

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (REPEAL) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill, introduced in the Scottish Parliament on 21 June 2017.
2. The following other accompanying documents are published separately:
 - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 19–LC);
 - Explanatory Notes (SP Bill 19–EN);
 - a Policy Memorandum (SP Bill 19–PM).
3. This Financial Memorandum has been prepared by the Non-Government Bills Unit (NGBU) on behalf of James Kelly MSP, the member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

4. The Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill (“the Bill”) seeks to repeal the Offensive Behaviour and Threatening Communications (Scotland) Act 2012 (“the 2012 Act”). In view of the intrinsic link between the current Bill and the 2012 Act, the Financial Memorandum (FM) for the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (“the 2011 FM”) is referred to throughout this document.
5. This FM estimates the costs that have been incurred as a result of the implementation of the 2012 Act, and assesses what the financial implications might be of repealing the Act.
6. The financial implications of repealing the section 1 offence (offensive behaviour at football matches) and the section 6 offence (threatening communications) are considered separately. The two offences are considered together, however, in considering the implications for local authorities and businesses.

The Financial Memorandum for the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

7. The Financial Memorandum¹ (FM) for the Offensive Behaviour and Threatening Communications (Scotland) Bill (“the 2011 FM”) introduced in the Parliament on 16 June 2011, set out the Scottish Government’s estimated costs associated with the measures introduced by that Bill.

8. The Scottish Government did not envisage that significant additional costs would be associated with the introduction of the measures provided for in that Bill. It argued that the main costs were likely to relate to policing and enforcement, the anticipated increase in the number of cases which might be brought to the courts as a result of such enforcement, and the costs associated with dealing with those convicted, whether that conviction led to a community or custodial sentence.

9. It was emphasised that additional arrests, prosecutions and custodial or other sentences would not entail a significant additional financial burden, and there might well have been such numbers of arrests etc in any event. The provisions would be part of a wider programme of work to tackle sectarianism, the costs of which would primarily fall on the criminal justice system. It was anticipated that there was:

“likely to be an initial period of activity, but that the overall costs will reduce over time as public information and the awareness of successful prosecutions begins to have a deterrent effect and more general preventative approaches in relation to offending and sectarianism take hold ... While savings would, therefore, be expected over time, it is not possible at this point to estimate the extent of such savings and when they would be realised”.

THE SECTION 1 OFFENCE (OFFENSIVE BEHAVIOUR AT REGULATED FOOTBALL MATCHES)

10. It is not possible to say definitively what savings will result from the repeal of the 2012 Act; however, it is possible to set out an estimate of the costs that have been incurred in implementing the 2012 Act since it came into force.

Prosecution, court and legal assistance costs

11. The main costs arising from section 1 of the 2012 Act are prosecution costs (falling mainly on the Crown Office and Procurator Fiscal Service (COPFS)), court costs (falling mainly on the Scottish Courts and Tribunals Service (SCTS)) and legal assistance costs (falling mainly on the Scottish Legal Aid Board (SLAB)). The cost of policing football matches is dealt with separately later in this memorandum. It has not been possible to estimate the costs involved in

¹ *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1), Financial Memorandum*

[http://www.parliament.scot/S4_Bills/Offensive%20Behaviour%20at%20Football%20and%20Threatening%20Communications%20\(Scotland\)%20Bill/b1s4-introd-en.pdf](http://www.parliament.scot/S4_Bills/Offensive%20Behaviour%20at%20Football%20and%20Threatening%20Communications%20(Scotland)%20Bill/b1s4-introd-en.pdf)

any cases where people charged under the 2012 Act have been held in police custody following arrest.

12. The following table² sets out information obtained as the result of an FOI request and details the number of people prosecuted for offences under section 1 of the 2012 Act, and the type of procedure used, since that section came into force.

Table 1: Prosecutions under section 1 of the 2012 Act

Court Procedure	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Solemn	-	4	6	-	-	10
Summary	2	87	148	90	173	500
Total Prosecuted	2	91	154	90	173	510

13. The above table only separates 2012 Act prosecutions according to whether they were prosecuted under solemn or summary procedure, but doesn't include a breakdown according to the court in which they were heard. As Table 3 below makes clear, prosecution costs vary significantly according to the court – for example, the average cost of prosecuting a solemn case in the High Court is more than ten times the average cost of prosecuting a solemn case in the sheriff court.

14. As no breakdown by court is available for 2012 Act cases, data for all criminal proceedings has been used instead. For simplicity, this has been based only on 2014-15, the most recent year for which data is currently available (although numbers vary only slightly from previous years):

² Source: Scottish Government Criminal Proceedings in Scotland database – obtained following an FOI request
In a letter dated 13 March 2017, the Scottish Government Safer Communities Directorate, Justice Analytical Services Division advised that these statistics “are not directly comparable with statistics in the reports Hate Crime in Scotland or Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2015-16. Both of the other outputs use COPFS figures which measure individual charges at the case marking stage while the statistics provided above are representative of closed cases that have reached a final verdict in court. Whilst the other reports include information on the disposal in court they are only counted if the charges were proceeded against and closed by the time the information was compiled. Some charges marked by the COPFS for court action will not have received a final verdict and will still be on-going at the time the reports were published. Information on convictions from the COPFS data source is thus provisional at the time of publication and subject to change.”

Table 2: Total court disposals in Scotland, 2014-15³

Type of court disposal [procedure]	Number	Proportion
Total JP Court disposals [Summary]	36,881	37%
Total Sheriff Summary Disposals	55,674	56%
Total Sheriff and Jury Disposals [Solemn]	5,638	6%
Total High Court Disposals [Solemn]	549	0.5%

15. Applying the above percentages to the figures in Table 1, it would be reasonable to assume that, of the 10 cases so far prosecuted under solemn procedure, only one was dealt with in the High Court and the remaining nine in the sheriff court and that, of the 500 summary cases, 280 were dealt with in the sheriff court and 220 in the JP court.

16. The following table sets out the average cost, across the whole criminal justice system, of cases that proceed to court, broken down into the prosecution costs (assumed to fall on COPFS), court costs (assumed to fall on SCTS) and legal assistance costs (assumed to fall on SLAB), and distinguishing according to whether solemn or summary procedure is used, and according to whether the case is heard in the High Court, sheriff court or JP court.⁴ It has not been possible to establish whether or how far costs for 2012 Act cases differ from these averages.

Table 3: Average costs of cases proceeding to court

	High Court	Sheriff Court - Solemn	Sheriff Court - Summary	Justice of the Peace Court
Prosecution	£58,546	£4,473	£379	£379
Court costs	£9,638	£1,856	£385	£194
Legal assistance	£13,545	£1,852	£600	£322

17. Multiplying the numbers in paragraph 15 by the costs in Table 3 gives the following estimates of total prosecution, court and legal assistance costs for cases under section 1 of the 2012 Act (to the end of 2015-16):

³ Source: COPFS, Statistics on Case Processing Last 5 years

⁴ Source: Scottish Government, *Costs of the Criminal Justice System in Scotland dataset*:

<http://www.gov.scot/Topics/Statistics/Browse/Crime-justice/Publications/costcrimjustscot/costcrimjustdataset>

Table 4: Costs of offences under section 1 of the 2012 Act

	Prosecution costs	Court costs	Legal assistance costs⁵	Totals
High Court	1 x £58,546 = £58,546	1 x £9,638 = £9,638	1 x £13,545 = £13,545	£81,729
Sheriff Court (solemn)	9 x £4,473 = £40,257	9 x £1,856 = £16,704	9 x £1,852 = £16,668	£73,629
Sheriff Court (summary)	280 x £379 = £106,120	280 x £385 = £107,800	280 x £600 = £168,000	£381,920
JP Court	220 x £379 = £83,380	220 x £194 = £42,680	220 x £322 = £70,840	£196,900
Totals	£288,303	£176,822	£269,053	£734,178

18. These estimates do not take account of the costs involved in charges which do not result in prosecutions – e.g. the cost to COPFS in such cases of considering the reports received from the police in order to reach a decision on whether prosecution is in the public interest.

Costs of Football Liaison Prosecutors

19. Three dedicated football liaison prosecutor posts were announced in 2011⁶, and it is believed they were filled in September 2012. According to COPFS, there are currently seven Procurator Fiscal Deputes performing the football liaison prosecutor role throughout Scotland in addition to their other duties as prosecutors.⁷ It is not possible to say whether these appointments would continue after repeal of the Act.

20. Current (2016-17) pay ranges for Procurator Fiscal Deputes are £41,312 - £48,248. It is not known what proportion of their time the seven current post-holders spend on their roles as football liaison prosecutors; but if it was (say) 50%, the total cost per annum would be around £157k. Salary costs for COPFS staff are already included in the figures in Table 4.

⁵ The Scottish Legal Aid Board, in response to a FOI request, said that legal assistance had been granted in 524 summary cases and 49 solemn cases under the 2012 Act – a total of 573. This is higher than the 510 cases shown in Table 1. The difference may be explained by some of the 537 cases being for charges under section 6 (rather than section 1) of the Act, or by some being for cases that didn't result in a prosecution, or both.

⁶ See, for example, <http://www.bbc.co.uk/news/uk-scotland-15034035>

⁷ Information provided in response to an FOI request to COPFS.

Costs of disposals

21. The following table shows the number of court disposals resulting from charges under section 1 of the 2012 Act, to the end of 2015-16, broken down according to the type of disposal⁸:

Table 5: Main court disposals for convictions under section 1 of the 2012 Act

Year	2012-13	2013-14	2014-15	2015-16	Total
Disposal					
Community penalty	11	5	5	16	37
Custody	2	2	1	3	8
Football Banning Order	5	7	4	6	22
Monetary penalty	38	27	23	46	134
Other	6	2	5	2	15
Total	62	43	38	73	216

Costs of imprisonment

22. Table 5 suggests there have only been 8 sentences of imprisonment for section 1 offences (to the end of 2015-16). However, the following table, which gives a breakdown according to the duration of sentence imposed, suggests a higher total of 13. The difference in numbers is understood to be the product of separate databases and different methodologies (see also footnote 12). For the purposes of estimating actual costs of imprisonment, the figures in Table 6 have been used:

Table 6: Duration of custodial sentences given for charges under section 1 of the 2012 Act⁹

Length	2011-12	2012-13	2013-14	2014-15	2015-16	Total
3 months or less	-	-	-	-	1	1
Over 3 months to 6 months	-	2	1	2	3	8
Over 6 months to 2 years	-	2	2	-	-	4
Totals	-	4	3	2	4	13

⁸ Source: *Charges reported under the Offensive Behaviour at Football and Threatening Communications Act 2012 in 2015-16* (Table 15). This report is based on the COPFS case management database, populated by information provided by the police to COPFS. The data is not directly comparable to that in the Scottish Government’s Criminal Proceedings database, which uses data from SCTS.

⁹ Source: FOI request to the Scottish Government. Data is taken from the SG’s Criminal Proceedings Database. The letter responding to the FOI request said that the data “is not directly comparable with ... *Charges reported under the Offensive Behaviour at Football and Threatening Communications Act 2012 in 2015-16*”. The Table 6 data are “representative of closed cases that have reached a final verdict in court” whereas the COPFS data [the source of the data in Table 5] is “provisional at the time of publication and subject to change”.

23. Table 7 assumes that the average sentence imposed in a range (e.g. over 3 months to 6 months) is around the mid-point of the range (e.g. 4.5 months). It also takes into account provision requiring offenders sentenced to terms of under 4 years to be conditionally released after serving half of the sentence imposed.¹⁰

Table 7: Cost of custodial sentences for offences under section 1 of the 2012 Act

Category	Number of custodial sentences imposed	Average duration of sentences imposed	Total duration of sentences imposed	Sentences served	Cost (@ £37K/year)¹¹
3 months or less	1	1.5 months	0.125 years	0.0625 years	£2,313
Over 3 months to 6 months	8	4.5 months	3 years	1.5 years	£55,500
Over 6 months to 2 years	4	15 months	5 years	2.5 years	£92,500
Total	13		8.125 years	4.0625 years	£150,313

Costs of community penalties

24. According to Table 5, a total of 37 community penalties have been imposed under section 1 of the 2012 Act (to end of 2015-16). The costs of administering community penalties are borne by local authorities through their responsibility for criminal justice social work (although they are supported in doing so by direct funding from the Scottish Government).

25. Audit Scotland estimated in 2011¹² that the average cost of implementing a community service order was £2,769, while the 2011 FM assumed a cost per Community Payback Order of £2,250 to £2,400¹³. On this basis, the total cost of community penalties under section 1 is likely to have been around £90k.

Costs of football banning orders

26. According to Table 5, a total of 22 football banning orders (FBOs) have been issued under section 1 of the 2012 Act (to end of 2015-16). FBOs are issued by and administered by the police. No source of information about the cost of imposing football banning orders has been identified.

¹⁰ Prisoners and Criminal Proceedings (Scotland) Act 1993, section 1 (read with section 27).

¹¹ Source: <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset> Table 1, note 2.

¹² *An Overview of Scotland's Criminal Justice System*, available at: http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf

¹³ This is derived from the figures given in paragraph 68 (£18k/8 and £36k/15).

Costs of monetary penalties

27. According to Table 5, a total of 134 “monetary penalties” have been imposed under section 1 of the 2012 Act (to end of 2015-16). This is understood to include both fines, issued by the courts, and fixed penalty notices (FPNs), issued by the police.

28. Information provided by the Scottish Courts and Tribunals Service (SCTS) shows that fines totalling £132,428 were imposed on people convicted (at least in part)¹⁴ for 2012 Act offences between 2011-12 and 2016-17 (to 1 February 2017), of which £108,314 has so far been paid – see Table 8.¹⁵ It is not known how many individual fines were imposed, but it is assumed that the costs for SCTS of dealing with a particular case in court are the same whether or not a fine is imposed. Fine income is understood normally to be remitted to the UK Treasury, so cannot be directly offset against the costs involved.¹⁶

Table 8: Fines imposed and paid under the 2012 Act

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17*
Total imposed	£380	£17,110	£16,708	£20,920	£32,281	£45,029
Total paid	£380	£15,360	£15,953	£20,093	£29,082	£27,446

* 1 April 2016 – 28 February 2017

29. The 2011 FM (paragraph 67) assumed that the main cost in issuing FPNs would be in police time, and that 5-15 minutes would be required for each one. Police Scotland give a cost of £51 per hour for a constable’s time¹⁷, so the implication is that the cost of issuing 134 monetary penalties (at an average of 10 minutes’ time per item) would be just over £1,100. This does not account for the income from FPNs, at £40 each (or £60 if not paid during the first 28 days). Like fine income, this is understood to be remitted to the UK Treasury, so cannot be directly offset against the costs involved.

¹⁴ The SCTS data relates to “fine accounts” which may incorporate financial penalties resulting from a number of charges, not all of which will be under the 2012 Act. It may therefore be that similar fines could have been imposed even in the absence of the 2012 Act offences. The SCTS data does not distinguish between charges under section 1 of the 2012 Act and charges under section 6, but it is reasonable to assume that the large majority were for section 1 offences, since there were 65 monetary penalties imposed in 2011-2014 under section 1 (see Table 5 above) and only three under section 6 (see paragraph 47 below).

¹⁵ Source: Response by SCTS to FOI request made on behalf of the member.

¹⁶ According to SCTS, the Scottish Government may retain some fine income, for example under the Proceeds of Crime Act 2002. This is unlikely to apply in relation to fines imposed for 2012 Act offences.

¹⁷ Source: Police Scotland, “Organising an event”, available at: <http://www.scotland.police.uk/contact-us/organising-an-event/>. This states that officer time is charged on a cost-recovery basis.

Overview of section 1 costs

30. All of the amounts estimated above can be classified according to whether they fall on the Scottish Administration (which includes COPFS, SCTS and SPS), local authorities (Criminal Justice Social Work) or other bodies (specifically, SLAB and Police Scotland):

Table 9: Distribution of costs for offences under section 1 of the 2012 Act

(Note: all figures have been rounded to the nearest £1k.)

	Scottish Administration	Local authorities	Scottish Legal Aid Board	Police Scotland
Prosecution costs (COPFS)	£288k			
Court costs (SCTS)	£177k			
Legal assistance costs (SLAB)			£269k	
Prison costs (SPS)	£150k			
Community penalties		£90k		
Fixed penalty notices				£1k
Totals	£615k	£90k	£269k	£1k

31. Therefore, the total estimated costs on the Scottish Administration, local authorities and other bodies of section 1 offences since the 2012 Act came into force are in the region of £975k.

32. As indicated earlier, this figure does not include police costs in terms of investigating cases under the Act, nor of detaining suspects in custody pending a decision about release/prosecution.

Other policing costs

Policing of football matches

33. The estimated costs of policing high-profile fixtures is set out below. It is thought to be unlikely that repeal of the 2012 Act will make a significant difference to that cost – since those fixtures will still have to be policed in much the same way post-repeal.

34. The 2011 FM states that: “It is no part of the assumptions of this Bill that the introduction of these measures will require matches to be policed that are not already being policed. It remains for the local Force [now Police Scotland], in consultation with football clubs, to assess risk of public disorder and respond accordingly”. It goes on to add that:

“The Scottish Government does not rule out that individuals who are not currently considered to be acting criminally will be arrested on the basis of these new offences. However, since the primary intent of the measures is to bring clarity and strengthen the law, and not criminalise behaviour that is not already likely to be prosecuted, the policing response to football matches is not expected to be dramatically different, and certainly not in a way that demands a whole new approach of significant additional resources.”

35. The 2011 FM estimated that the average costs of policing an “Old Firm” match at the time were £328k for a standard fixture, £346k for a Sunday fixture and £282k for a week day fixture.¹⁸ Between February 2010 and March 2011, £2.3million was spent policing seven “Old Firm” fixtures.¹⁹ (It is not clear what the breakdown of these matches in terms of standard, Sunday or weekday fixtures was.)

36. Accounting for inflation, in 2016-17 terms, and assuming a similar level of policing and annual number of high profile fixtures, current figures would be £352k for a standard fixture, £371k for a Sunday fixture and £302k for a week day fixture²⁰. Taking an average of those three figures (£342k) and assuming the same number of fixtures, this would amount to an estimated annual figure of £2.5million. (It is assumed that this figure would mainly relate to staffing costs but would also cover any additional costs, such as mounted police, cameras, etc. It is also assumed that this figure is for policing within the definition of a “regulated football match” which includes behaviour in public venues in which football matches are being televised, as well as offensive behaviour on journeys to and from football match venues. The figure would not necessarily include other lower profile matches which would still be subject to the provisions of the Act.)

37. Based on the annual estimate of £2.5 million per annum, this might have resulted in expenditure of around £12.5 million since the Act came into force.

Football Coordination Unit for Scotland (FoCUS)

38. As part of the Police Scotland budget, it is also worth referring to the Football Coordination Unit for Scotland (FoCUS) which was established by the then Strathclyde Police force following the Scottish Government’s summit on football in 2011 and which considered issues of violence, disorder and hatred in the Scottish game²¹. According to Police Scotland, the aim of FoCUS is “to deliver the Strategic Objectives of the Police Scotland Football Working Group which are, in essence, to provide a consistent national approach to Policing football across Scotland with a view to eradicating violence, disorder and hatred from the game and thereby

¹⁸ *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1), Financial Memorandum, p10*

¹⁹ *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1), Financial Memorandum, p11*

²⁰ Scottish Parliament Information Centre Inflation Tool. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/63552.aspx>

²¹ <http://www.scotland.police.uk/whats-happening/featured-articles/behind-the-scenes-football-coordination-unit-for-scotland>

ensuring that people feel safe and able to attend football matches in a comfortable and secure environment”.²²

39. The summit, the establishment of FoCUS and the 2012 Act were all responses to several problems which arose during the 2010-11 football season, notably “‘sectarian’ and offensive behaviour, misconduct from players and managers, death threats, and live ammunition and bombs sent to prominent figures directly and indirectly associated with football”.²³

40. The budget for FoCUS in 2014-15 was, according to the response to a freedom of information request, £769,690 and then employed 15 officers.²⁴ It is assumed that the portion of that budget which relates to policing football fixtures is part of Police Scotland’s overall budget for policing “regulated football matches” and that this sum will form part of that budget.

41. It is impossible to say with any certainty whether, and if so how, repeal of the 2012 Act will affect this expenditure. For example, it would be an operational decision for Police Scotland whether to disband FoCUS, or reduce its budget, in response to repeal. In the event that FoCUS was disbanded, the extent to which this will lead to actual savings is, however, hard to quantify. Offences currently prosecuted under the Act may still be prosecuted under other legislation. Similarly, operational actions of FoCUS which relate to the Act but are not specifically provided for in the Act itself (such as filming football fans at, and on the way to, football grounds) may continue after the Act is repealed.

THE SECTION 6 OFFENCE – THREATENING COMMUNICATIONS

Prosecution, court and legal assistance costs

42. The following table²⁵ sets out the number of people prosecuted for offences under section 6 of the 2012 Act, and the type of procedure used, since that section came into force.

Table 10: Prosecutions under section 6 of the 2012 Act

Court Procedure	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Solemn	-	-	-	-	2	2
Summary	-	2	7	4	2	15
Total Prosecuted	-	2	7	4	4	17

²²<http://www.scotland.police.uk/whats-happening/featured-articles/behind-the-scenes-football-coordination-unit-for-scotland>

²³ *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1)*, Policy Memorandum, p2

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29678.aspx>

²⁴ <https://stv.tv/news/politics/1363267-police-scotland-spend-baffling-2m-on-football-crime-unit/>

²⁵ Source: Scottish Government Criminal Proceedings in Scotland database (obtained following an FOI request)

43. As with section 1, the above table only separates prosecutions according to whether they were prosecuted under solemn or summary procedure, but doesn't include a breakdown according to the court in which they are heard. Again, as no breakdown by court is available for section 6 cases, data for all criminal proceedings has been used instead (set out in Table 2).

44. Applying the percentages from Table 2 to the figures in Table 10, it would be reasonable to assume that, both of the solemn cases were dealt with in the sheriff court, and that of the 15 summary cases, nine were dealt with in the sheriff court and six in the JP court.

45. Multiplying the prosecution costs, court costs and legal assistance costs respectively in Table 3 by the numbers given in Table 10 gives the following estimates of total costs of cases proceeding to court to date under section 6 of the 2012 Act:

Table 11: Costs of offences under section 6 of the 2012 Act

	Prosecution costs	Court costs	Legal assistance costs	Totals
Sheriff Court (solemn)	2 x £4,473 = £8,946	2 x £1,856 = £3,712	2 x £1,852 = £3,704	£16,362
Sheriff Court (summary)	9 x £379 = £3,411	9 x £385 = £3,465	9 x £600 = £5,400	£12,276
JP Court	6 x £379 = £2,274	6 x £194 = £1,164	6 x £322 = £1,932	£5,370
Totals	£14,631	£8,341	£11,036	£34,008

46. Based on the above figures, it might be reasonable to estimate the total costs of the cases proceeding to court under solemn and summary procedures to be in the region of £34k.

Costs of disposal

47. The report *Charges reported under the Offensive Behaviour at Football and Threatening Communications Act 2012 in 2015-16* does not give a breakdown of disposals for section 6 offences comparable to the breakdown given for section 1 offences (set out in Table 5 above). The only relevant information given is that court proceedings had been concluded (at time of publication) for only two of the seven charges in 2015-16 and one of those two had resulted in a community sentence, the other in no conviction. No information is given for disposals for section 6 offences in earlier years.

48. However, the report *An evaluation of section 6 of the Offensive Behaviour at Football and Threatening Communications Act 2012* states that in the first three years of operation of the Act (2011-12 to 2013-14), there were eight convictions for section 6 offences, of which three resulted in monetary penalties, two in Community Payback Orders and one in imprisonment. On

this basis, it might be estimated that the total number of disposals over the five year period since the Act came into force would be around five monetary penalties, three CPOs and two sentences of imprisonment.

Costs of imprisonment

49. Information received as a result of an FOI request and extracted from the Scottish Government Criminal Proceedings Database, show that there have indeed been two custodial sentences made under section 6 since the Act came into force – one in 2013-14 for a period defined as “over 3 months to 6 months” and one in 2014-15 for a period of “over 6 months to 2 years”.

50. Using the same methodology as for the section 1 calculations (see paragraph 21 and Table 7 above), the 2013-14 case can be estimated to have cost £6,938 ($(4.5 \text{ months}/2 = 0.1875 \text{ years} \times £37\text{K}/\text{year})$), and the 2014-15 case to have cost £23,125 ($(15 \text{ months}/2 = 0.625 \text{ years} \times £37\text{K}/\text{year})$) – a total of around £30k.

Costs of community penalties

51. Using the figures cited in paragraph 23 above, the estimated three CPOs over the 5-year period since the Act came into force are likely to have cost around £7,500.

Cost of monetary penalties

52. The 2012 Act does not provide for fixed penalty notices to be imposed in relation to section 6 offences, so all the “monetary penalties” imposed (estimated at five) must have been fines. The information obtained from SCTS (see paragraph 27 and Table 9) does not make it possible to say how much was imposed, or paid, for section 6 (rather than section 1) offences. As previously noted, fine income (like income from FPNs) is understood to be remitted to the UK Treasury, so is not directly relevant to estimating the costs of 2012 Act cases. It is assumed that there are no additional costs involved in disposing of a case when the outcome is a fine (compared to the disposal costs when no fine is imposed).

Overview of section 6 costs

53. On the same basis as in paragraph 27 and Table 9 above, the following table gives a breakdown of the estimated section 6 costs according to whether they fall on the Scottish Administration, local authorities or other bodies (SLAB):

Table 12: Distribution of costs for offences under section 6 of the 2012 Act

(Note: all figures have been rounded to the nearest £1k.)

	Scottish Administration	Local authorities	Scottish Legal Aid Board
Prosecution costs (COPFS)	£15k		
Court costs (SCTS)	£8k		
Legal assistance costs (SLAB)			£11k
Prison costs (SPS)	£30k		
Community penalties		£8k	
Monetary penalties (fines)	-		
Totals	£53k	£8k	£11k

Other policing costs

54. The 2011 FM stated that the Scottish Government considered that the policing and enforcement of threatening communications would continue to be part of the emerging police response to such behaviour, including e-crime, and that the costs of this could be absorbed within existing resources.²⁶

55. The evaluation of section 6 of the Act states that there had been little experience among justice system practitioners of using the legislation.²⁷ Police respondents to the evaluation who had experience of using section 6 powers had done so with incidents of threatening communications that they perceived were relatively straightforward and where use of section 6 powers was deemed appropriate in the circumstances. These respondents were satisfied that the incidents of offending communication they dealt with were not just abusive, and so capable of being prosecuted under existing legislation, but fitted the definition of section 6 (i.e. consisting of material that contained a threat of serious violence that was designed to have had, or was likely to have caused, fear or alarm to a reasonable person).²⁸

²⁶ *Offensive Behaviour at Football and Threatening Communications (Scotland) Bill (SP Bill 1), Financial Memorandum, p13*

²⁷ *An evaluation of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, Scottish Government Crime and Justice (2013-14), p18*

²⁸ *An evaluation of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, Scottish Government Crime and Justice (2013-14), p18*

56. Therefore, it is envisaged that repeal of section 6 will be cost neutral. There may be some savings at the margins (e.g. less police officer time spent investigating such offences and processing suspects).

This document relates to the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 21 June 2017

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (REPEAL) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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