



**Offensive Behaviour at Football and Threatening Communications
(Repeal) (Scotland) Bill**

Evidence from the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

Legislation clearly has a role in changing attitudes. Few people believed in 1965 that the Race Relations Act would have the effect of making many offensive comments unsayable in polite society. We therefore favour the strongest possible legislation against all forms of hate crime.

Consequently, we are concerned that repeal of the Offensive Behaviour at Football and Threatening Communications Act would send exactly the wrong message. However, we oppose the restriction of such legislation to a single community, a single protected characteristic, or a single context such as football, and consequently, we urge the extension rather than the repeal of this legislation, or its repeal only in the context of new legislation with a more general reach.

2. Did you support the original legislation?

With reservations, we were supportive of the intention of the original legislation. In our response to the Scottish Parliament's 2011 consultation we stated that¹:

¹ Offensive Behaviour at Football and Threatening Communications (Scotland) Bill: Evidence from the Scottish Council of Jewish Communities (June 2011):
http://www.scojec.org/consultations/2011/11vi_offensive_behaviour_etc_bill.pdf

“The Scottish Council of Jewish Communities strongly supports the Bill’s objective to “*root out violent and bigoted attitudes and behaviours from Scottish society and make our communities safer*”.”

However, we regretted that:

“... the offence of “offensive behaviour” relates exclusively to football and does not cover identical behaviour in other contexts, for example at Scottish Defence League demonstrations or distributing “threatening, insulting and abusive leaflets”. It is dangerous to imply that expressing hatred of, or inciting hatred against individuals or communities is less impermissible simply because it does not take place in relation to football, and irrational that the same range of disposals should not be available to the courts for both.”

We further noted our concern that:

“... singling out religion as the only protected characteristic with regard to “offensive communications” not only fails to “*contribute to tackling inequalities in Scotland*”, but, on the contrary, risks creating a hierarchy of discrimination. ... *Threatening communications are a serious concern, regardless of whether they are, or can be proven to be, “sectarian” or connected with football*”, and we therefore urge that the offence of “offensive communications” should be extended to cover all of the [protected] characteristics ...”

We also expressed concerns about the timescale for the Bill:

“... especially since the Minister has acknowledged it may be necessary to introduce further legislation on the same subject later in the session. Piecemeal legislation can only serve to confuse; a single piece of more considered legislation would have been preferable”.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

We note that Crown Office, who must be considered the expert in this area, has stated² that

“There is ... 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. ... It is also possible to envisage behaviour which would be offensive to the reasonable person and which would cause or risk public disorder such as to fall within section 1 of the Act, but which might not constitute a breach of the peace or fall within section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.”

and, in relation to a Berwick Rangers v Rangers match that took place outside Scottish territorial jurisdiction:

“It is worth observing that had the Act not been in force or had it not included section 10(1), the behaviour in that case could not have been prosecuted in

² Crown Office response to James Kelly MSP’s consultation on his then “Proposed Football Act (Repeal) (Scotland) Bill” (October 2016):
<https://scraptheact.files.wordpress.com/2016/06/letter-to-james-kelly-msp.pdf>

Scotland because offences such as breach of the peace and section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 do not have extraterritorial effect.”

We would regret the repeal of legislation that the prosecuting authorities believe has enabled them to pursue offenders who would otherwise have been able to continue their course of abuse and causing offence with impunity. However, as we have already mentioned, and detail further in response to Q4, we strongly believe that the legislation should be extended to include contexts other than football matches.

4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?

It is undoubtedly the case that in practice the Act has brought the police and justice system into conflict with certain football clubs and their supporters. However, as stated above, we believe that the solution to this is not repeal but to extend the scope of the Act and apply it equally in all contexts and venues, to all protected characteristics, and to all forms of hate crime.

We agree that these behaviours covered by the 2012 Act should be criminal offences, but disagree that this should be limited to the context of football matches. We are, for example, aware of analogous behaviours at the venue of an Edinburgh Fringe Festival event, when demonstrators protesting against the presence at the Festival of an Israeli dance group abused Jewish and Israeli people with taunts of "Your money is covered with Palestinian blood" and "How many babies did you slaughter today?". The level of intimidation at such demonstrations was such that one mother told us *“We are scared for our children's safety. We are now confining ourselves to our home more. We have instructed the children not to identify themselves as Jewish to anyone who doesn't already know. We fear the new school year. We fear bringing the children to cheder [Jewish religion classes]”*.

It is indisputable that the victims, who included families with children, felt that the abuse was “threatening”, and it is equally incontrovertible that it was “expressing hatred of, or stirring up hatred against, an individual based on the individual's membership (or presumed membership) of a [relevant] group”, “behaviour that a reasonable person would be likely to consider offensive”, and “likely to incite public disorder”. The fact that this abuse and intimidation took place outwith the context of a football match should not be relevant and so should not determine whether or not the perpetrators can be prosecuted.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

Once again we note the view of Crown Office², who have stated 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.”

And also that of the Scottish Government, who have commented that³:

“The removal of the Section 6 offence on threatening communications would create a serious gap in the law and leave Scotland lagging behind the rest of the UK – where threats intended to stir up religious hatred have been criminalised since 2006 – yet still those opposing it offer no viable alternatives.”

We are particularly concerned at the increase in online abuse and threats, which according to statistics from the Community Security Trust constituted 19–22% of the record number of recorded antisemitic incidents in 2016–17, and would have serious misgivings about any measure that would make it more difficult, if not impossible, for such offences to be prosecuted effectively.

One respondent to our *What’s Changed About Being Jewish in Scotland*⁴ inquiry told us that he “*started getting hate posts from [his neighbour’s family]*” including one threatening that “*it is only a question of time before they finish us*”.

Examples of abusive and threatening twitter posts that have been targeted at ourselves by use of the “@SCoJeC” tag, include an image of Hitler with the text “@SCoJeC I like a good shower don’t Jew?”, and an image of Anne Frank with the text “@SCoJeC How do you get a Jewish girls #? Look at her arm.” The senders of these, and of a large number of similar, posts, as well as of abusive and threatening facebook messages and e-mails purport to justify their actions on the grounds that our Director has been cited as a witness in a case currently before the courts that concerns an allegedly antisemitic youtube video.

The findings of *What’s Changed About Being Jewish in Scotland* reveal that online and face-to-face abuse and threats, such as those we have referred to above, together with Scottish Government data that reveals that although low in absolute figures, when taken in context of the size of each community, Jewish people are 30 times more likely to be targeted than those of other religions⁵, have resulted in many Jewish people feeling increasingly vulnerable and threatened, telling us:

“I personally am going to avoid any Jewish gatherings in the near future. It feels to me that whatever is going to happen, it will happen soon.”

“I’m scared to tell people at work that I’m Jewish – I talk about going to church instead of synagogue.”

“I have become a lot more selective on who I let know that we are a Jewish and Israeli family.”

“I do not speak Hebrew on the phone in public for fear that I would be attacked”

They also tell us that they are deterred from reporting incidents due to fear (justified in our experience) of the abuse and intimidation they might receive as a consequence.

We would deplore the message that repeal of section 6 would inevitably send both to perpetrators and victims of threatening communications, as well as the fact that it would be more difficult for such offences to be prosecuted.

³ <https://news.gov.scot/news/offensive-behaviour-act>

⁴ https://www.scojec.org/bjis2_findings.html

⁵ Worrying statistics on antisemitic hate crime (June 2017)
https://www.scojec.org/news/2017/17vi_hate_crime.html

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?

As we have already stated, we do not believe that simple repeal of the Offensive Behaviour at Football and Threatening Communications Act would be appropriate, and any move to assure perpetrators that “there should be no further convictions for section 1 and 6 offences” that, according to Crown Office, may not be otherwise prosecutable, would be to license offensive, threatening, and abusive behaviour.

Furthermore, we do not believe it appropriate to make changes to individual pieces of legislation during Lord Bracadale’s review of hate crime legislation, but strongly recommend awaiting his report.

We therefore urge that this Bill should not proceed, firstly because it would provide reassurance to perpetrators and alarm their victims, and secondly because piecemeal measures are inappropriate in advance of the findings of Lord Bracadale’s comprehensive review.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

Sectarianism is merely one form of religious hatred, which in turn is merely one form of hatred based on group identity or a protected characteristic. We therefore support the position as stated in The Scottish Government review of this legislation⁶ comments:

“It is important to note that the Act does not use the word “sectarian” or “sectarianism”, instead making use of more established terms in Scots law such as hatred based on religion, race, sexual orientation, disability and so on to capture the various behaviours that are dealt with in section 1. The term “sectarian” is problematic and highly contested and has not been used in any criminal legislation in the UK.”

We do, however, consider that the 2012 Act has been of assistance in tackling offensive behaviour – albeit only in the context of football matches – and threatening communications. The most recent available data⁷ reveals that there were 377 charges under section 1 of the Act in 2016-17, an increase of 32% on the previous year, and the highest number of such charges since the Act was introduced. During the same period, there were 6 charges under section 6 of the Act. It is reasonable to suppose that this legislation was the most appropriate in each of these cases, and probable that some would not have been prosecutable were the Act not in force, leaving the victims in fear that the perpetrators were free to pursue their threatening and abusive behaviour with impunity.

Repeal would inevitably, even though not by intention, signal that certain behaviour currently prohibited under the 2012 Act is now permitted. The alternative of extending the coverage of the Act to other contexts, venues, and characteristics would undoubtedly have a far more positive effect for all the listed groups.

⁶ An evaluation of Section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (June 2015) <http://www.gov.scot/Resource/0047/00479049.pdf>

⁷ Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2016-17 (Scottish Government, June 2017) <http://www.gov.scot/Resource/0052/00520637.pdf>

Legislation cannot, however, provide the whole solution, and we emphasise the importance of educational initiatives, and interfaith and inter-communal activities in demystifying ‘the other’, and enabling people to appreciate the lives and fears of people throughout Scotland’s diverse communities. However, legislation can send a strong message of “what society expects”, as well as providing a practical remedy against criminal behaviour, and we do therefore consider that the Act has been of value. In consequence, we would only support its repeal on the day that a wider Act, not limited only to football matches, were to be commenced and not before, but our strong preference, as stated, would be to await the outcome of Lord Bracadale’s review, and to address all of these issues in the context of a comprehensive revision of Scottish hate crime legislation.