social research

Research Findings
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CRIME AND JUSTICE

# An evaluation of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

## Introduction

This summary sets out key findings from a multi-method research study to evaluate the implementation and impact of new powers introduced in Section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

The research sought to determine whether the Act has achieved its primary aim of preventing the communication of threatening material, particularly where it incites religious hatred that would otherwise have occurred, and that it has done so without causing any other unintended harmful consequences.

This evaluation was conducted by Scottish Government, Justice Analytical Services and is based on qualitative research methods (e.g. semi-structured interviews with relevant stakeholders), analysis of Crown Office and Procurator Fiscal Service (COPFS) data, and findings from an online survey of Scottish football fans, conducted by ScotCen Social Research.

## The use of section 6

Since the Act was introduced in March 2012, there have been 33 “threatening communications” charges under section 6 of the Act. There were 5 in 2011-12 (during March 2012 – the first month of the legislation), 19 in 2012-13, and 9 in 13-14[1].

The relatively low number of charges makes it difficult to provide generalised research findings about patterns of reported offending. This report however provides some information about the accused, the victims, the nature of charges

[1] The number of charges reported in 2014-15 will be published by COPFS in June 2015

and the court outcomes. This is based on research already published by the Scottish Government in annual reports of the charges reported under the Act[2].

Of the accused in these charges, 25 were male (76%), and 23 were aged between 16 and 30 (69%).

Fifteen of the section 6 charges were recorded as being related to football in some capacity (45%). Four section 6 charges included reference to religion, 2 included a racial element, and 4 referenced support of a terrorist group.

Of the total section 6 charges, 27 had a specific victim of the offence; 14 of these victims were workers (e.g. bar staff or security steward) and 13 were members of the public.

Scottish Government 'criminal proceedings' data for the 3 financial years that are available (2011-14)[3] show that prosecutions have been completed in 9 of the 33 charges. Of these, 8 have resulted in convictions and 1 was found not guilty. Three of the accused were given monetary penalties, 2 were given community payback orders, 2 were admonished, and 1 received a custodial sentence.

Police respondents who had experience of using section 6 had done so with incidents of threatening communications that they perceived were relatively straightforward – section 6 was deemed as an appropriate charge in these circumstances.

COPFS respondents were satisfied that section 6 has gone some way to addressing threatening communications made over social media, an area in the existing legislation that was previously identified as potentially being insufficient.

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[2] Goulding and Cavanagh (2013) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012) in 2012-13*. The Scottish Government, available at http://www.scotland.gov.uk/Resource/0042/00425855.pdf and Skivington and McKenna (2014) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2013-14*. The Scottish Government, available at http://www.scotland.gov.uk/Resource/0045/00452585.pdf.

[3] See: http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings . Charges completed after the 2013-14 financial year are not included in this evaluation. Also, note that charge information from COPFS is based on charges reported by the police to COPFS in a financial year, and criminal proceedings information is from the Scottish Court Service and based on charges completed in court during a financial year.

## Impact of section 6

Justice system practitioners perceived a drop over the past two years in offences that may have been relevant to section 6. This was believed to be due in part to a series of high-profile prosecutions of threatening communications (by section 6 or not) that had 'sent a message' to the public about the unacceptability of such actions, and raised awareness of the existence of legislation to deal with such incidents. A lack of Rangers and Celtic fixtures, cooling the rivalry between these opposing sets of supporters, was also thought to have caused a reduction in threatening communications.

To consider the potential impact of the legislation on a key group who might be affected by it, the evaluation included a survey of football supporters in Scotland. This asked respondents about threatening, offensive and potentially inciteful material that they might have seen in different places including social media. This research therefore only provides an indication into a specific group of people who might be affected and is not a representative sample of everyone who is affected by the legislation.

Of a sample of 2,185 active football supporters in Scotland, around half (51%) said that while visiting football related internet sites, online forums or blogs to post messages and / or read about football over the past two seasons (the seasons coinciding with the introduction of the Act) they have been they have been offended at some point by something they saw or read.

Of those respondents who were offended by something on a football-related internet site, 45% were offended by negative references to religion, 35% by comments in support of terrorism, 33% by the celebration or glorification of the loss of life, 26% by negative references to a person's country of origin, 26% by threats of violence, 19% by negative references to a person's sexuality, 15% by negative references to a person's skin colour, and 11% by negative references to a person's gender.

Forty-one percent of people said that they had perceived no change in the frequency of offensive comments during this time. A quarter of respondents (25%) said these comments had become more frequent and a similar proportion (24%) said they had become less frequent.

The survey asked respondents to what extent they believed the 'threatening communications' legislation had achieved its aims of reducing threats of violence and incitements of religious hatred.

Fifty-six percent believed the Act had made no difference in relation to frequency of incidents of *threats of violence* in football fan forums and elsewhere; 18% believed it had contributed to a reduction; and 5% believed it had caused an increase.

Most respondents (58%) also said that they believed the Act has made no difference in relation to such incidents of *incitement of religious hatred* in football fan forums and elsewhere; 19% believed it had contributed to a reduction; and 7% believed it had caused an increase. Ten percent of respondents claimed they had changed their behaviour in regards to what they might post online since the Act was introduced. Thirty-four percent of these respondents claimed this change in behaviour was as a direct result of the Act.

## Potential barriers to the use of section 6

A potential barrier to the use of the legislation was the varying levels of awareness of section 6 amongst justice system practitioners. Knowledge gaps may exist due to: lack of suitable training of justice system practitioners; misinterpretation of certain aspects of section 6 (believing it to be football related only); and lack of direct or indirect experience.

Respondents commented that the high legal threshold of section 6 meant that existing legislation (i.e. section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 127 of the Communications Act 2003) would remain appropriate for the majority of cases involving threatening communications. Section 6 represented an additional as opposed to a replacement charge, specifically one that would mostly likely only be used in more serious cases.

Obtaining sufficient evidence that would be more likely to lead to a successful prosecution was noted to be a significant challenge for prosecutors in some section 6 cases. This was particularly the case where a threatening communication was made via an electronic device onto a social media host site and there was no admission of guilt from the accused.

**How to access background or source data**

The data collected for this social research publication:

☐ are available in more detail through Scottish Neighbourhood Statistics

☐ are available via an alternative route <specify or delete this text>

☒ may be made available on request, subject to consideration of legal and ethical factors. Please contact Ben.Cavanagh@Scotland.gsi.gov.uk for further information.

☐ cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.

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