The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

34th Meeting, 2013 (Session 4)

Tuesday 26 November 2013

The Committee will meet at 10.00 am in Committee Room 2.

1. **Criminal Justice (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Robin White, Vice-Chair, Scottish Justices' Association;

   Raymond McMenamin, Solicitor Advocate, member of the Criminal Law Committee, Law Society of Scotland;

   James Wolffe QC, Vice-Dean, Faculty of Advocates;

   Mark Harrower, President, Edinburgh Bar Association.

2. **Anti-social Behaviour, Crime and Policing Bill (UK Parliament legislation):** The Committee will take evidence on supplementary legislative consent memorandum LCM(S4) 22.2 from—

   Catriona Dalrymple, Head of Policy Division, and Anne Marie Hicks, Procurator Fiscal for Domestic Abuse, Crown Office and Procurator Fiscal Service;

   Detective Chief Superintendent Gillian Imery, Police Scotland;

   Mridul Wadhwa, Information and Education Officer and Children and Young People's Services Supervisor, Shakti Women's Aid;

   Lily Greenan, Manager, Scottish Women's Aid.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

   Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289);

Act of Sederunt (Commissary Business) (SSI 2013/291);

Drugs Courts (Scotland) Amendment Order 2013 (SSI 2013/302).

4. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

   Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Miscellaneous) 2013 (SSI 2013/294).

5. **Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012:** The Committee will consider responses received.

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The papers for this meeting are as follows—

Agenda item 1

Private paper	J/S4/13/34/1 (P)
Copy of the Bill, accompanying documents and SPICe briefing	
Written submissions received on the Bill	

Agenda item 2

Private paper	J/S4/13/34/2 (P)

Agenda item 3

Paper by the clerk	J/S4/13/34/3
Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289)	
Act of Sederunt (Commissary Business) (SSI 2013/291)	
Drug Courts (Scotland) Amendment Order 2013 (SSI 2013/302)	

Agenda item 4

Paper by the clerk	J/S4/13/34/4
Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Miscellaneous) 2013 (SSI 2013/294)	

Agenda item 5

Paper by the clerk	J/S4/13/34/5
Private paper	J/S4/13/34/6 (P)

Justice Committee

34th Meeting, 2013 (Session 4), Tuesday, 26 November 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:

- Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289);
- Act of Sederunt (Commissary Business) (SSI 2013/291);
- Drugs Courts (Scotland) Amendment Order 2013 (SSI 2013/302).

2. Further details on the procedure for negative instruments are set out in the Annexe attached to this paper.

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289)

Purpose of instrument

3. The purpose of the instrument is to add one body, the Perth and Kinross Heritage Trust, to the list of prescribed conservation bodies.

4. The instrument comes into force on 9 December 2013.

5. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at: http://www.legislation.gov.uk/ssi/2013/289/contents/made

Consultation

6. The policy note on the instrument confirms that a consultation was not required because applicants either meet the terms of the legislation or they do not.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 29 October 2013 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

8. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 2 December 2013.

Policy Note: Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289)

The powers to make this Order are conferred on the Scottish Ministers by section 38(4) of the Title Conditions (Scotland) Act 2003. It is subject to the negative parliamentary procedure.

Policy Objective

Section 38(4) of the Title Conditions (Scotland) Act 2003 grants Scottish Ministers the power to prescribe certain bodies to be conservation bodies. Bodies which are so prescribed may have conservation burdens created in their favour. Conservation burdens are conditions in the title deeds of property that ensure the preservation or protection of architectural, historical or other special characteristics of land for the benefit of the public. A conservation body is entitled to enforce conservation burdens created in its favour.

This Order makes an amendment to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 by adding one body, Perth and Kinross Heritage Trust to the list of prescribed conservation bodies.

The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned preserve or protect, for the benefit of the public, the architectural, historical or other special characteristics of any land (in accordance with section 38(5)). The body dealt with by this Order complies with this requirement.

Perth and Kinross Heritage Trust (PKHT)'s application to seek designation as a conservation body is based on a condition set by Historic Scotland after they were granted funds to undertake work to preserve or protect the architectural or historical or other special characteristics of any land. A condition of the grant is that PKHT execute a consecutive deed creating a conservation burden over property which is subject to grant assistance. PKHT can only create a burden in their favour if they are designated as a conservation body.

Previous amending Orders designating conservation bodies were laid in 2003, 2004, 2006, 2007, 2008 and 2012.

Consultation

A consultation is not required as applicants either meet the terms of the legislation or they do not.

Equality Impact Assessment

An equality impact assessment has not been undertaken on the basis that this policy does not have any impact on equality issues.

Financial effects

This Order is not expected to have any significant financial effects on Scottish Government, local government or on business. As there is no impact on business or the third sector, no Business and Regulatory Impact Assessment is required.

Civil Law and Legal System Division
October 2013

Act of Sederunt (Commissary Business) (SSI 2013/291)

Purpose of instrument

9. The purpose of the instrument is to consolidate and restate the Act of Sederunt (Commissary Business) 1975 with modifications, as a result of the sheriff court closures specified in the Sheriff Court Districts Amendment Order 2013 (SSI 2013/152).

10. Commissary business is dealt with in sheriff courts and relates to succession and access to a deceased person's estate. Commissary work mainly involves issuing confirmations, which are legal documents sometimes required by organisations, such as banks, before they can release money and other property belonging to someone who has died. The instrument is consequential to the 2013 Order as it removes those courts which are closing from the list of places where commissary business can be conducted.

11. The instrument comes into force in accordance with paragraph 1(2), (3) and (4).

12. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2013/291/contents/made

Delegated Powers and Law Reform Committee consideration

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 29 October 2013 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

14. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 2 December 2013.

Drugs Courts (Scotland) Amendment Order 2013 (SSI 2013/302)

Purpose of instrument

15. The purpose of the instrument is to remove the requirement for there to be a dedicated Drugs Court in the Sheriffdom of Tayside, Central and Fife, as for a number of reasons, including court capacity, there is no longer a strong case for continuing the Fife Drugs Court in its current form.

16. The instrument comes into force on 29 November 2013.

17. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2013/302/contents/made

Consultation

18. The policy note on the instrument confirms that Scottish Government officials have consulted with the Sheriff Principal for Tayside, Central and Fife, the Scottish Court Service and Fife Criminal Justice Social Work.

Delegated Powers and Law Reform Committee consideration

19. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 12 November 2013 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

20. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 2 December 2013.

21. At last week's meeting, a Member asked for further details of the reasons why an impact assessment had not been conducted on the proposal. Scottish Government officials have provided the following response:

> "No formal impact assessment was undertaken as the Sheriff Principal was clear that he no longer wanted a Drug Court to run in his Sheriffdom. The Scottish Government continues to work with local partners in Fife to ensure a smooth transition to a Drug Testing and Treatment Order regime and, where possible, the transfer of best practice from the Drug Court."

Policy Note: Drugs Courts (Scotland) Amendment Order 2013 (SSI 2013/302)

The Scottish Ministers make the following Order in exercise of the powers conferred by section 42(2) of the Criminal Justice (Scotland) Act 2003 and all other powers enabling them to do so.

Background

The Fife Drugs Court was first piloted in 2002 and is one of two specialist drug courts currently operating in Scotland. It sits in both Dunfermline and Kirkcaldy Sheriff Courts under a dedicated, specialist Sheriff.

Drugs Courts are targeted at offenders over 21, with complex and deeply entrenched drug problems that relate to their offending behaviour, to help them recover from addiction and rebuild their lives. The policy objective is to reduce the level of drug-related offending behaviour and to reduce or eliminate offenders' dependence on, or propensity to use, drugs.

This Order removes the requirement for there to be a Drugs Court in the Sheriffdom of Tayside, Central and Fife. The Sheriff Principal for Tayside, Central and Fife advised Scottish Government officials that he will be better able to ensure the efficient disposal of court business in his Sheriffdom if we move away from a dedicated Drugs Court. The Sheriff Principal believes that, for a number of reasons, issues including court capacity, there is no longer a strong case for continuing the Fife Drugs Court in its current form.

Consultation

Scottish Government officials have consulted with the Sheriff Principal for Tayside, Central and Fife, the Scottish Court Service and Fife Criminal Justice Social Work. Under the Sheriff Courts (Scotland) Act 1971, Sheriff Principals have a statutory duty to secure the efficient disposal of court business in their Sheriffdom. The Sheriff Principal for Tayside, Central and Fife, believes that he will be better able to discharge his statutory responsibility if we move away from a dedicated Drugs Court. It is not possible to continue a Drugs Court in Fife without the support of the Sheriff Principal.

Scottish Government officials are currently working with stakeholders in Fife to ensure the Drug Treatment and Testing Order regime continues to operate effectively.

Financial Effects

Current funding for Fife Drugs Court is approximately £690,000 per annum. This is non-core centrally initiated funding, and is in addition to funding provided to Fife and Forth Valley Community Justice Authority for Drug Treatment and Testing Orders made across the area. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the closure of Fife Drugs Court will result in net savings to Scottish Ministers and it will have no financial effects on local government or on business.

Scottish Government
October 2013

ANNEXE

Negative instruments: procedure

Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx

Justice Committee

34th Meeting, 2013 (Session 4), Tuesday 26 November 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instrument which is not subject to any parliamentary procedure:

- Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Miscellaneous) 2013 (SSI 2013/294).

Purpose of instrument

2. The purpose of the instrument is to: insert new rules into Chapter 38 (Reclaiming) and Chapter 40 (appeals from inferior courts) in respect of the urgent disposal of reclaiming motions and appeals; amend rule 41.57 (permission to appeal against decisions of the Upper Tribunal); amend rule 76.36 (applications); and amend rule 76.37 (disclosure orders).

3. The instrument comes into force on 11 November 2013.

4. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2013/294/contents/made

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 5 November 2013 and agreed to draw the instrument to the attention of the Parliament on the ground that it incorrectly refers to an instrument of subordinate legislation which it seeks to make provision about.

6. The relevant extract from the DPLR report on the instrument is reproduced on page 2 of this paper.

Justice Committee consideration

7. The instrument was laid on 21 October 2013 and the Justice Committee has been designated as lead committee.

Procedure
8. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

9. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the Delegated Powers and Law Reform Committee has drawn the instrument to the lead Committee's attention on technical grounds; or

- a Member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

10. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

11. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 56th Report 2013

Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Miscellaneous) 2013 (SSI 2013/294) *(Justice Committee)*

1. The instrument makes miscellaneous amendments to the Rules of the Court of Session. It is subject to the laying requirement in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, and comes into force on 11 November 2013.

2. In considering the instrument, the Committee asked the Lord President's Private Office ("the LPPO") for clarification of certain points. The correspondence is reproduced in the Annexe.

3. Among other matters, the instrument amends rule 76.37 (disclosure orders) of the Rules of the Court of Session, in consequence of the coming into force of the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (SI 2013/2605). In doing so, it incorrectly refers to an application for a disclosure order under article 55(2) of the Proceeds of Crime Act 2002, rather than article 55(2) of that Order.

4. **The Committee accordingly draws the instrument to the attention of the Parliament under the general reporting ground as it incorrectly refers to an instrument of subordinate legislation which it seeks to make provision about.**

5. **Paragraph 5(1)(b) of the instrument substitutes rule 76.37(3) of the Rules of the Court of Session. The new rule provides that "an application under section 396(4) of the Proceeds of Crime Act 2002 or article 55(2) of the Proceeds of Crime Act 2002 (supplementary) shall be by motion." The reference to article 55(2) of the Proceeds of Crime Act 2002 should be a reference to article 55(2) of the Proceeds of Crime Act 2002 (External Investigations) Order 2013. Paragraph 5(1)(b) of the instrument accordingly refers to the wrong legislation.**

6. **While such drafting is not considered defective as it is unlikely in practice to prevent or impede the operation of the instrument, it does amount to a patent error on the face of the instrument.**

7. **The Committee also notes that the LPPO accepts that the reference to the legislation is incorrect, and has undertaken to rectify the matter by amendment when the next Act of Sederunt amending the Rules of the Court of Session is made.**

ANNEXE

Act of Sederunt (Rules of the Court of Session Amendment No 6) (Miscellaneous) 2013 (SSI 2013/294)

On 24 October 2013, the Lord President's Private Office was asked:

1. Paragraph 5(1)(b) of the instrument substitutes rule 76.37(3) of the Rules of the Court of Session. The new rule provides that "an application under section 396(4) of the Act of 2002 or article 55(2) of the Proceeds of Crime Act 2002 (supplementary) shall be by motion." Does the LPPO agree that the reference to the Proceeds of Crime Act 2002 is incorrect, and that the reference should be to the Proceeds of Crime Act 2002 (External Investigations) Order 2013? If so, does the LPPO consider that the provision requires to be corrected?

2. Paragraph 3 of the instrument amends rule 41.57 (permission to appeal against decisions of the Upper Tribunal) to reflect the terms of the enabling legislation, following a commitment given by the LPPO to the Committee in relation to SSI 2013/238. The LPPO indicated that it would also amend an erroneous cross-reference contained in SSI 2013/238 at the same time as making the amendment to rule 41.57. The error was in new rule 104.5(1) (inserted by paragraph 3 of SSI 2013/238) which refers to the parties mentioned in rule 104.3(4)(b) to (d), when the relevant parties are mentioned in rule 104.3(6)(b) to (d). The Committee monitors commitments given to amend instruments in response to points it has raised. It therefore asks whether the LPPO proposes to amend rule 104.5(1), and if so, when?

3. Paragraph 5(2) of the instrument amends rule 76.37A (evidence overseas) to correct an error which was mentioned by the Committee in relation to SSI 2013/162. The error was one of two errors mentioned in relation to that instrument, the other being a reference in rule 24.6(4) to the provision being "subject to paragraph (3)", which the Committee considered should have read "subject to paragraph (5)". In that case, the LPPO gave a commitment to amend both typographical errors by correction slip. The error in rule 76.37A is however being amended by the current instrument. Can the LPPO confirm whether the error in rule 24.6(4) is to be amended by correction slip, or otherwise?

The Lord President's Private Office responded as follows:

1. We agree that the reference is incorrect and that the provision requires to be corrected. This will be done when the next Act of Sederunt amending the Rules of the Court of Session is made.

2. We do propose to amend rule 104.5(1) and this will be done when the next Act of Sederunt amending the Rules of the Court of Session is made. We apologise for this oversight standing the commitment given previously to the Committee.

3. We now propose to correct the error in rule 24.6(4) by way of an amending instrument and this will be done when the next Act of Sederunt amending the Rules of the Court of Session is made. We apologise for this oversight standing the commitment given previously to the Committee.

Justice Committee

34th Meeting, 2013 (Session 4), Tuesday, 26 November 2013

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Paper by the clerk

Purpose

1. The purpose of this paper is to invite the Committee to consider responses received regarding the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

Background

2. At its meeting on 5 November, the Committee considered email correspondence from members of the public raising concerns regarding the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

3. At that meeting the Committee agreed to invite the Minister for Community Safety and Legal Affairs, the Lord Advocate and the Chief Constable to respond to the issues raised in the correspondence. The responses and the email representations received are attached in the annexe to this paper. These have also been posted on the Committee's website.

4. In addition, the Minister provided the Committee with supporting documentation which has also been posted on the website and is included with the papers.

Annexe

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Letter from the Scottish Government to the Convener

Thank you for your letter of 5 November 2013 regarding the Justice Committee's considerations around the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. It remains the Government's view that bringing forward the evaluation timetable agreed by Parliament would not be appropriate and I have set out our reasoning below.

As Justice Committee members are aware, there is a statutory obligation on the Government to report to Parliament on the operation of the Act's offences over two full football seasons. The Government will fulfil that obligation and work is already taking place as part of that review. In agreeing that two full football seasons should have passed before the report's publication, the Government took full account of the suggestion in the Justice Committee's report on the Bill that it should contain express provision requiring a report to Parliament, but only after the legislation had been in operation for a sufficient length of time to evaluate the evidence of its impact. Parliament agreed to that approach.

The rationale for adhering to the timetable recommended by the Committee and agreed by Parliament has not changed; doing so will enable us to complete a proper, comprehensive, quality assured and evidence based evaluation of the operation of the Act. Bringing forward the timetable risks this work being done without the evidence base which Parliament recognised as being required and at a pace which will jeopardise the quality of the final research.

I recognise that Committee members have received a significant level of correspondence on this matter, primarily as a result of an online campaign. It is important to address the matters raised in and around that campaign as doing so further explains our view that accelerating the evaluation timetable is unnecessary.

In June this year the Scottish Government published a number of documents which provide a clear evidence base for work across justice partners in relation to football related offensive behaviour.

The first annual publication of 'Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) 2012 Act' was published on 14th June. I have attached a copy of the full report as an annex to this letter. The full report is available on the Scottish Government website. This report covered the period from commencement of the Act on 1 March 2012 to 31 March 2013. The Scottish Government will be publishing this report next June for the year to 31 March 2014.

This analysis of charges reported under the Act showed that there were 268 charges reported under Section 1 of the legislation. The majority of the charges were for "hateful" behaviour (46.6%) and "threatening" behaviour (44.4%); while all 46 charges for "other behaviour that a reasonable person would be likely to consider offensive" were for behaviour which referenced terrorism or terrorist organisations (17.2% of all charges). The vast majority of charges for "hateful" behaviour were for behaviour derogatory towards Roman Catholicism (83%), with 15.1% for behaviour derogatory towards Protestantism and 1.9% for behaviour derogatory towards Judaism. This analysis will be published again in June next year.

We made clear as the bill progressed through Parliament that this legislation was intended to tackle exactly the kind of offensive behaviour described in these statistics. What they also show is that the vast majority of football supporters are well-behaved and simply wish to support their team. The fact that the overall number of offences are also broadly comparable with previous years' statistics illustrates that it is simply wrong to suggest that there is any evidence of a widespread criminalisation of football supporters.

The campaign also suggests that the Act has been dis-proportionately used to target certain supporters. The statistics make clear that there is no evidence to support that assertion. They showed that, in the charges where football affiliatons were noted by the police, 31.7 % of the accused were described as having Rangers affiliations, compared to 25.4% with Celtic affiliations and 10.4 % Hibernian affiliations. They also show that the Act has been used across a wide range of football fixtures involving a variety of clubs rather than suggesting an undue focus on any particular club.

Last June also saw the publication of the report on 'Religiously Aggravated Offending in Scotland' (section 74 of the Criminal Justice (Scotland) Act 2003) and the Crown Office's report on 'Hate Crime in Scotland'. I have attached both of these reports as annexes to this letter.

It is worthwhile highlighting that while the section 74 report found that the majority of religious abuse victims were police officers, more than a third of religious abuse was targeted within the general community. I am aware that some campaigners have downplayed the significance of police officers being the targets of this abuse and that arbitrary expressions of religious intolerance against the general community are also of little note. I am not however prepared to accept that and I hope that the Committee would not either.

It has been claimed as part of this campaign that figures obtained under the Freedom of Information Act show that there is 'no statistical link between acts of domestic violence and any particular football match'. The validity or otherwise of that claim is not affected by the Offensive Behaviour at Football and Threatening Communications (Scotland) Act. It is therefore difficult to see how a review of the Act would answer the campaign's concern here. However, most critically, the contention of the campaign is directly contradicted by the available evidence. You will recall that the First Minister's Football Summit in March 2011 considered evidence from Chief Constable House on the link between violent crime (including domestic abuse) and Old Firm matches. I think that this is compelling evidence of the need for action in

this area, work that is being taken forward with partners including the police. I am attaching a link which I hope is helpful.
http://www.bbc.co.uk/news/uk-scotland-glasgow-west-12670175

I would also draw the Committee's attention to research recently carried out by the University of St Andrews which showed a statistically significant relationship between reported domestic abuse and football matches. I have attached a copy of this report to my letter. The committee might wish to speak to the St Andrews researchers about the connection which they identified between football matches and incidence of domestic abuse.

Finally, the campaign raises concerns about the 'style of policing' which it suggests has been 'engendered' by the Act. I would simply refer the Committee to the letter it received from the Lord Advocate earlier this year where he pointed out that the Offensive Behaviour Act contains no provisions on policing and that policing is a matter for the Chief Constable. I would emphasise the Lord Advocate's comments that if there are any concerns about policing then there are avenues through which complaints can be made, investigated and adjudicated upon. I do not wish to comment on the events at the Gallowgate earlier this year (which have been raised in connection with the Act) as the cases arising are still being dealt with by the courts, other than to emphasise to the Committee that none of the arrests made were under the Offensive Behaviour at Football Act.

I hope that this letter explains clearly why we do not believe that a case has been made for the acceleration of the timetable to evaluate the Act and I hope that the Committee will support that view.

Roseanna Cunningham
Minister for Community Safety and Legal Affairs
13 November 2013

Letter from Police Scotland to the Convener

I refer to your letter dated 5 November 2013 regarding concerns raised about the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

I would make it clear at the outset that I expect my officers to robustly tackle behaviour which espouses terrorism or involves hate crime, threats, violence and disorder in whatever context they encounter it, including football. The advice from my officers to football supporters has consistently been to positively support their team and to avoid hateful or threatening behaviour, and I would stress the point that this is exactly what the vast majority of supporters do. However, this Act assists us in policing the minority who do not heed the advice.

As you will be aware, the Scottish Police Service, represented by ACPOS, supported the introduction of this Act and provided submissions to the Justice Committee as the Bill progressed through the Parliamentary process. Any future review or amendment to this legislation is rightly a matter for the Scottish Parliament.

However, I wish to make it clear that I believe that Police Scotland is implementing the Act effectively and with positive results in terms of detection and deterrence.

In preparation for operational implementation of the Act, the Football Coordination Unit for Scotland (FoCUS) delivered a national training programme for officers who would be involved in policing football matches, ranging from Match Commanders to Operational Constables. This training continues to be delivered in a variety of forums to police officers and staff at partner organisations. The officers deployed as evidence gathering teams equipped with bodyworn video and hand held cameras undertake a training course which includes information on police powers, Human Rights and Data Protection, and they are expected to provide members of the public with this information if asked to do so.

FoCUS also hosted a number of events around the country for supporters in the period immediately prior to the Act's implementation in March 2012. These provided an opportunity to discuss the Bill and address supporters' concerns. A key theme was to reassure supporters that police tactics would not be significantly changed once the legislation came into force. FoCUS continues to engage on a daily basis with elected members, supporter groups, fan liaison staff and individual members of the public to answer queries and provide education on the operation of the legislation. In many cases, however, those who most vociferously oppose the Act have repeatedly declined to meet with FoCUS officers.

There have in addition been several instances of misinformation being circulated in respect of police tactics, results of police enquiries and court decisions both via online forums and by distribution of leaflets at matches. This is, in my opinion, a deliberate strategy to discredit both the police and the legislation to further the ends of those responsible and it has greatly increased suspicion and mistrust of the police amongst large numbers of football supporters and in particular young supporters who are susceptible to such propaganda. It has been enlightening to many of those arrested by my officers that they are not subject to 'dawn raids' or mistreatment and they are in fact treated with respect and in many instances invited to attend by arrangement at a convenient time.

Police tactics at football are governed by an over-riding duty to ensure the safety of all attending the event. Consequently, match day officers are routinely briefed on the requirement to engage with supporters and the idea that policing has become more aggressive due to the Act now being in force is entirely mistaken. In fact, Scottish football has experienced massive reductions in the police resources deployed at matches over recent seasons to the point that the Scottish Premiership now regularly holds 'police-free' fixtures.

The deployment of officers tasked with gathering evidence of violence, disorder or anti social behaviour is restricted to those matches which are assessed as presenting a clear risk of such behaviour and the number of officers dedicated to this role can be as low as two at some fixtures. As an example, of the 21 senior Scottish football fixtures for the week commencing 9 November 2013 only two will have specialist evidence gathering teams in attendance.

In respect of the court proceedings for offences under the Act, the Scottish Government report '*Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012) in 2012-13'* records that in the financial year 2012-13 there were 8 different club affiliations identified for accused persons, quite clearly contradicting any contention that one particular group is being targeted. This report also documents that the police were recorded as victim in respect of such charges in only 13.1% of cases, with specific members of the public accounting for 38.4% and as such, contradicts any perception of this being a victimless crime.

The Scottish Government report notes that the conviction rate for cases reported in the first 13 months of the Act is 68%. It is for the courts to determine what disposal is appropriate in each case but I am confident that through the regular communication between my officers and the three Football Liaison Prosecutors (FLPs) the correct individuals are being reported in the right circumstances. It should be noted that prior to taking enforcement action in respect of emerging behaviour such as new songs or chants, FoCUS will consult the relevant FLP to confirm that the Crown would be content to proceed with cases reported for such behaviour. FoCUS will then inform the club, relevant supporter organisations and fan liaison staff that continuing to engage in such behaviour is likely to result in arrest. Only then will enforcement action be undertaken, thus ensuring that those who continue to engage in such behaviour are fully informed in their decision to do so. This is the approach that was taken with 'Roll of Honour', which was referred to by one of your correspondents.

To suggest that any individual is arrested 'for nothing more than supporting their team', as one correspondent does, is quite frankly astonishing and is not borne out either by complaints of wrongful arrest, or responses from Crown Office and Procurator Fiscal Service regarding the quality of police reports.

In addition to enforcement action, the increased scrutiny and debate surrounding offensive behaviour at Scottish football has resulted in an observable reduction in mass offensive behaviour: while there remain pockets of offensive behaviour mainly linked to specific groups, it is no longer common to see entire sections of a stadium engaging in offensive behaviour. In respect of the second offence created by the Act, threatening communications, increased scrutiny has brought encouraging signs of self-policing amongst online users.

In relation to the links between domestic violence and football there remains much work to be done. However, there is now research (Dickson et al 2013) which demonstrates a statistically significant link between domestic abuse and 'Old Firm' fixtures between Celtic FC and Rangers FC. Domestic abuse and alcohol misuse formed much of the basis for the Scottish Government Joint Action Group, of which I was a member, and these issues continue to be a high priority for policing, not just in football but in wider Scottish society.

I would also make the following points about the FoCUS. The FoCUS is not a unit dedicated solely to enforcement of the Act and it was not established for this purpose. The establishment of a football coordination unit was proposed within the 'Old Firm' 6 point plan which was presented to the Football Summit in March 2011.

This was then adopted as one of the Scottish Government Joint Action Group commitments and pre-dates publication of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill.

FoCUS was indeed given responsibility for operational implementation of the Act but its remit covers a wide range of football policing matters, including coordination of intelligence, delivery of football-related training, support to the strategic lead officer for football in Scotland and engagement with partner organisations. Many of its successful operations relate to incidents involving serious violence in towns and cities across Scotland and while FoCUS has enjoyed Scottish Government funding, the implication by one correspondent that £1.8 million has been spent on enforcing the Act is inaccurate and does not reflect the positive work done by the unit.

Finally, I note that several of your correspondents raise the matter of particular songs which have some basis in Irish history. I am aware that the Scottish Government Advisory Group on Tackling Sectarianism in Scotland is due to report to Ministers in the near future. I welcome the establishment of this expert Group and look forward to its recommendations. I also wholeheartedly welcome the significant financial investment that the Scottish Government has committed to anti-sectarian projects. There is no doubt that much of the violence and hatred which is manifested at football is based on what can be described as sectarian affiliations. This is unlikely to be eradicated without societal changes which go well beyond football.

I trust that the foregoing information will be useful to Justice Committee members, and perhaps provide a more factual basis for discussions, but please be assured that I am happy to provide further information should you require it.

Sir Stephen House
Chief Constable
Police Scotland
13 November 2013

Letter from the Lord Advocate to the Convener

Thank you for your letter dated the 5th November 2013 regarding the Justice Committee and its consideration of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

You have asked me to respond to the issues raised in the letters enclosed with your letter which I will endeavour to do.

One of your correspondents has suggested that persons are arrested ‘for nothing more than supporting their team’. This is not the experience of Procurator Fiscals. Successful prosecutions have followed arrests for brandishing a flagpole to make it look like a firearm during a football match, making a Nazi salute at a football match, engaging in organised and pre arranged disorder and violence at a busy station, abusing passengers including children en route to a football match, wearing a T shirt in sight of opposition fans with the words ‘INLA f*** your poppy’ en route to Ibrox for an Old Firm match, discharging a flare in a football match and causing danger to fans, singing and chanting songs containing lyrics to the effect that the opposition

fans are ‘fenian bastards’ and ‘f*** your pope and the Vatican’ and shouting racial and religious comments at opposition players. This is a snapshot of the type of disorder that police and prosecutors are dealing with. The notion that this behaviour does not take place flies in the face of reality.

I appreciate of course that this type of behaviour is carried out by a small minority of people. It is however the case that such disorder is being carried out by individuals supporting a number of football clubs in different divisions. In the most recent Government statistics provided in relation to offences under section 1 of the Act, 25.4% related to individuals affiliated to Celtic and 31.7% related to individuals affiliated to Rangers, with those affiliated to Hibs the next highest at 10.4%. In relation to those who commit such crimes it is important to reiterate that the club which an individual supports is irrelevant when considering whether an offence has occurred. Further there is no evidence to support the contention that any one group of supporters or football team is singled out by the Act. As I pointed out in previous correspondence the Act is silent on policing which is a matter entirely for the Chief Constable. If members of the public consider that they have been subject of police misconduct or aggressive policing as a correspondent has suggested then there are mechanisms and procedures to deal with such allegations and if criminal proceedings are taken the court will have supervision of police action in the context of a criminal trial.

I note there is also reference made in the correspondence to the identity of the victims. The same recent Government statistics reflect that Police Officers were in fact the victims in only 13.1% of charges whereas the figures for the Community (45.9%) and members of the public (38.4%) were significantly higher. I should also point out that this detailed data could not have been provided prior to the Act, when charges such as Breach of the Peace were generally used, given that the COPFS statistical database would not have been able to distinguish between those crimes related to football and those crimes not related to football.

Correspondents also refer to the issue of the singing of particular songs. As I made clear to the committee previously I consider that it is not appropriate to issue a list of songs, words, banners or chants which are deemed offensive. It is important that the context and circumstances of every case are taken in to account by police officers in line with the Guidelines which I published in relation to the Act.

In those same guidelines I made it clear that police officers should also take in to account proportionality, legitimate football rivalry and common sense when establishing whether particular behaviour was offensive. I will not make any comment on the offensiveness of a specific song but I can say in relation to the song “Roll of Honour”, which has been raised in some of the correspondence, that a number of individuals in separate cases in different Sheriffdoms have been convicted for singing this song. People who engage in singing this song should appreciate that it is offensive to fans of other football teams and depending on the circumstances could result in arrest and conviction. It is not the case as a correspondent has suggested that most of the prosecutions under the Act are for singing this song. Finally on this subject I can point out that prior to the Act coming into force convictions have resulted for Breach of the Peace for singing this song as they have

done under the Offensive Behaviour Act, so I make the obvious point that it is not the Act which criminalises the signing of such a song.

Attending a football match should be an occasion on which supporters of any club can enjoy the passion and atmosphere of a match without being witness to or the victim of offensive behaviour. This also extends to places away from football grounds where members of the public should be able to go about their business without witnessing offensive behaviour as described above. It is encouraging therefore , as reported to you by the Chief Constable, that it is no longer common to see entire sections of a stadium engaging in offensive behaviour and that the second offence created by the Act in relation to threatening communications has resulted in encouraging signs of self policing amongst on line users.

I consider that the legislation is continuing to be used effectively by Prosecutors in their role in deciding how to proceed in cases reported by the police. The correspondence attached to your letter refers to “failed prosecutions”, but what is being referred to are charges under the Act which do not result in a conviction, and this can happen for a number of reasons.

This includes situations where the Crown has led sufficient evidence in law to establish that an offence under the Act has taken place but the Court decides that the evidence is not sufficiently credible or reliable, for example, to prove identification. The high standard of proof, beyond a reasonable doubt applies to offenses under the Act as it does across the criminal justice system. It is quite right that the Court weighs up all the evidence heard, including any given by the accused before deciding on their guilt or innocence and decisions of this type do not reflect on the content of the legislation itself nor on its application by Prosecutors. I can also confirm that prosecutors take account of decisions and guidance issued by the Court in the decision taking in future cases. I do not agree that there is an abnormally low conviction rate for prosecutions under the Act..

While the legislation is in its infancy it is important to consider the reported decisions taken by the Courts in relation to the interpretation of the legislation and its application by Prosecutors. To date these have been few and there have been no successful challenges [including challenges under the European Convention of Human Rights] to the legislation.

With regard to superintendence and interpretation of the act by the Courts in the case against Cairns the Appeal Court issued guidance to Courts on how the Act should be interpreted. I enclose a copy of the judgement. You will note that the Appeal court in their judgement made no criticism of the Act.

In a further published judgement a Sheriff supported the extraterritorial element of the Act and the Crown’s use of the Act to prosecute an individual who was alleged to have committed an offence in Berwick. I enclose a copy of the Sheriff’s judgement for your information.

Additionally a Sheriff rejected the argument made on behalf of six accused that particular behaviour was not “in relation to a regulated football match”. In that judgement the Sheriff referred to the objective of the legislation being “to improve

standards of behaviour at, in the immediate vicinity of, and on journeys to and from regulated football matches". The case in which that judgement was issued reflects all too well the type of behaviour which the Act is intended to attack. Sixteen individuals were convicted of charges under the Act as a result of one large scale brawl which took place at a busy Glasgow Central railway station one Saturday evening following a Scottish Cup game between Ayr and Hibs. The sentences for these individuals, who were resident in both Scotland and England, included extensive Community Payback Orders, Football Banning Orders and sentences of imprisonment.

Further the Appeal Court in a recent sentencing appeal [McGowan v HMA] stated, "In our opinion, this case was a good example of the frightening and destructive nature of football hooliganism. When supporters of a particular team join together - even spontaneously - to present an aggressive, foul-mouthed band clearly looking for trouble, the potential for fear, panic, violence, and injury is very real. On this occasion, but for the presence and intervention of the police, matters would undoubtedly have escalated. We therefore wholly agree with the sheriff's assessment of the offence as a grave one, *prima facie* meriting both a custodial sentence and a football banning order."

With regard to the review of the legislation, this is not a matter for me to comment on and is a matter for the Parliament. As I have made repeatedly clear the Crown welcomes and will cooperate, as we have done already, in the review of the Act. I understand that the review of the Act is already underway

I continue to monitor the decisions of the Courts and keep the guidelines that I published under review on that basis.

Finally, I note that one correspondent has suggested that there is no statistical link between acts of domestic violence and a particular football match. I am afraid this is not the case. Dickson et al 2013 demonstrated a statistically significant link between domestic abuse and Old Firm fixtures. Our internal data also demonstrated such a link. I should however point out that no one is suggesting that the respective football clubs involved in this fixture are in any way responsible for the domestic abuse. It is simply recognition of a sad fact that perpetrators of such abuse often use the match as an excuse or a catalyst for engaging in such reprehensible behaviour. The point which is being made, as I understand it, is that in order properly to deal with domestic abuse it is necessary to understand the triggers and motivations. Such studies are informative in this regard.

I hope this assists the Committee in its deliberations.

Lord Advocate
14 November 2013

Correspondence received by Members of the Justice Committee regarding the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

I am writing to register with you my very serious concerns about the operation of this Act and the impact it is having on the lives of ordinary decent football fans with no previous contact with the police. The figures released this summer by the Crown Office Procurator Fiscal Service and widely publicised by the Lord Advocate and by the Community Safety Minister Roseanna Cunningham do not, as they claim, show that the Act is 'working'. What it shows is a piece of legislation which has a lower conviction rate than any other crime except rape and murder (despite having a dedicated police unit which has cost the public purse over £1.8 million over the period of its existence and who are in the majority of cases the 'victim' in what are otherwise victimless incidents).

Moreover, figures obtained under the Freedom of Information Act by STV also show that contrary to the position argued by proponents of the Act, there is no statistical link between acts of domestic violence and any particular football match.

Serious concerns about the operation of the Act and the style of policing which it has engendered have now been expressed by lawyers, journalists, politicians and fan groups and have already been raised in the Justice Committee.

I would be obliged if you would confirm to me whether or not, in the light of these concerns, you are willing to urge your colleagues on the Justice Committee to ask for an early Review of the Act instead of waiting for another two full football seasons and for further damage to the relationship between football fans and the police and politicians.

To All Members of the Justice Committee

I write to express, firstly, my disgust at the e-mailed response sent by your Convenor, Ms Grahame, to a concerned member of the public in which she suggested his e-mail setting out his concerns re the Act were merely clogging up her Inbox to the detriment of the homeless. If she is more interested in the concerns of the homeless, might I suggest she leave the Justice Committee? If not, could you all maybe suggest to her that e-mails regarding the (so-called) justice system are actually pretty important, particularly to those directly affected by them? I thank you in advance.....

Regarding the Act itself, and your review of it, it must go. All you are achieving is a deeper divide between football supporters and Police Scotland. In addition, this is supposed to be an Act applied to all fans, regardless of team loyalty yet while video cameras are used to single out and prosecute individuals who sing Republican songs, court cases in which the goings on of 'our' Armed Forces are thrown out of court because those individuals were not identified by the relevant authorities. Heaven forfend that the majority of individuals in those authorities are in any secret organisations! (PS I'm a Protestant so don't think I'm biased....)

I could list many, many songs sung throughout the world which might upset people. How about "Mandela Day" by Simple Minds? Or "Free Nelson Mandela" by Jerry Dammers? Didn't the Thatcherites view him as a terrorist? Was he not imprisoned on terrorist charges and is now one of the world's best-loved individuals? Then there's "God Save the Queen". "Rebellious Scots to Crush....."? Now if that's not offensive.... Likewise sending Edward's Army home "to think again" but nobody gets arrested for singing it. What about all the Negro Spirituals sung to give them strength and hope through their persecution? Weren't there many who were against their emancipation, including many MPs of the day? Were these slaves bigoted? There will be songs forever sung which will offend some but it doesn't mean they're wrong. They're sung from a different viewpoint. It's the same with "Roll of Honour". Many may view those men as terrorists, just like Mandela; trying to gain their freedom from an imperialist, capitalist system which thought it knew better.

Do you truly want an open and diverse Scotland? Free and inclusive of ALL faiths and lifestyles? If so, you have a lot of work to do to build any faith in one particular section of society. And this comes from someone who has prayed for independence all her almost-50 years. Unfortunately, if what I see now is the Scotland of independence, I will not vote for it and that breaks my heart because if we don't get it now, we never will.

You MUST repeal this Act. If not, it implies you want us all to cow-tow to your beliefs. Keep that up and you'll eventually have us all like North Korea - not allowed to think for ourselves.

As for you, Ms Graham, if you've made it to the end of this e-mail, I'm proud of you (almost)!

Fellow Scots

I am writing to urge you to move for an early review of this ill conceived and poorly implemented law.

It is never too late to admit a mistake. We all make them. We should all learn from them.

The Scottish Parliament will be taking a great stride on the road to recognition as a mature political institution, if its members can have the courage to admit this grave error, and the wisdom to learn from it.

Dear Members of the Scottish Parliament

I write to ask you to review the OBA 2012 at your earliest convenience. The act was poorly crafted, rushed into legislation and has not been a success (as proven by the number of failed prosecutions). I hope you and your colleagues in government treat

this matter with some urgency before more football supporters are arrested for nothing more than supporting their team (and scarce public money is wasted in unsuccessful prosecutions).

Yours in Hope

We are writing to your regarding this item which will be on the Agenda of the Justice Committee tomorrow. We have listened to you online and in person discussing this issue at previous meetings of the Justice Committee and we are aware that you are someone who is sensitive to the potential problems with this Act and its impact on football supporters.

We are writing to you today to urge you to support an Early Review of this Act even if you are not prepared at this stage to argue for its repeal. I am sure you will agree that there is sufficient evidence to raise doubts as to its operation in practice. As football supporters who travel the length and breadth of Scotland and who are aware at first hand of the way that fans are now being subject to very aggressive policing as a result of this Act, we are in no doubt that to allow it to go on for another two years would be very dangerous. The impact of this Act on relationships between the police and the fans and indeed between politicians and young fans is so corrosive that it could do long-lasting damage to Scottish society.

You may not be aware but we can confirm that Celtic Football Club has been in recent correspondence with the Community Safety Minister on this very issue and has also urged her to bring the review of the Act forward.

… video cameras are used to single out and prosecute individuals ….

We are writing to your regarding this item which will be on the Agenda of the Justice Committee tomorrow. From your previous contributions in Committee in the run-up to the introduction to this Act and since its introduction we feel that you are someone who is sensitive to the dangers of illiberal and ill-thought out legislation. We are also sure that, given your party allegiance, you are committed to the principles of liberalism and are conscious of the dangers of interfering unduly in the thoughts and views of citizens.

Our experience as people who travel widely to follow football is one which, were you to experience it, would horrify you. We are a couple in our 50s and we have been photographed, searched, monitored, followed and generally harassed simply for being football supporters. What we have seen young people subjected to is much worse. This simply cannot be allowed to go on for another two years.

The COPFS has given direct instructions to the police to prosecute Celtic fans for singing a particular song which is about the 10 republican hunger strikers who died in protest at prison conditions in 1981. Most of the prosecutions of Celtic fans have been centred on this song and very many more have been charged with this in

recent weeks. We have taken the trouble to copy the words for you below so that you can see that while it honours people for their self-sacrifice and courage in support of a particular political aim, if offers no offence to anyone of any religion or race, nor does it promote violence. You may not agree with the cause for which these young men died and you may wonder why Celtic supporters feel the need to sing this at a football match, but, in a sense, that is irrelevant. The question is, should this be a criminal offence? We would suggest not and we hope you agree.

Please support the call for an early review of this Act because if it is allowed to go on much longer we fear that great damage will be done to relations between a generation of young football fans and the police and politicians. That is not good for Scottish society.

Best wishes

Following the e-mail campaign launched by Fans Against Criminalisation (FAC), we have found it encouraging that our call for an early review of the Offensive Behaviour at Football and Threatening Communications Act is being considered by the Justice Committee. FAC is also extremely supportive of the proposal of an Ad-hoc committee being commissioned to examine this Act and how it has affected all football supporters.

Having considered the letters of reply to the Convener by the Lord Advocate, Police Scotland and the Scottish Government respectively, it is worth noting our concerns with each of their positions.

The Lord Advocate

Within his letter, Lord Advocate Frank Mulholland begins by stating that fans are not merely arrested for 'watching their team' and lists several offences which have resulted in convictions under the Offensive Behaviour at Football and Threatening Communications Act. This list however omits the people who *have* been arrested and charged for the crime of being a football supporter.

- There is no mention of the man who was arrested at the airport as he returned home from his holiday with his panic-stricken girlfriend on a charge which was so ridiculous it was thrown out within weeks of this incident.

- There is no mention of the young man accused of singing lyrics to a song which prosecutors have deemed offensive, in spite of the fact that video evidence clearly demonstrated this not to be the case and that he was singing something different entirely. The constant court appearances however still caused this young man to lose his livelihood.

- There is also no mention of the 4 cases in which the presiding Sheriff has simply been unable to rely upon the evidence given by police witnesses. Examples such as these demonstrate the human cost to this legislation.

The Lord Advocate specifically mentions one song, known as The Roll of Honour, in his reply to the convenor. '*People who engage in singing this song should appreciate that it is offensive to fans of other football teams and depending on the circumstances could result in arrest and conviction.'*

We reject entirely the notion that to sing this song is to glorify violence or that it should be a criminal offence. We are happy to provide the lyrics to this song if the committee would find it useful. It is also suggested that this song had resulted in convictions under previous legislation and we would like the Lord Advocate to expand on this with details and the context of exact cases as we have consulted the three solicitors who have handled most of these cases and they are not aware of any convictions under the Section 74 legislation. The song refers to the Republican hunger strikers of 1981 and is fundamentally a song about human rights and civil resistance. People such as Nelson Mandela, Tony Blair, Tony Benn and several Loyalists have commended the bravery of these men, yet sadly this is now seen as a criminal offence within the context of Scottish football. The issue is not whether one might agree with the political stance of the song or whether one might feel that it has nothing to do with football, the issue is should it be illegal to espouse political opinion? It is an extremely dangerous precedent to set. It is difficult to see how this song could be deemed illegal without calling into question the legitimacy of a song such as 'Scots Wha Hae', the classic favourite of the Scottish National Party. When you begin to create laws on the basis of something as subjective as offensiveness, freedom of expression is the natural casualty.

Police Scotland

Within the reply submitted by Police Scotland it is claimed that propaganda has led to mistrust of the police. We flatly reject this claim and contend that is in fact the behaviour of police officers themselves which has led to a complete breakdown in trust between football supporters and the police. Rather than being indoctrinated as is suggested by Police Scotland, young fans are particularly disillusioned because they are often the victims of the harassment which sadly goes hand in hand with following certain teams in Scotland at present. Whilst it may be the case that some fixtures have seen a reduction in policing, those present at the recent match between Hibernian and Celtic in Edinburgh will testify that in real terms, the level of policing is extremely over the top and an unnecessary drain on the taxpayer's money.

It is also worth pointing out that FAC are well aware that it is not only Celtic fans who are subject to this act, nor are Celtic fans the only group of supporters who have opposed it. There have been numerous protests against this act across the country, from Motherwell to Livingston to the Scottish National Team. Banners have been displayed, demonstrations have been held and e-mails have been sent. The Celtic support may well be at the forefront of this fight and we make no apologies for that whatsoever, but this is fundamentally an issue for all football supporters across the country. However, we would also note that the overwhelming majority of fans of other clubs who have been convicted under this Act, were convicted for actions which would have been illegal before the Act was passed. The same cannot be said of Celtic fans and, in fact, we are only aware of three convictions of Celtic fans under this Act and two of them resulted in an Absolute Discharge. Convictions are actually

less of a problem at this stage than the harassment and heavy handed policing which the Act has engendered encouraged.

Minister for Community Safety

FAC also finds it entirely regrettable, yet sadly unsurprising, that the Minister for Community Safety and Legal Affairs has argued against an early review of this Act. We simply do not accept that it is in the public interest to wait to assess the damage being done. It is clear that there is a demand for action now and there is far more to be lost by waiting needlessly for this act to inflict even more damage upon those who attend football matches. This act has been implemented for over 18 months which is more than an adequate amount of time to gauge its' effectiveness. Within that time it has been lambasted by academics, ridiculed by lawyers and dismissed as 'mince' and a 'nonsense' by judges of the Sheriff court. It has been defended only by those who sought to implement it in the first place.

Thank you for your attention.

Fans Against Criminalisation
18 November 2013