

# **Scottish Government Report on the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012**

**June 2015**

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## MINISTERIAL FOREWORD



Football is Scotland's national game, and all supporters share in that odd mixture of pleasure and agony which keeps alive the passion they have for their teams. Healthy rivalry is the life blood of the sport and no one should ever be ashamed of the strong ties that give them a lifelong bond to local and national teams and which are so central to so many lives. A Scotland without passionate football rivalry would be a much poorer country.

However when supporters allow their passion and rivalry to descend into abusive behaviour, bigotry and, in extreme cases, violence, whether at home or overseas, those supporters bring shame on our country, our clubs and all fair-minded people across Scotland. Despite recent challenges, Scottish football is still widely watched around the globe and the successes and failures both on and off the pitch are hugely influential in shaping how the global community perceives Scotland and her people. Such behaviour also has a negative impact at home, as the singing, chanting and shouting of racial and sectarian comments acts as a way of normalising derogatory attitudes and souring relationships or inflaming existing, strained relationships within or between Scotland's communities.

The Scottish Government recognises that the vast majority of football supporters are well-behaved and simply wish to support their team and enjoy the game, but, regrettably, there are those who are intent on causing problems and ruining the enjoyment of the match for other spectators in their pursuit of their alternative agenda. The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was designed to send out a clear message to those who let their passion and pride become violent or offensive. It tells the world that Scotland is a country which will not tolerate any form of prejudice, discrimination or hate crime.

Of course the Scottish Government recognises that social issues like racism, sectarianism and homophobia are not simply confined to football, and predate football, and we are taking a broad range of actions in wider society to stamp out such insidious behaviour. Through our wider work to tackle these social problems we have seen a real appetite for change, particularly among young people, and communities across Scotland have told us that they are, for example, tired of the worn out rhetoric of sectarianism and the impact it is having on people's lives. I wholeheartedly agree with this view and am committed to working with all those who seek to effect positive change in their community or across Scotland as a whole.

I welcome the evaluation reports on Sections 1 and 6 of the Act which are a further step on Scotland's journey to building a better nation and these evaluations will inform our future thinking on the issues we seek to address in ridding Scotland of prejudice and offensive and threatening behaviours. The evaluations demonstrate that the Act has had a positive impact and our approach has delivered real improvements in behaviour at football and online. I will take on board the recommendations from these reports and continue to work with partners to ensure that the suggested improvements are fully considered and implemented to continue to improve the match-day experience for all supporters and all those who interact with those travelling to or watching a regulated football match.

Much has been done already and I thank all of those fans who have rejected antisocial abuse and the prejudices of the past, in favour of positive support for their teams, and who celebrate their heritage while not denigrating or offending others. We will look at how we can work with our partners, both inside football and within the wider stakeholder community, to take the evaluation recommendations forward, as part of our on-going monitoring of the implementation of the Act.

I believe the legislation is working. However, there are important messages within the evaluation around how the legislation is implemented and how we can help fans, to understand the impact of their behaviours and to divert them from activity that could lead to criminal charges. This is why I am today announcing that we are pleased to be working with SACRO – Scotland’s leading organisation for reducing reoffending in communities - to develop their ‘Diversion from Prosecution’ programme into a Scotland-wide programme and, where appropriate, through the programme make available an alternative disposal that reduces the likelihood that someone committing an offence, under the Act, will end up with a criminal record.

Evidently, however, there is still much else for Scottish Government and our partners to do and we must work together to free Scottish football and, indeed, Scottish society from negative, destructive prejudices of the past, wherever these remain. This is a challenge that we are determined to meet.

Scotland is a nation that has a proud history, but it is a nation with many cultures, and regardless of whether someone is a Scot by birth or by choice, regardless of ethnicity, national identity, or sexual orientation all our many cultures are worthy of celebration and pride. All of Scotland’s communities enrich our nation and contribute to the vibrant fabric of our society that makes Scotland the country we know and love.

It is time for all football supporters who are truly dedicated to the sport, to stand up and be counted and lead the way in ensuring that passion is not allowed to become synonymous with prejudice, and rivalry synonymous with bigotry. The prize will be a more positive environment for all fans that can help clubs to attract ever more families and other new supporters to enjoy a magnificent sport and source of entertainment; allowing football clubs to better attract further sponsorship and investment.

A handwritten signature in black ink, appearing to read 'Paul Wheelhouse', written in a cursive style.

**PAUL WHEELHOUSE MSP**  
**Minister for Community Safety and Legal Affairs**  
**12 June 2015**

## **INTRODUCTION**

1. This is the Scottish Government's report on the operation of the offences under in section 1(1) and section 6(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (the Act). The Act placed a statutory requirement that Scottish Ministers must lay the report in the Scottish Parliament by 1 August 2015. It should be read in conjunction with the evaluations of the two new offences created under the Act, the COPFS reports on hate crime, and the Scottish Government analyses of the charges reported under the Offensive Behaviour etc. Act in 2012-13, 2013-14 and 2014-15.

2. The Act was always intended to be part of a range of work to tackle abusive behaviour and was never meant to be a single fix. Indeed, we do not believe that societal problems like sectarianism, racism or homophobia can be eradicated through legislation alone. They are complex problems which can only be addressed through a range of actions.

3. The detailed analysis for charges under the Act in 2012-13 was published at <http://www.gov.scot/Publications/2013/06/4590> and the analysis of charges under the Act in 2013-14 were published at <http://www.gov.scot/Publications/2014/06/8566>. The statistics for 2014-15 and the two evaluations are published alongside this report and can be found at:

<http://www.gov.scot/Publications/Recent>

## **BACKGROUND**

4. A central objective of the Act was to tackle sectarianism by preventing offensive and threatening behaviour related to football matches, and in doing so, aiming to clarify and strengthen the law in relation to sectarian and offensive chanting, and prevent the communication of threatening material where it incites religious hatred or threatens serious violence.

5. The impetus for the Act was a particularly troublesome season in 2010/11 which saw problems associated with Scottish football reach an unacceptable level. In particular the Celtic FC v Rangers FC Scottish Cup replay on 2 March 2011 featured a number of incidents involving players on the pitch and a clash between the two club managers at the end of the match. Within the ground itself, there were 35 arrests for a variety of sectarian and racial breach of the peace offences. Following the match, Strathclyde Police reported a sustained increase in the level of violence and disorder.

6. Associated with this was an unacceptable level of sectarian threats online, on social media and elsewhere. In March 2011, the then Celtic manager Neil Lennon was the target for two parcel bombs. He had additionally received live bullets through the post, as did some Celtic FC players. Viable explosive devices were also sent by post to other public figures associated with Celtic FC – Trish Godman MSP, then one of the Scottish Parliament's Deputy Presiding Officers; and the late Paul

McBride QC, who had represented Celtic FC, as well as to Glasgow-based Irish republican organisation, Cairde na hÉireann. Subsequently, in May 2011, Mr Lennon was approached while in the team dug-out by a Hearts fan during a match at Tynecastle.

7. This increased pattern of threats and disorder was the catalyst for the introduction of the Act.

## **OVERVIEW**

8. The Act introduced two new offences aimed at preventing offensive and threatening behaviour related to football matches and preventing the communication of threatening material intended to stir up religious hatred. The two new offences are under Section 1 of the Act ('Offensive Behaviour at Regulated Football Matches') and Section 6 ('Threatening Communications').

### **Section 1 – 'Offensive Behaviour at Regulated Football Matches'**

9. An offence is committed under Section 1 if a person engages in behaviour which is or would be likely to incite public disorder. "Behaviour" is defined in Section 1(2) of the Act.

10. The [Lord Advocate guidelines](#) are clear that "otherwise offensive" behaviour can include flags, banners, songs or chants in support of terrorist organisations or which glorify, celebrate or mock events involving the loss of life or serious injury. Section 1 does not criminalise the singing of national anthems, making religious gestures, or general football banter - even if in bad taste - in the absence of any threatening, hateful or otherwise offensive behaviour that risks public disorder.

11. An offence can be committed at a regulated football match; while the person committing it is entering or leaving the ground; on a journey to or from a regulated football match; or at any venue televising a regulated match, with the exception of domestic premises. It can also apply to a person engaging in threatening or offensive behaviour towards somebody travelling to a match, even if the person committing the offence themselves was not planning to attend. The definition of a "regulated football match" is wide.

12. An offence can be committed under the Act even where the match is held outside of Scotland, if it involves a national team representing Scotland or a club which is a member of an association or league based in Scotland.

13. A person guilty of an offence under Section 1 is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

## **Section 6 – ‘Threatening Communications’**

14. The threatening Communications offence is not confined to football and applies to threats more generally. Under Section 6, an offence is committed if a person communicates material to at least one other person which threatens a person with serious violence or death, or incites others to kill or commit a seriously violent act against a person, or which implies such a threat and where that communication would cause a reasonable person to suffer fear or alarm and the person sending the material either intended to cause such fear and alarm, or was reckless as to whether the communication of the material would cause such fear and alarm; or consists of threats made with the intent of stirring up hatred on religious grounds.

15. The Lord Advocate’s guidelines make clear that Section 6 does not stop peaceful preaching or proselytising, restrict freedom of speech, including the right to criticise or comment on religion or non-religious beliefs, even in harsh terms, or criminalise jokes and satire about religion or non-religious belief.

16. Conviction under Section 6 of the Act can carry a maximum penalty of a fine and/or up to 5 years imprisonment.

## **Section 11 – ‘Evaluation’**

17. Section 11 of the Act requires the Scottish Ministers to lay before Parliament a report on the operation of the s1(1) and s6(1) offences during the ‘review period’ which is the period from 1 March 2012 until 1 August 2014. The report requires to be laid before Parliament no later than 1 August 2015 (12 months after the end of this review period).

18. In the period since the Act has been introduced the Scottish Government has published three detailed annual analyses of charges reported under the legislation, in 2012-13, 2013-14 and 2014-15 – these provided on-going information about the nature of the charges, the accused, victims and criminal proceedings. To provide a fuller understanding of the implementation and impact of the Act, the Scottish Government commissioned evaluations. Independent researchers based at The University of Stirling, in conjunction with ScotCen Social Research, carried out an evaluation of the offence at Section 1 of the Act, ‘offensive behaviour at related to football’. The evaluation of the offence at Section 6 of the Act, ‘threatening communications’, has been carried out by the Scottish Government’s Justice Analytical Services staff. Full information on the methodologies used in the evaluations, and those consulted, is contained in the evaluation reports. However, we have summarised the key issues and findings below.

## **EVALUATIONS**

19. A wide range of stakeholders were consulted by both evaluation teams during the course of their duties in carrying out these reviews. In the case of the review of Section 1, independent researchers at The University of Stirling also conducted two online supporters’ surveys at the end of seasons 2012/13 and 2013/14, seeking

respondents' views about their match day experience since the legislation came into force.

20. The first survey closed on 15 September 2013 and was completed by supporters of all 42 SPFL clubs. A total of 1,945 completed surveys were received with Celtic supporters returning most responses (310) followed by Hearts (299) and Rangers (180). A second online fan survey was carried out at the end of 2013/14 season and, again, was completed by supporters of all 42 SPFL clubs. A total of 2,185 survey responses were received with Celtic supporters again returning most responses (423), followed by Rangers (249) and Hearts (232).

21. In addition to the two online surveys, researchers also held focus groups with supporters' representatives from a variety of clubs and carried out interviews with league and football club officials, procurator fiscals and sheriffs, and police representatives – including match commanders and safety managers at football grounds.

22. In the case of the review of Section 6, the research involved research with practitioners, police, procurator fiscals, website forum administrators and also a survey of football supporters – to understand the views of a key audience.

### **Key findings – Section 1 – ‘Offensive Behaviour at Regulated Football Matches’**

23. The full findings from the evaluation, carried out by the University of Stirling, can be found in the research report. Summarised below are the key findings the Government sees as most pressing:

#### **The impact of the legislation**

- In both the 2012/13 and 2013/14 seasons, a larger proportion of supporters (home and away) felt that all of the measured behaviours (with the exception of letting off flares) were less common than in previous seasons, compared to the proportion who thought they were more prevalent.
- These positive assessments of change were stronger for home games attended than away games. Qualitative research with fans and officials alike supported these accounts of positive change.
- These perceptions of positive change may partially account for an observed drop in charges made under the Act over time.
- Home supporters of both Rangers and Celtic were somewhat more likely to hear negative reference to religion in 2013/14, than supporters of other clubs, on average. However, large proportions of home supporters of both clubs, Rangers (50%); Celtic (40%), felt that this type of behaviour was less common than in previous seasons.

- This perception of improvement was occasionally (and somewhat grudgingly) acknowledged by fans of other teams.
- Observational work found limited evidence of offensive singing at both Ibrox and Celtic Park, whilst COPFS charges provides further tentative support with charges associated with matches at these two venues, falling from 73 charges, 2012/13 to 40 charges in 2013/14.
- There were also indications of more positive changes in fan behaviour, in particular an increase in self-policing, at some clubs, by fans.

## **Policing**

- Though police officers expressed various degrees of support for the Act, and varying levels of appreciation for the initial operational activities of the Football Coordination Unit for Scotland (FoCUS), a substantial majority acknowledged that the operational implications of the Act had been effectively communicated both through various forms of briefing and direct training (often provided by FoCUS) and via email, web communications, and in particular via FoCUS' e-learning package.
- Although some police officers questioned whether section 1 of the Act added anything new to the powers available under prior legislation, other officers talked about the Act as providing a new simplicity and therefore a new clarity – particularly around sectarian behaviour and offensiveness – that had been previously lacking.
- It was also thought that this new clarity made it easier for officers to write police reports that clearly linked the behaviour witnessed to the relevant legislation.
- Both fans and police officers in particular detected varying levels of ability among frontline officers' skills in applying the legislation, and in having a nuanced understanding of sectarian issues.

## **Fan awareness**

- There was high fan awareness of the legislation, though not its specifics – over four-fifths of supporters surveyed had heard of the Act. However, despite general awareness of the Act being high, many supporters did not feel that they had a deep level of awareness of what it involves.
- There was a clear degree of agreement regarding the sorts of behaviour which could be viewed as offensive, with three quarters of all fans agreeing in both survey sweeps that it was offensive to sing songs about people's religious backgrounds or beliefs.

- However, fans were often of the view that neither police nor club officials presented them with enough information to give them a sufficient idea of what was, and was not, acceptable behaviour.
- A majority of supporters (55%) reported sometimes being offended by things they hear at football matches, while half of supporters agreed with the view that 'people go to football matches to let off steam and what they say should not be taken seriously'. There was greater consensus around the view that it is offensive to make negative comments about religious background or beliefs and to make comments in support of terrorist organisations.
- Rangers supporters were less likely to think that it was offensive to make comments about religious background compared to supporters generally (60% compared with 85% overall). Conversely, Celtic supporters were much less likely to agree that it is offensive to sing songs in support of terrorist organisations (47% compared with 82% overall) and make political gestures at football matches (29% compared with 60% overall).
- The two main types of ambiguity focused on songs, chants or displays that made some mention of organisations or movements that, at some point, could have been associated with sectarian terrorist organisations, but which at other points of time had either been legitimately political or otherwise legitimate organisations. The second type of ambiguity (often intertwined with the first) was expressing a cultural identity in a form that could not be shown to directly communicate any hatred or opposition to another's culture, ethnicity or religion, but which could be construed as offensive simply because that cultural identity was viewed as provocative or 'oppositional' by others. For some this amounted to criminalising legitimate expressions of identity.
- Even where fans did view many of the traditional Rangers and Celtic supporters' songs as problematic now, there was still opposition to legislation which criminalised fans who sang them. In the view of a number of respondents, the songs had been on the wane anyway and efforts to replace and marginalise them pre-dated the legislation.

### **Legal views**

- Fiscals were supportive of the legislation and its surrounding mechanisms, such as, saying that it had enabled the fiscal service to work more effectively on a long-running problem and liaise more closely with the police.
- Some said that 'borderline' offensive singing cases were challenging because of the question of how to interpret the impact of the songs. The guidance from *MacDonald v Cairns* appeal case would be helpful (Appeal

Court consideration of the song 'Roll of Honour' accepted the Crown's argument that "the words that referred to the hunger strikers and to joining the IRA ... were references to relatively recent events in British history ... [and was] behaviour that a reasonable person would be likely to consider offensive". The appeal focused on whether that behaviour was likely to risk public disorder, which the Sheriff had concluded it did not. Appeal court concluded that "the Sheriff misdirected himself on what the Crown had to prove in order to secure a conviction [for 'offensive behaviour at regulated football matches'].")

### **Targeting of the Act**

- Outside those matches involving either Celtic FC or Rangers FC, most police respondents felt that the Act had made little difference to the categories of behaviour that were the focus of policing. Although the legislation was clearly being used, it was simply being applied to behaviour that previously would have been prosecuted as breach of the peace.
- The early stages of the Act's implementation was characterised by a somewhat "intensive" policing approach, perhaps unsurprising given the level of political and media coverage in the year preceding its introduction.
- Police representatives interviewed acknowledged that the early 'intensive' approach to policing the Act may have caused tension between police and groups of supporters.
- Supporters' focus groups argued that individuals arrested at games often appeared to be chosen somewhat arbitrarily. A common theme from the supporters' focus groups was the issue of hundreds or thousands of supporters singing the same song yet police arresting only a small number of people.
- An even greater issue for many supporters was a perception that that Act was disproportionately targeted at young fans. Even fans that were supportive of the legislation in principle voiced concerns that young people are being targeted for behaviours that were at least tacitly tolerated for many years, and as such they have grown up considering these as 'normal'.

### **Refinements and innovations**

- Although FoCUS had initially suffered from being associated (fairly or otherwise) with the politics of police reform and mergers, the Unit over time had come to be seen as a more neutral resource servicing Police Scotland as a whole.

- Aside from training other officers in camera use for evidence gathering, and training relating to the Act generally, FoCUS had also taken a strategic role in attempting to improve police capability and consistency.
- A final area of tentative improvement and refinement reported by some officials was in stewarding at Celtic FC and Rangers FC.

### **Key findings – Section 6 - Threatening Communications'**

24. The full findings from the evaluation, carried out by the Scottish Government's Justice Analytical Services team, can be found in the research report. Summarised below are the key findings the Government sees as most pressing:

#### **Impact of the Act**

- 10% of respondents from the second annual supporters' survey claimed they had changed their behaviour in regards to what they might post online since the Act was introduced. 34% of these respondents claiming this change in behaviour was as a direct result of the Act.
- Negative references to religion (45%), support of terrorism or terrorist group (35%), glorification of the loss of life (33%), threats of violence (26%), person's country of origin (26%) were the most commonly cited offensive comments. Catholic and Celtic supporters were more regularly offended by the majority of these categories.
- Almost 20% of respondents believe that the Act has had an effect in reducing such incidents of inciting religious hatred and threats of violence since its introduction. However, almost half stated that they believe that the Act is being used disproportionately or has targeted behaviour which is not relevant.
- Justice system practitioners also perceived there to have been a drop in offences that may have been relevant to Section 6 over the past two years. High-profile prosecutions of threatening communications (by Section 6 or not), and a lack of Celtic FC v Rangers FC fixtures were perceived by them to be the main causes for this reduction. Moreover, online forum administrators also anecdotally noted a decline in football-related user-to-user offensive language and threats over the past two years.

#### **Usage**

- The number of threatening communications charges is low.
- Half of all Section 6 charges are related to football in some capacity. The majority are committed in the main population areas of Scotland, and the majority are also made via social media.

- Court proceedings have been completed in 9 of the 33 charges. Of these 9, 8 have resulted in convictions (a conviction rate of 89%); 3 of the accused were given monetary penalties, 2 were given community payback orders, 2 were admonished, and 1 received a custodial sentence. One of the accused was accepted to be not guilty.

### **Barriers to use of Section 6**

- Overall awareness of the Act among justice system practitioner respondents is varied. This may be due to lack of suitable training of justice system practitioners; misinterpretation of the purpose of the Act (believing it to be football related only); or lack of hands-on experience.
- Justice system practitioner respondents commented that certain aspects of Section 6 created a very high legal threshold.
- It was noted by many Justice System practitioners that gathering evidence that would be sufficient to increase the chance of a successful prosecution was challenging for some threatening communications cases, particularly where a threatening communication was made via an electronic device onto a social media host site.
- Internet based social media in general is becoming a burdensome and problematic issues for front-line policing. This is predicted to become more challenging as internet usage increases, with potential knock-on effects for the use of Section 6.

## **RECOMMENDATIONS**

25. The above findings provide a broad range of evidence, which was used by the researchers to set out a series of 8 recommendations in relation to Offensive Behaviour at regulated football matches and 3 areas for action in relation to threatening communications. The recommendations in relation to Section 1 are set out in Annex A, together with the Government's response to each. The areas for action in relation to Section 6 are set out in Annex B, together with the Government's response to these.

26. The recommendations aim to enhance the effectiveness of the legislation and outline, where appropriate, what steps can be taken to achieve this. Not all of the recommendations and areas for action are for the Scottish Government and many are aimed at more than one organisation. It will therefore be important for other organisations to consider and respond to those recommendations involving them.

## **CONCLUSIONS**

27. The Scottish Government welcomes the findings of the evaluations of Section 1 'Offensive Behaviour at Regulated Football Matches' and Section 6 'Threatening Communications'.

28. The two supporters' surveys that were carried out attracted around 2,000 responses each and included fans from all 42 SPFL clubs. The findings, therefore, give us a robust understanding of the impact that the Act has had in the first two seasons that it has been in operation, and this, in turn, gives us a good basis for moving forward to ensure that the Act is having a positive impact.

29. The findings from the evaluations suggest that offensive behaviour at football and threatening communications are declining and this is to be welcomed. For example the University of Stirling evaluation findings show that:

- 90% of respondents to the fan survey found songs which glorify or celebrate the loss of life or serious injury offensive;
- 82% found songs in support of terrorist organisations offensive;
- 75% found songs, chants and shouting about people's religious background or beliefs at football matches offensive; and

30. Furthermore, the results of an independent poll, commissioned from YouGov by Scottish Government, and published on 12 June 2015, make clear that the people of Scotland are strongly supportive of action to tackle sectarianism and other forms of offensive behaviour and that these issues stain the reputation of Scottish football as a whole and individual clubs in particular. The key poll results are as follows:

- **83% support legislation, in general**, to tackle offensive behaviour at football (50% strongly support, 33% tend to support) while a total of just 11% oppose using legislation to tackle the issue;
- **80% directly support the Offensive Behaviour at Football and Threatening Communications Act** (47% strongly support, 33% tend to support) and a total of just 13% oppose the Act;
- 82% believe that sectarian singing and chanting at football matches is offensive'
- A further 82% agreed that offensive behaviour around football matches is harmful
- Of those who agreed that offensive behaviour at and around football matches was harmful, a number of reasons were cited<sup>1</sup> including:
  - it is a bad influence on young people (82%),
  - it tarnishes the reputation of Scotland at Scottish events (80%),
  - it encourages antisocial behaviour outside of football (79%),
  - it tarnishes the reputation of individual clubs (75%),
  - is upsetting and/or discriminatory towards individuals and groups targeted (74%),
  - it puts people off attending matches (73%).

31. We have set out our responses to the recommendations and areas for action from the evaluations in Annexes A and B and remain committed to tackling all forms of bigotry, intolerance, and discrimination, including sectarianism, to build stronger and safer communities so that all of the people of Scotland can live, work and raise

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<sup>1</sup> Respondents were asked to select all that applied.

their families free from the threat of prejudice, fear and harm. We will continue to work with all partner organisations seeking to rid Scotland of the chauvinisms of the past by promoting equality and equal opportunities for all.

32. The Scottish Government wants to ensure that we have a measured approach to understanding and dealing with offending behaviour in an integrated way to help young people, their families and the community.

33. The Scottish Government will work with SACRO – Scotland’s leading organisation for reducing offending in communities – to develop its anti-sectarian ‘Diversion from Prosecution’ programme as an alternative to prosecution under the Act. This Scotland-wide programme will ensure appropriate offenders are given discretion.

34. Appropriate and effective interventions are needed to address offending and we are fully supportive of both the Crown Office and Procurator Fiscal Service and Police Scotland in utilising intervention and diversionary measures which keep people, particularly young people, out of the criminal justice system whenever appropriate.

35. In effect this means that wherever possible people will be given appropriate alternative education programmes to make them understand the real impact of their actions; steer them away from the downward spiral that people entering the criminal justice system can get caught up in; and give them opportunities to make positive life changes. Those on the programme will acquire the skills to be able to avoid being directly involved in sectarian behaviour and to pass on those positive behaviours to others.

36. We recognise that there is still a great deal of work to be done, but the Act is just one strand of the Scottish Government’s approach to tackling sectarian and other forms of offensive behaviour. The Act is proving to be an effective part of our broader strategy and we will continue to work with a broad range of partners and wider stakeholders to consider the report recommendations and how we can implement change in relation to the areas identified for improvement. The information in the evaluations will be considered, alongside all other available evidence, to inform our policy decisions going forward.

## ANNEX A – SECTION 1: OFFENSIVE BEHAVIOUR AT FOOTBALL

### Recommendations

This table highlights the Government’s responses to all of the recommendations made by the independent researchers at the University of Stirling in their evaluation of section 1. The Government is fully committed to working with all organisations to ensure the recommendations are fully considered and addressed.

<b>Recommendation of the Section 1 evaluation report</b>		<b>Government response</b>
<b>R1</b>	<p>The formal objectives of the Act are to address a variety of hate crimes, not just sectarianism. Acknowledging that there appears to have been a recognised reduction in sectarian-associated offensiveness, this broader focus needs to be strengthened.</p>	<p>The Scottish Government believes that there is no excuse for any form of hate crime; it is not acceptable and will not be tolerated. We believe that everyone has the right to be safe and to feel safe and we are committed to creating and supporting safer and stronger communities where everyone takes responsibility for their actions and how they affect others.</p> <p>In relation to the primary driver of tackling inequality, the Scottish Government has committed to supporting the improvement of life chances for all of Scotland's people, including those who face discrimination, disadvantage and prejudice; mainstreaming equality in all aspects of Scottish Government policy development and decision making, demonstrating leadership for Scotland; and supporting the development of a robust evidence base which identifies the underlying causes of inequality and supports activity to address it.</p> <p>We will continue to work with all partners including police, prosecutors and communities to ensure that those who commit all forms of hate crime are held to account.</p>

<p><b>R2</b></p>	<p>Careful consideration needs to be given to how best to strengthen relationships and trust between supporters groups, clubs and the police. This is critical if recent gains in terms of reductions in offensiveness are to be consolidated.</p> <p>There is already evidence that fans within stadia are self-policing each other to an extent. The more fans identify with the aims and legitimacy of the Act, and the more that they approve, (and identify with), official actors in terms of how they enforce the Act, the stronger this self-policing should be.</p>	<p>The Scottish Government is keen to see a continued reduction in offensiveness at football and in Scottish society more generally and we will continue to work with key organisations and influencers to explore how to take this work forward. We are pleased at the suggestion of positive changes in fan behaviour, in particular the recognised increase in self-policing, at some clubs, by fans and the effective role this can play in tackling offensive behaviours at football. We want to see more supporters challenging unacceptable behaviour which risks tarnishing the reputation of their club and the majority of supporters.</p> <p>We fully support the police, football clubs and the football authorities as well as supporters groups to work together to strengthen relationships and build trust.</p> <p>The evaluation of Section 1 suggests that the relationship between supporters and the police has been negatively affected and we will work with Police Scotland consider ways that we can all engage positively with football supporters to improve relationships and levels of trust.</p>
<p><b>R3</b></p>	<p>In terms of police and club operational tactics, a clearer demarcation needs to be made between violent risk groups and younger sets of fans who are <i>at risk</i>, of engaging in offensive behaviour.</p>	<p>The Scottish Government is committed to assisting Police Scotland, football clubs and the football authorities to consider how best to take this recommendation forward.</p> <p>The Scottish Government is supportive of any efforts police, clubs and the football authorities can take to ensure that younger supporters at risk of engaging in offensive behaviour are dealt with in an appropriate and proportional way. We know that contact with the criminal justice system can increase the chances of young people reoffending. We will consider opportunities for early intervention alongside diversion from statutory measures and robust community alternatives as we believe these are more likely to result in positive outcomes for those young people involved in offending. We would like to see all partners working together to develop a consistent approach to preventing and reducing offending by children and young people. We are pleased to be working with SACRO – Scotland’s leading organisation for reducing reoffending in communities - to develop their</p>

		<p>'Diversion from Prosecution' programme. This will be a Scotland-wide programme ensuring that appropriate offenders are given discretion rather than pulling them into the criminal justice system.</p>
<b>R4</b>	<p>Clubs, in particular, need to be re-engaged with work in this area, for instance taking forward educational initiatives, and having a much closer dialogue with supporters groups.</p>	<p>The Scottish Government believes that football has an important role to play in tackling social problems as part of a wider approach to addressing abusive behaviour and discrimination. We will write to all Scottish Clubs and the football authorities to highlight existing educational materials on sectarianism and wider hate crime and encourage them to adopt these as part of their educational initiatives with supporters.</p> <p>The Scottish Government is supportive of any initiatives by Clubs and the football authorities to recognise the positive contribution of younger supporters. One of the 41 recommendations of the Joint Action Group was for the Police Scotland, Government and Supporters Direct Scotland (SDS) to jointly build upon the research conducted by SDS to develop a national strategy to ensure that all supporters were aware of their responsibilities prior to the end of season 2011/12. The Government appointed James Proctor as Project Manager for the National Football Supporters' Charter. FoCUS attended a number of the organised group sessions where the proposed Supporters Charter was discussed and provided insight into the police position on offensive behaviour. The <a href="#">Fans' Charter</a> was launched in January 2013 and we support this recommendation encouraging clubs and football authorities to utilise this as a resource for promoting dialogue with supporters.</p> <p>The Scottish Government will work in unison with football clubs and the football authorities to consider how best to take this recommendation forward.</p>
<b>R5</b>	<p>Clubs and the police authorities need to find ways that better balance the need to hold secure matches, free from offensiveness and disorder, whilst reducing some of the</p>	<p>The Scottish Government believes all supporters should be able to enjoy their match day experience in a safe and secure environment. We will continue to support Police Scotland to ensure officers are trained to the same standard and operating procedures, enabling the consistent treatment of supporters across</p>

	<p>inconsistencies and disproportionality that is evident in the current policing of more vocal and enthusiastic fan groups.</p> <p>Supporters are more likely to receive consistent treatment, in conditions where there are experienced, knowledgeable and known police officers and stewards.</p>	<p>Scotland.</p> <p>The communication efforts of FoCUS have rightly been recognised by the evaluation report and we commend FoCUS for the work it has done to date.</p> <p>We will encourage Police Scotland to consider how this recommendation can be addressed going forward, to ensure football supporters across Scotland are treated fairly and in a consistent way by local officers who are familiar with the legislation and able to apply it appropriately.</p>
<b>R6</b>	<p>Models of good stewarding and local policing should be identified and strengthened.</p>	<p>The Scottish Government recognises that improvements have been made in terms of behaviour within football grounds due to effective policing but stubborn elements such as sectarian chanting remain. These should not go unchallenged as they risk undoing all of the positive steps football supporters, clubs and police have taken to improve Scotland's national game. We will liaise with Police Scotland, COPFS, football clubs and the football authorities to consider suitable ways to make football fans aware of what is not acceptable chanting or singing.</p> <p>We encourage Police Scotland to continue to consider the most appropriate way of policing matches in Scotland to ensure that supporters are engaged with fairly and proportionately.</p> <p>Given the move towards more 'police-lite' and 'police free' games, we encourage Clubs to consider the role of stewards at matches and ensure that those employed by the Club to maintain safety and order are appropriately trained to ensure consistency.</p>
<b>R7</b>	<p>Given the great range of behaviours encompassed by the Act, more consideration should be given to a much</p>	<p>The Scottish Government does not support the view that it is acceptable to engage in sectarian, racist, homophobic or any other offensive behaviour at football to 'let off steam'. The Act does not criminalise football banter, even if in bad taste, in the</p>

	<p>more nuanced set of responses, shading from club-focussed sanctions and diversionary measures that preclude the need to impose a criminal record, through to appropriate criminal penalties for more serious or incorrigible offenders. For instance, consideration should be given to using diversionary sanctions for less serious s. 1 offences (and for first time offenders) such as short football banning orders (ideally combined with match period sign-on conditions to maximise effectiveness).</p>	<p>absence of any other threatening, hateful or otherwise offensive behaviour that risks public disorder. What the Act does, is send a clear message to supporters that Scotland is a country which does not tolerate any form of prejudice, discrimination or hate crime and football is no exception. However, we recognise that there needs to be a measured approach to dealing with offenders and we support COPFS to utilise diversionary measures where appropriate and, when this is not appropriate, to prosecute individuals for more serious offences in the Courts where more severe criminal penalties are available. It is for the Judiciary to decide on the appropriate use of criminal penalties and sentencing.</p> <p>The Scottish Government is committed to work with Police Scotland and others to consider when and in what circumstances alternatives to prosecution like a Fixed Penalty Notice may be suitable for a S1 offence. This commitment will also be part of the response to dealing with R8.</p> <p>We will also write to the football authorities seeking confirmation of the steps they will be taking to tackle offensive behaviour at football and how the scope for them to introduce a suite of appropriate strong club sanctions. This would also be in support of the recommendations at paragraph 4.24 of the Advisory Group on tackling Sectarianism in Scotland report published 29 May 2015.</p>
<p><b>R8</b></p>	<p>More serious s. 1 cases should receive faster consideration by relevant agencies, and should reach a conclusion more quickly. This, particularly if combined with the previous recommendation, would potentially improve confidence in the fairness and proportionality of charges made under s. 1 of the Act.</p>	<p>We welcome this approach and will continue to encourage and support alternatives to prosecution for first time and less serious offenders. These should be designed to deal with the underlying causes of the individual's offending, keeping people away from the formal criminal justice process where possible and giving them the opportunity to make positive life changes.</p> <p>Front line policy on this is for Police Scotland and COPFS to consider how best to take this recommendation forward. Where use of appropriate criminal penalties and sentencing is involved, it is for the Judiciary to consider. We will liaise with Police Scotland and COPFS to consider the options for more tailored and appropriate interventions.</p>

		<p>Scottish Government will approach COPFS to consider the potential options of revising the Lord Advocate’s Guidelines, particularly on Diversionary measures.</p> <p>The Scottish Government is currently considering changes to the Football Banning Orders legislation. The changes are designed to improve the use of FBOs – making it easier for prosecutors to request an FBO and increase the awareness of Sheriffs when sentencing. We will carefully consider the proposals and take the necessary steps to implement any changes.</p> <p>Where criminal prosecution and sentencing is not involved, football clubs already have the power and responsibility to consider whether individuals should be banned from football grounds, and should continue to use this power appropriately.</p> <p>The Scottish Government appreciates the negative effect that a delay in proceedings can have on individuals, we also recognise the pressures already placed on courts and police to deal with the large number of cases processed each year - which are often complex and resource intensive. We will liaise with COPFS and Scottish Court Service to highlight the concerns raised in the report.</p>
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Ministers remain committed in their determination to tackle Offensive behaviour at regulated football matches. We will continue to work with the police and Crown Office to build on the successes of Section 1 to date, as well as considering how we can work together going forward to ensure the legislation is being used to effectively and proportionately to achieve the objective of ridding football of offensive behaviour that harms our communities and a wonderful sport.

## ANNEX B – SECTION 6: THREATENING COMMUNICATIONS

This table highlights the Government responses to key areas for improvement made by the Section 6 evaluation report.

<b>Areas identified for improvement from the Section 6 evaluation</b>	<b>Government response</b>
<p>The number of threatening communications charges are currently very low and usage of Section 6 has declined since its introduction. Overall awareness of the Act among justice system practitioner respondents appears to be low. This may be due to lack of suitable training of justice system practitioners; misinterpretation of the purpose of the Act (believing it to be football related only); or lack of hands-on experience.</p>	<p>The problem that the threatening communications offence was introduced to deal with, while often found in football, goes beyond football and we would like to see the police and prosecutors using the offence to deal with a wide range of situations including bullying and harassment, domestic abuse and any other situations where there are threats of serious harms or threats intended to stir up religious hatred.</p> <p>The Scottish Government will liaise with COPFS and Police Scotland to encourage them to consider ways to raise awareness and provide further education to justice system practitioners and officers on the offence under Section 6 to ensure that lack of awareness, misinterpretation or lack of training is no longer a barrier to its use.</p>
<p>Respondents commented that certain aspects of Section 6 created a very high legal threshold for justice practitioners, resulting in a lack of confidence and a fall back to more familiar pieces of legislation. It was noted by many Justice System practitioners that gathering evidence that would be sufficient to increase the chance of a successful prosecution was challenging for some threatening communications cases, particularly where a threatening communication was made via an electronic device onto a social media host site.</p>	<p>The Scottish Government appreciates that there have been difficulties prosecuting cases. We will work with COPFS and Police Scotland as appropriate to explore ways to raise confidence amongst Justice System practitioners in the use of Section 6 and to identify any improvements that would help to ensure that the high burden of proof is not seen as a barrier to use of the offence.</p>
<p>Internet based social media in general is becoming a burdensome and problematic issue for front-line policing. This is predicted to become more challenging as internet usage increases, with potential knock-on effects for the use of Section 6.</p>	<p>The complexities inherent in offences committed on line are recognised in the guidance published by the Crown Office and Procurator Fiscal Service. The complexities relate not only to the nature of what is said but also the process for securing evidence.</p>

	<p>With the ever expanding use of social media it is important that Police Scotland is able to deal with any increase of online crime. Police Scotland should consider how it can develop its systems and operating procedures to ensure this likely increase does not have a knock on effect on its ability to identify people who commit crimes online, including offences under Section 6.</p> <p>The Scottish Government will continue to work with Police Scotland to encourage it to explore ways to enhance officers' understanding and awareness of the legislation through on-going training.</p>
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Ministers remain committed in their determination to tackle threats of serious violence or death and threats made with the intent of stirring up hatred on religious grounds. We will continue to work with the police and Crown Office to build on the successes of Section 6 to date, as well as considering how we can work together going forward to ensure the legislation is being used to its full intention.



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