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

Yes, I agree with the proposal to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. Since the Act came into force on 1st March 2012, there has been a steady increase in tensions between fans and the police at football grounds, their surrounding environs and on transport to and from matches. I have witnessed this at first hand as a regular attendee at football matches and I believe the wide-ranging powers which have been afforded to the police as a result of the introduction and implementation of the 2012 Act to be directly responsible for this.

The Act was introduced amidst a background of knee-jerk rhetoric and headline grabbing surrounding the need “to do something” about “sectarianism in football”. It is this reactionary response which allowed the then Bill to be rushed through parliament and placed onto statute with complete disregard to the countless evidence and views that were provided to the Scottish Parliament from a plethora of voices across Scottish civic society during the consultation period in 2011.

The very premise of the Act is to criminalise ‘Offensive Behaviour at Football’. This, in itself, is flawed. Firstly, the subjective nature of ‘offensiveness’ has created widespread confusion over what is and is not legal under the legislation. This confusion has not only been experienced by football fans themselves, but within court rooms where numerous Sheriffs have dismissed cases whilst branding the Act as unworkable and, in the words of one Sheriff, as “mince”. Secondly, it is flawed in that the Act indiscriminately targets one section of society (football fans) for ‘crimes’ that would be perfectly legal elsewhere. To be clear, as I support the repeal of the 2012 Act, I am not advocating the extension of its provision to the rest of society. However, a serious question should be asked of legislatures when they see fit to discriminate against one group within a particular environment whilst the same behaviours are exhibited in other environments and are considered appropriate.

This does, however, clearly illustrate the regressive and outdated attitude that is shown towards football fans. As I’ve stated, this Act was introduced in order “to do something” about “sectarianism in football”. Therein lies the problem. Sectarianism in Scotland is a societal issue and always has been. Yet, it is easy and convenient for parliamentarians and commentators to place a historically-rooted issue at the feet of football fans despite statistics from existing legislation clearly indicating that the majority of religiously-aggravated crime in Scotland occurs away from football grounds. It is this easy and convenient approach which has enabled football fans as a collective to be used as scapegoats and it is this easy and convenient approach which has resulted in legislation being introduced which is preserved solely for football fans and ignores this issue within wider society. Combined with the
background to the introduction of the Act as stated above (knee jerk and headline grabbing), I believe this casts doubt on the oft-alluded to “good intentions” behind the Act which is routinely regurgitated by supporters of the Act.

Furthermore, the 2012 Act has resulted in types of behaviour which would not be considered sectarian to be criminalised. Fans up and down the country have been arrested on ridiculous charges (e.g. for swearing) and have been dragged through the courts for months on end. It is tedious cases such as this which have further exposed the absurdity of the Act and the reason why I fully support its repeal. There is also the issue of fans being targeted under the Act for expressing political views within grounds or in surrounding areas. This has also further enhanced my support for the repeal bill currently being considered.

2. Did you support the original legislation?

No. I have opposed the 2012 Act since its inception and have backed calls for its repeal ever since.

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

I firmly believe that existing legislation combined with the use an aggravated by prejudice offence to be more than adequate in dealing with any issues concerning sectarianism – whether these incidents occur at the football, at the rugby, in a pub or in the middle of a busy street etc. Notably, Section 74 of the Criminal Justice (Scotland) Act 2003 and Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 are more than adequate in preventing or responding to any type of public disorder surrounding football matches.

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

As I have stated in response to question 1 above, this is one of the primary reasons why I have opposed this Act since its introduction and why I support its repeal today. The discriminatory nature of the legislation in criminalising one section of society for behaviour that is perfectly acceptable elsewhere in society is ludicrous. Existing legislation is sufficient in dealing with the issues we were told were the reason for the introduction of the Act in the first place. Other types of behaviour which have now been criminalised at football (including forms of political expression) as a result of the 2012 Act are perfectly legal elsewhere – and rightly so. Football fans should, therefore, have parity with their fellow members of the public and the repeal of the 2012 Act would provide this.

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

I believe that Section 127 of the Communications Act 2003 whilst used in conjunction with an aggravated by prejudice offence to be sufficient in responding to cases which could result in arrest under Section 6 of the 2012 Act.

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

Once the 2012 Act is repealed, I believe there should be no further convictions resulting from any provisions of the Act. Any ongoing cases should be discontinued and the police should desist from pursuing charges against any individuals. I also believe that individuals with convictions under the 2012 Act should have these quashed due to the discriminatory nature of the legislation as stated above.

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

I do not believe that this Act has done anything towards tackling sectarianism. As I have stated in response to question 1 above, sectarianism is a historically-rooted societal issue in Scotland. The introduction of this Act does not in any way tackle sectarianism throughout Scottish society but merely targets footballs fans. This approach is flawed in two respects:

1. Evidence clearly indicates that the majority of religiously aggravated crime occurs away from football grounds. Therefore, enacting legislation which focuses solely on football does not delve into the roots of the issue at hand.

2. The 2012 Act does not tackle ‘sectarian behaviour’ but ‘offensive behaviour’. Therefore, there are individuals who have been arrested and charged under this Act whose behaviour cannot reasonably be assumed to be ‘sectarian’ or cannot reasonably be considered to be a hate crime. This is important to note given the Scottish Government’s decision to include the 2012 Act in the review they are undertaking into current hate crime legislation in Scotland. The inclusion of legislation which has had numerous individuals arrested for behaviour which does not constitute hate crime does a disservice to what should be a meaningful and much-needed review of hate crime legislation.

Paul Wilcox
17 August 2017