



Briefing for the Public Petitions Committee

Petition Number: [PE1593](#)

Main Petitioner: Paul Quigley

Subject: A full review of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Calls on the Parliament to urge the Scottish Government to hold a full and comprehensive review of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 with a view to having this Act repealed.

Background

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (“the Act”) was passed by the Scottish Parliament on 14 December 2011 and came into force on 1 March 2012. The Act was introduced following concerns about a perceived increase in various “offensive” behaviours within the context of football.

The policy memorandum to the Bill stated:

“In summary, it is a critical assumption of this Bill that there is something very specific and increasingly unacceptable about attitudes and behaviour expressed at football matches, whether that be “sectarian”, racist or homophobic.”

The Bill was introduced following a number of incidents which occurred at football matches (primarily involving Rangers and Celtic football clubs), and other, more sinister incidents which, though not directly connected to football, were regarded as further manifestations of sectarianism in Scotland¹.

The Act provides for two new offences: offensive behaviour at regulated football matches (“the section 1 offence”); and threatening communications.

¹ For example, the then Celtic FC manager, Neil Lennon, former MSP Trish Godman, and the late Paul McBride QC had all been the intended recipients of what were described by the police as “viable parcel bombs”. The devices were found at various locations in the west of Scotland. Also, in January 2011, bullets addressed to Mr Lennon, which had been sent from an address in Northern Ireland, were intercepted at a mail sorting office in Glasgow. Bullets were also sent to two Celtic players who had recently represented Northern Ireland.

(Although the petition seeks to have the Act repealed in its entirety, it would appear that the section 1 offence is most pertinent to the petition).

Section 1 of the Act creates a statutory offence of engaging in offensive behaviour which is likely to incite public disorder at a regulated football match.

The Act lists the five kinds of behaviour which trigger the offence at subsection (1). These are:

(a) expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or group defined by reference to a characteristic listed in subsection (4)² (for example, by engaging in sectarian chanting or singing);

(b) expressing hatred of, or stirring up hatred against, an individual based on the individual's membership (or presumed membership) of a group mentioned in paragraph (a) above (for example, expressing hatred of a particular player or manager because of that person's presumed or actual religious affiliation);

(c) behaviour that is motivated by hatred of a group mentioned in paragraph (a) above;

(d) behaviour that is threatening; or

(e) other behaviour that a reasonable person would be likely to consider offensive (for example, this would include, but is not limited to, sectarian songs or chants).

Although the Act is designed to tackle a range of hate crimes and is not restricted to tackling sectarianism, the Scottish Government specifically believed the existing legislation and common law provisions to be inadequate to deal with the perceived increase in sectarian-related behaviours in and around football grounds.

Scottish Government Action

The Scottish Government, in response to a recommendation in the Justice Committee's stage 1 report brought forward an amendment to provide a review clause on the face of the Bill, the intention being to review the legislation following the completion of two full football seasons from the commencement of the legislation.

² Subsection (4) provides a list of further characteristics, other than religion, by which a group may be defined, in respect of which it is an offence to express or stir up hatred. These are: colour; race; nationality; ethnic or national origins; sexual orientation; transgender identity; and disability.

To that end, [An evaluation of Section 1 of the Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012](#) was published in 2015.

Amongst other things, the objectives of the research were:

- to evaluate whether the atmosphere and behaviour at and around football matches has improved since the introduction of the Act;
- relatedly, to assess whether the Act has also resulted in a reduction in offending at and around football matches; and finally,
- to examine supporters' perception of the legislation, in terms of their understanding of its content and acceptance of its objectives.

The researchers pointed out that it was not in the remit of the evaluation to engage in political and normative debates about the continued existence of the Act but to comment on the Act's "effectiveness" and to suggest ways in which that effectiveness might be enhanced.

The evaluation found evidence from some sources that offensive behaviour at football matches has decreased since the legislation was introduced, and strong support from police and prosecutors who said the laws had brought a new 'simplicity and clarity' to dealing with incidents. However, the research found that the extent to which these reductions can be attributed to the impact of the Act is far from clear, not least given the substantial and sustained reductions in many categories of violence and disorder across Scotland and the UK as whole.

The Petitioner is calling for the Act to be repealed on the basis two key concerns, which are that:

"To create a law which clearly discriminates against one section of society, creating a criminal offence which only applies to this group is fundamentally wrong. This Act by definition [singles out] football fans and discriminates against them.

And that, to create a law which outlaws something as subjective as 'offensiveness' is both ridiculous and inherently dangerous. If you outlaw 'offensiveness' it creates a broadening blurring of what is allowed and what is not. It is very easy to see how freedom of speech is under immense risk within this context."

Graham Ross
Senior Research Specialist
16 December 2015

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