

1. Which of the following best expresses your view of the proposal to repeal sections 1 to 5 of the 2012 Act? Please explain the reasons for your response.

Fully opposed

The Equality Network works for lesbian, gay, bisexual, transgender and intersex (LGBTI) equality in Scotland, including the reduction of hate crime, discrimination and prejudice. Section 1 of the 2012 Act does not just cover sectarianism at football matches, but also includes other offensive behaviour and forms of hatred based on sexual orientation, transgender identity, race and disability.

From Equality Network research we know that homophobia, biphobia and transphobia are a significant problem in football. A 2011 survey we conducted on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, found that 56% of respondents in Scotland (60% of whom were LGBT), had witnessed or experienced homophobic, biphobic or transphobic behaviour at football matches or associated with football matches, the majority of those being as a football supporter at a match itself (60%), or as a football supporter watching or listening to a match in a public venue, such as a pub (56%). One respondent commented: *“Homophobic insults are a regular occurrence and are ignored by bystanders in a way that racist comments would not be”*.

In 2012 we conducted further research into homophobia and transphobia in Scottish sport. It was the first research of its kind in Scotland, and was published in our report *Out for Sport* [Out for Sport (2012) Smith, M., Cuthbertson, S. and Gale, N. Available at <http://www.equality-network.org/wp-content/uploads/2013/03/Out-for-Sport-Report.pdf>]. Key findings from this research included:

- 62% of LGBT respondents had witnessed or experienced homophobia or transphobia in sport.
- 79% of respondents thought there was a problem with homophobia in sport.
- 66% of respondents thought there was a problem with transphobia in sport.

Football was identified, by a significant margin, as the sport which had the greatest problems with both homophobia and transphobia. Within the survey, people were asked which sports have the greatest problem with homophobia or transphobia. 1,382 respondents answered the question. 1,335 identified football, followed by rugby at 564.

Interim results from our new LGBTI hate crime survey, conducted over the past two months, reveal that **51%** of respondents who watch football have witnessed homophobic, biphobic or transphobic hate or hate-motivated behaviour at or outside a football match, travelling to or from a football match, or at a venue where a football match was being shown on TV. A further **16%** have experienced it targeted at themselves.

Respondents' comments regarding repealing the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 include:

"I would be against removing it at this time or any future time - how would this be a constructive move? Homophobic, biphobic or transphobic hate or hate-motivated behaviour should always be expressly forbidden. I still do not think the football world is a safe space for LGBT people and this is still very relevant".

"It should not be removed. Football matches are one of the very places where such behaviour is most likely to occur".

"It should be amended and not removed".

"Why remove protective legislation? Are they claiming football fans should be ALLOWED to be offensive and hateful on match days?!"

"I used to be a football steward and witnessed a lot of homophobic behaviour, chants, etc.".

"Getting rid of a law like this will bring about social change, as the message is being sent that in 2016, Scotland will tolerate bigotry. It is not who we are. With Brexit there is already a turn towards xenophobia, the repeal of this law could see discrimination increasing".

Our findings above are reflected in the Scottish Government's own evaluation of section 1 of the 2012 Act, which indicates that negative behaviour related to a person's sexual orientation is happening at two thirds the prevalence of negative behaviour related to a person's religious background. Negative behaviour related to a person's sexual

orientation was witnessed by **19%** of home supporters, and **22%** of away supporters [*An evaluation of Section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012* (2015) ScotGen Social Research, pp. 69-70].

However, the 2012 Act does not appear to have been used effectively yet to address homophobic behaviour. In two of the four years since 2012 - 2012-13 and 2014-15 - there were no sexual orientation related charges at all. In 2013-14 there was only one sexual orientation related charge, and although in the last year there have been five charges, this only accounts for 2% of the overall charges under the Act for 2015-16. Compared with religion related charges over the last four years, there is a huge disparity. For example, in 2015-16, there were sixty-three religion related charges (22%) compared to sexual orientation's five (2%) [*Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2015-16* (2016) ScotGen Social Research, p.15]. Given the extent of the problem of homophobia, biphobia and transphobia in football, these statistics bring into question how effectively the Act is being used to address this behaviour. This appears to be an implementation problem rather than a fault in the legislation.

In June 2011 the Equality Network gave written and oral evidence to the Justice Committee regarding the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, in which we raised the following concerns:

- There was insufficient pre-legislative consultation and scrutiny of the evidence and proposals made. The consultation period was extremely rushed and the bill lacked the usual level of parliamentary scrutiny.
- In our view, focused specific legislation can have value, even if it overlaps with other existing offences.
- We welcomed that section 1(2)(a)-(c) covers all of the hate crime protected characteristics (as listed in section 1(4)).
- We expressed concern that the section 6 condition B offence departs from the scope of Scotland's existing hate crime legislation, by addressing religious hatred only, and not hatred on the grounds of sexual orientation, transgender identity or disability.

The Equality Network continues to believe that a focussed offence can enhance clarity in the law, even if it overlaps with other existing offences. We welcome that the section 1 offence covers prejudice and hatred on

all the hate crime protected characteristics. We accept that the scope of the offence is different to that covered by existing offences, such as threatening or abusive behaviour, and breach of the peace. We have no particular view about other details of the scope of the section 1 offence (for example, whether section 1(2)(e) is too wide).

We are seriously concerned about the message that repealing the 2012 Act would send to the public. We feel it would condone expressions of prejudice and hatred at football matches, as well as suggesting that this behaviour is being decriminalised. We therefore believe that it would be inappropriate to repeal the Act, and 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.

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

As noted above, in our view, a blanket repeal of the legislation would send entirely the wrong message about the acceptability of hate-related behaviour at football. It would be likely to make it harder for such behaviour to be addressed.

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 is potentially a range of ways to do this, including through clear leadership from politicians, football clubs and supporters' groups. The Equality Network is currently speaking with clubs about adopting our LGBT Sports Charter [*Scottish LGBT Sports Charter (2015)* Equality Network. Available at <http://www.equality-network.org/wp-content/uploads/2015/05/Scottish-LGBT-Sports-Charter-Guidance.pdf>]. The Charter is based on five principles for LGBT inclusion, one of which is to challenge homophobic, biphobic and transphobic behaviour. Taking the time for a thorough review of the 2012 Act would allow informed development of additional measures to address the issue of unacceptable behaviour.

4. Which of the following best expresses your view of the proposal to repeal sections 6 to 9 of the 2012 Act? Please explain the reasons for your response.

Fully opposed

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).

The problem of hateful communication online is one that continues to grow. In our new survey on LGBTI hate crime, interim results show that online abuse (via emails, social media, etc.) is the fourth most prevalent type of hate crime, with **21%** of LGBTI respondents reporting they have been targeted by such abuse. The recently published 'Report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion', also identified and highlighted online abuse as an area that needed particular focus, and recommended that the Scottish Government conduct a wider review into this relatively recent, but rapidly growing phenomenon [*Report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion* (2016). Available at <http://www.gov.scot/Publications/2016/09/3565>]. We do not think section 6 should be repealed until there has been a thorough review of law and policy in relation to online abuse.

In terms of section 9, we were pleased that this was added to the bill, as it potentially allows section 6 to be extended to cover other protected characteristics, correcting the main problem we had identified with the section.

A thorough review of how online abuse should be addressed might well lead to amendment of sections 6-9, or replacement by new legislation.

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)?

The work that is needed to review the growing problem of online abuse will need to consider the appropriate boundaries between abuse that

should be criminal, abuse that should not be criminal but should be discouraged, and freedom of expression which should be welcomed.

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?

Unsure

We have no particular view on the question of strict liability for clubs.

7. What transitional arrangements do you think would need to be included in a Bill to repeal the 2012 Act? (Possible options are set out in the consultation paper at page 24)

As noted above, we do not support repeal of the Act at this time.

8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have? Please provide any comments.

Unsure

As noted above, we do not support repeal of the Act at this time.

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?

Negative

The Equality Network believes 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. The discussion in the consultation paper on equalities issues is not a full, robust equality impact assessment (EqIA), as it does not address any protected characteristics, apart from age. While we note that most people accused and convicted under the Act are young men, that is also the case for some other crimes, and this does not mean that those crimes should be abolished.

We certainly agree that hate crime is a problem in many other contexts than football, but we think context-specific approaches, including specific legislation around football and online abuse, can have value.

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

In our view, before the 2012 Act is repealed or amended, there should be a broad review and consultation about how to address hate-motivated and other unacceptable behaviour at football matches, and about the detailed scope of section 1, as well as a thorough review and consultation about how to deal with online harassment.

11. Have you any other comments to make on the proposed Bill or on the matters raised in the consultation document?

As highlighted above, we have serious concerns about the message that repeal would send. We feel it would condone expressions of prejudice and hatred at football matches, as well as suggesting that this behaviour is being decriminalised and is therefore now acceptable. Apart from strict liability for clubs, the consultation paper suggests no alternative policies or provisions to deal with such behaviour, which both our own research and that of the Scottish Government shows is widespread. The original Bill suffered from inadequate pre-legislative consultation and the legislative process was rushed. However, in our view, it would be a serious mistake to compound this by proceeding with wholesale repeal, without the reviews and consultations proposed above. After such 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.