behaviour.” (ID 42310409 – anonymous)

- The main issue was about protecting personal rights and freedom of expression: “It’s not really a cost issue is it? The debate is whether this is an infringement of freedom of expression. The cost of implementing this (or not) does not seem relevant”. (David McDonald - ID 42365063)
Equalities issues

Question 9: “What overall impact is the Bill likely to have on the following protected groups (under the Equality Act 2010): race, disability, gender (including transgender), age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity?”

Question 10: “In what ways could any negative impact of the Bill on any of these protected groups be minimised or avoided?”

Of the 2,994 responses to question 9, 832 (29%) thought there would be a positive impact, 202 (7%) felt that the Bill would have a slightly positive impact to some degree on the protected groups; 1,217 (41%) were of the view that it would have a neutral effect, 91 (3%) that there would be a slightly negative effect; and 652 (22%) that there would be a negative effect.

There were 1,347 responses to question 10.

Positive impact on protected groups

Regarding the views of those who responded that the impact of the Bill would be positive on the protected groups detailed, a number of themes arose, some of which were of a general nature, and included suggestions for how the legislation and its implementation could be improved in the future.

The majority of such comments related to sections 1 to 5 of the Act (offensive behaviour at football).

Those commenting directly on the benefits of the Bill included Glasgow City Council, which was of the view that the Bill was likely to have a positive overall impact on all the protected groups, and Fans Against Criminalisation, which thought that repealing the Act would have a positive impact in relation to age, gender and race and on those discriminated against on the grounds of socio-economic status.

One individual offered the view that there was no negative side to repealing the Act and that: “rethinking the act entirely and giving out proper guidelines on what is deemed offensive would only be positive progress”. (ID 42396081 – anonymous)

Impact on particular groups

There were comments on the impact on the apparent discrimination to one particular age group and gender – young men:

“the Act has impacted very negatively on young men and that is a discriminatory effect that will end if the Act is repealed. So the Bill to repeal the Act will have a positive effect on at least two protected groups.” (ID 43758049 – anonymous)
Fans Against Criminalisation felt that the legislation disproportionately criminalised young men and that “Concerns regarding the ages of those who tend to be charged are clearly expressed in the Evaluation Report of the legislation published by the Scottish Parliament and conducted by the University of Stirling in 2015”.

There were a number of comments made in response to other questions which also related to protected groups. In particular, there was a focus on particular religions and nationality:

“No one has the right not to be offended however everyone has the right to not be abused because of their skin colour, religion, nationality, sexual orientation, etc ... Scottish society has failed to accept that overwhelmingly "offensive" behaviour at football has been anti-Irish and anti-Catholic racism. Why is the question not "What do you think needs to be done to reduce racism/bigotry etc."? By trying to equate expression of Irish identity (never mind expressions of Irish Nationalism and Republicanism) with anti-Irish/catholic racism through the widest definition of “sectarianism” possible the true nature of offensive behaviour at football has been hidden behind the convenient ‘both as bad as each other’s mindset.” (ID 43271403 – anonymous)

Neutral impact

There were few responses which directly commented on the impact being neutral - one which did:

“I'm not sure that the repeal of the bill would have any noticeable impact on these protected groups as it doesn't seem to particularly protect them just now." (ID 44977536 – anonymous)

Negative impact

Of the respondents who believed that the impact would be negative to some extent, many individual respondents simply responded that the Act should not be repealed:

“Leave the original legislation as it stands, the only persons who are likely to be negatively impacted are those of a sectarian nature who were the targets and why the legislation was drafted and put in place in the first place.” (ID 42310018 – anonymous)

The Equality Network had specific concerns that:

“the Bill is likely to have a negative impact on the hate crime protected groups, namely: race, religion, disability, sexual orientation and transgender identity, because, by repealing the 2012 Act, it would send
a message that behaviour at football that is motivated by hate on these
grounds is being decriminalised, and is therefore acceptable”

and suggested that after a

“review and consultation, it may well be that sections 1-5 should be
adjusted in scope and clarity, and that section 6, with or without
amendments, might become part of a wider set of provisions to deal
with the rapidly increasing problem of online hate and harassment.”

Stonewall was also concerned about a possible negative impact on the
protected characteristics of sexual orientation and transgender identity and
felt that:

“Whilst there have been very few charges brought under the Act in
relation to behaviour relating to these characteristics, we are
concerned that a repeal of the Act could send a worrying message
about the seriousness of behaviour which is offensive and threatening
towards LGBT people”.

Work should take place to strengthen “the implementation of the Act with
regards sexual orientation should happen alongside awareness raising
campaigns about the impact of anti-LGBT behaviour and engagement with
LGBT players, professionals and fans”.

Section 6 – Threatening communications
A number of responses to question 4 on the repeal of section 6 referred to
equalities issues, particularly in relation to the fact that section 6 only covered
religious hatred – these points are not replicated here.

How negative impact could be minimised or avoided

Some commented on ways in which other measures might be taken forward
to mitigate any negative effect, including amending the existing Act “to iron out
any areas of concern” (ID 42309190 – anonymous), or to make it “more
proportional and make clubs contribute to the costs”. (ID 42309495 –
anonymous)

Existing legislation
Some respondents felt that existing legislation would provide sufficient
protection if it was implemented properly:

“If we revert back to the use of existing legislation and use this
proactively I actually think those groups would all benefit because the
law would be working in a more focused, supportive, holistic, inclusive
and appropriate framework. That’s really about internal management
and ensuring that these priorities form part of policing's priorities going
forward.” (ID 42301112 – anonymous)

Others thought that legislation already in place was fit for purpose:
“The act does not serve to protect disadvantaged people so the effect would be minimal. (James Cryans - ID 42291447)

“It should make no difference as existing legislation already provides protection for these groups. (ID 42290500 – anonymous)

“As long as existing laws are implemented fairly and consistently, all groups should be equally protected as well as being equally accountable for their behaviour. (Hamish Whittle - ID 42397124)

This was supplemented by other views that there should be guidance to police, the Procurators Fiscal and Sheriffs on the use of existing legislation.

Consultation and education
The importance of consultation with relevant groups was also emphasised:

“If you had all stakeholders involved in creating a new Bill, you would get a more positive “buy in” from clubs, supporters, police and all stakeholders.” (ID 42821937 – anonymous)

as was the significance of education:

“Always educate against hatred and discrimination at a young age especially within the family unit.” (Thomas Mitchell - ID 42395969)

General

Question 11: “Have you any other comments to make on the proposed Bill or on the matters raised in the consultation document?”

Of the 1,196 responses to this question, many re-stated whether they were in favour of, or opposed to, the repeal of the Act, and the majority of these views have already been dealt with, so are not repeated in any detail here.

Those in favour of repeal included comments on:

- The illiberal nature of the Act, and the lack of clarity of what is and is not deemed “offensive”.

- The targeting of a particular section and age group within one specific arena:
  “Any conduct which is illegal should be illegal irrespective of the venue. Football supporters should not be held accountable to a higher standard than any other individual. The criminalisation of young people for expression of free speech is a disgrace for this country and only alienates football supporters more.” (ID 42976216 – anonymous)
• The amount of funding which could be put to better use elsewhere.
• The increased level of mistrust between football supporters and the police.
• The reported detrimental impact on individuals' lives of being charged under the Act.
• There were already laws in place prior to the Act.

In its submission, Glasgow City Council referred to the terms of a motion passed by the Council on 8 September 2016 – the motion covered a number of the areas relating responses to this question:

“Council condemns the Offensive Behaviour at Football and Threatening Communications Act 2012; believes that the Act discriminates against football fans and is an unjustifiable attack on their rights to political expression and freedom of speech; shares the concerns of Scottish civic society, football fans, academics and lawyers and praises all those involved in campaigning against the Act; further believes that sectarianism has no place in our society and that education is key to tackling the issue; and supports moves by opposition parties at the Scottish Parliament to repeal the Act.”

Arguments against repeal included:

• The Bill should be abandoned and replaced with one to reinforce the existing Act.
• The Act’s provisions should be widened to cover all public places on match days.
• The Act should be retained and reinforced with the introduction of strict liability.
• It would take some time for the Act to change behaviour:

“The Act which it is proposed to repeal is preventative in nature and it will take some years for behaviour to change, so we must persist with it, to the benefit of future Scots. The attempt to repeal it in fact works against good order at football matches as it gives comfort to fans intent on offensive behaviour. Women, children, families, older people, folk affected by disabilities and their carers all enjoy football matches, but any increase in offensive behaviour will discourage these groups from attending, and be a barrier to their enjoyment. The sectarianism which is such a scourge in Scotland does not need to be fed in this way again, and spill out onto our streets.” (ID 42352067 – anonymous)

There were some comments of a more general nature, such as the importance of a considered and common-sense approach which “would be in
everyone's interest, consistent management from police and clubs would be the most important part of having any suitable outcome”. (Mark Gallagher - ID 42337501)

Other comments referred to the need for a wider more societal approach through education:

“The key issue is that the criminalisation of young people for the behaviours they learn from their parents, elders and society is counter productive. It would take generations to eradicate bigotry in general and from football grounds in particular. This can best be achieved through education. Only education can eliminate bigotry for all times - not just 90 minutes of football.” (Dr Uday Mukherji - ID 42440923)

One respondent commented on the use of the term “sectarian” within the consultation and felt that:

“This word is not helpful for this debate as it means something different to everyone and ultimately means nothing. The word that should be used is ‘Bigotry’ …. ‘Sectarian’ is a word of convenience to make both ‘sides’ in the debate equal. But the reality is, there is a bigotry problem in society. To say otherwise is simply a deflection from reality.” (ID 46186579 – anonymous)

Another respondent referred to the Scottish Government’s review of the operation of sections 1 and 6 of the Act and expressed the view that:

“It may be expected that the current consultation, though of course not initiated by The Scottish Government, will in practice gather much of the information and opinion from stakeholders which a formal review would have taken on board. Accordingly I do not think that repeal of the 2012 Act should be delayed in order that a formal statutory review can now be undertaken. However, were the Scottish Parliament to vote not to proceed with repeal, it would then in my view nevertheless be all the more important for The Scottish Government to carry out the review and rationalisation of current legislation.” (Christopher Judson - ID 46625575)

**Question 12: “Do you have any direct experience of the Act in practice that you would like to share?”**

There were 1,201 responses to this question, and they provided a mixed response, with a substantial number of individuals providing detailed accounts of their negative experience which they attributed to the existence of the Act, others being of the view that the existence of the Act had improved their experience at matches, and some respondents having had no experience of the Act. Again, the information in the responses highlighted issues which were thematic in responses to a number of other questions.
Negative experience of the Act in practice

A significant number of individuals reported negative experiences of the Act in practice. Common themes which emerged from these reports included:

- The apparently arbitrary filming and corralling of supporters by police: “Filming of ordinary football fans in calm, non-threatening situations and kettling of fans for no reason making [their] way to a match”. (ID 42352804 – anonymous)

- The perception that the same actions would be interpreted differently if they had not taken place at a football match:

  “I … know of a group of 4 teenagers in my home town who took part in the march in George Square against the bombings by Israel on Palestine. They each had a Palestinian head scarf, and sang songs of freedom and independence well known in the Irish people's fight for freedom. The group led the front section of the march, and were not only not arrested by police, but were safely escorted on their march. The police had no need to arrest them as none of the songs contained any sectarian or racist content. That same group at the next League Cup match were arrested. Their head scarves and their songs were identified as the cause of offence by the over-zealous FoCUS officers. All charges were thrown out by the Sheriff in Hamilton as having no basis.” (Richard Swan - ID 42343532)

  “Over policing … A completely different experience of the police at football games (rude, sneering, stand-offish) as opposed to the Commonwealth games (friendly and helpful) or large concerts.” (Andrea McMahon - ID 44763142)

- Many accounts involved the experience of young supporters and the reportedly unfair and over-zealous targeting of that age group by police.

- The immediate and longer term impacts on supposed offenders and their families as a result of them being arrested, as illustrated in the following extracts:

  “I do know of 3 people whom I attend football with regularly. Although they were all arrested under this act, jobs were lost, family were affected and they were banned from going to the football they were all cleared once they finally reached court. Guilty until proven innocent you might say.” (Patrick Harrold - ID 42293391)

  “I work as a criminal solicitor in Glasgow – a great deal of those persons I’ve dealt with under the OBFA could have been dealt with under other existing legislation and a sizable minority of
those persons I have dealt with would not have been prosecuted had it not been for the ridiculously open ended nature of the term ‘offensive behaviour’ – these persons are almost exclusively young men who have no previous contact with the criminal justice system but are left with criminal records that will blight the rest of their lives.” (Sinead Corrigan - ID 42615011)

- Some respondents felt that the effects of the Act, because of the alleged policing intimidation, were such that:

  “if it continues will likely stop going to games. After going to football for over 25 years that would be a difficult decision but one I would feel necessary as I can no longer give to the game whilst these actions take place, and whilst this law stands.” (ID 44979793 – anonymous)

Positive experience of the Act

Some felt that the existence of the Act had improved their experience at football matches, with views including that games were less intimidating, more family friendly and more civilised since the introduction of the Act.

One individual felt that there was “clear evidence on several occasions when supporters offending were quietened and [they] adjusted [their] behaviour when they realised they were being filmed and could be charged under the Act.” (Robert Donald - ID 42309350)

Another supporter of the Act stated that:

  “The way police acted after the last Scottish Cup Final was a perfect example of how to proceed under the act: slowly and carefully without provoking riots by over-reacting at the time. Via videos and photos people were identified who uttered sectarian abuse and the later arrests were well publicised and the clubs also acted in concert with the police to ensure offenders were banned from grounds.” (Francis Buchanan - ID 42405400)
SECTION 4: MEMBER’S COMMENTARY

James Kelly MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

I would like to place on record my sincere thanks to those who have made the consultation on my proposal an overwhelming success. This includes, but is by no means limited to: the Non-Government Bills Unit who assisted my team and me through the consultation, as well as the 3,228 individuals and 33 organisations who provided substantial and thorough feedback. This consultation received the highest number of unique responses for a Member’s Bill, and I am thoroughly grateful to those who responded.

The result of this consultation has been substantial and clear: my proposal to repeal and scrap the Football Act has overwhelming support from members of the public and civic society who responded. Of the 3,261 responses, a majority were supportive of repeal of both aspects of the Act - 73% supported repeal of sections 1 to 5 (71% fully, 2% partially), and 69% supported repeal of sections 6 to 9 (64% fully, 5% partially).

Shortly after the end of this consultation, the Scottish Parliament underlined this weight of public support and it too resolved (on 2 November 2016) that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act must be repealed. I have invited the Scottish Government to bring forward immediate plans for repeal; to date the Government has not responded.

Consistent with the mandate from this consultation and the Parliament, it is my intention to proceed with my proposal and in due course to introduce a Football Act (Repeal) Bill with the continued support of the Non-Government Bills Unit.

The vast majority of those who responded identified themselves as individuals and many of these provided engaging, detailed comments alongside their survey answers. The degree of detail in their responses has added real currency to the consultation - both in support and opposition to the proposal. The sheer volume has meant that there has been some replication of key arguments; it is entirely understandable that these rehearse the points made when the Government’s Bill was being considered by the Parliament, while it has been in operation, and since the launch of my consultation.

Supportive comments have echoed and expanded on the discussion points included in my consultation which focused on the way in which the Act criminalises certain behaviours only in a football setting, in particular young men, underlining the concern the Act is illiberal. There was continued debate about the vagueness of ‘offensive behaviour’, which has originated from the poor, rushed drafting of the legislation. Many were able to illustrate their concerns that the Act has had negative consequences with regard to freedom of speech and human rights. Commentary has explored how relationships with the police have become strained under the Act, as well as the way in
which sectarianism can be tackled in wider society, including our schools and communities.

The range and calibre of views raised and options discussed in response to question 3 (which asked ‘what do you think needs to be done to reduce offensive behaviour at football matches?’) demonstrate how thoroughly engaged respondents are with the issues at hand. As my Bill progresses through the legislative process I expect these issues to be rehearsed.

My proposal generated a great deal of debate and discussion. I therefore welcome the engagement of those opposed to the proposal. Notably contributions opposing repeal have parallels with those from respondents supportive of repeal: the common theme is how we tackle sectarian behaviour in Scotland. Where these responses differ is a perception that the Act is an effective solution, rather than recognising it as something which has created its own problems amongst the football supporter community.

Regrettably, some of these responses disregarded details of other legislation which can be employed by the police; however I hope that through Parliamentary scrutiny, these matters can be explored more fully. Included in this summary is an assessment of the option of amending the Act; having considered the consultation responses, little more than 1% of respondents have expressly called for this.

When I launched this proposal, I was absolutely clear that, across the political spectrum, there is agreement that sectarianism cannot be tolerated anywhere in Scotland, and this was a clear theme that filtered through in responses.

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was passed in the Scottish Parliament without any cross party support. The consultation has confirmed there is a substantial public mandate to proceed through the legislative process to progress repeal. The Scottish Parliament has confirmed its desire to progress with repeal. It is on this basis I propose to introduce legislation in the Parliament as soon as possible.
ANNEXE

Organisations who responded to the consultation:

BEMIS Scotland
Carluke Shamrock Celtic Supporters Club
Celtic Football Club
The Celtic Trust
Club 1872
Comhaltas na h’Alban
Crown Office and Procurator Fiscal Service
Eire go brach
Equality Network
Fair City Unity
Fans Against Criminalisation
Glasgow City Council
Glasgow Youth Council
Harrogate True Blues Rangers Supporters Club
Irish Heritage Foundation
More than 90 Minutes Celtic Fanzine
North Ayrshire Shamrock Celtic Supporters Club
Peter Scarff CSC
Scottish Football Supporters Association
Section A (Accies Fans Group)
Stonewall Scotland
Tommy Burns CSC
Unite Scotland Young Members Committee