

OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (REPEAL) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1

5. [Section 1](#) repeals the 2012 Act in its entirety, with effect from the day after the Act receives Royal Assent (see section 6).

Section 2

Subsection (1) – no further convictions or penalties after relevant date

6. Under subsection (1)(a) there are to be no convictions for a “relevant offence” (that is, an offence under section 1 or section 6 of the 2012 Act – see section 5 of the Act) on or after the “relevant date” (i.e. the day after Royal Assent – see sections 5 and 6). Under subsection (1)(b) no penalties can be imposed for a relevant offence on or after that date.
7. This involves some departure from the default provision that is set out in section 17 of the Interpretation and Legislative Reform (Scotland) Act 2010. Section 17 provides that the repealed Act continues to have effect for the purpose of investigating an offence, bringing or completing proceedings and imposing a penalty.
8. Under the default (section 17) arrangements, in other words, it would continue to be possible to convict and impose penalties in respect of a 2012 Act offence for an indefinite period after the Act was repealed, so long as the behaviour that constituted the offence took place before the date of its repeal. Under section 2(1), by contrast, a person who carried out behaviour of the sort criminalised by the 2012 Act can, from the date the repeal takes effect, no longer be convicted of or have a penalty imposed for a 2012 Act offence.

Subsection (2) – application to new prosecutions brought following appeal

9. The main application of subsection (1) is to cases arising from pre-repeal behaviour which have not yet been disposed of by the relevant date. However, subsection (2) makes clear that it also applies to new prosecutions brought (further to an appeal) either before the relevant date, on that date or after it, under either section 119 (in solemn cases, prosecuted on indictment) or 185 (in summary cases) of the Criminal Procedure (Scotland) Act 1995.
10. A new prosecution under section 119 may result from the High Court disposing of an appeal against conviction by quashing the conviction given by the trial court and granting the Crown authority to bring a new prosecution (under section 118 of the 1995 Act). It may also result from the High Court disposing of an appeal against acquittal

These notes relate to the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Act 2018 (asp 7) which received Royal Assent on 19 April 2018

by quashing the acquittal on the basis that it was wrong in law, but granting the Crown leave to bring a new prosecution charging the accused with the same offence or with a similar offence arising out of the same facts (under section 107E of the 1995 Act).

11. Similarly, section 185 of the 1995 Act allows a new prosecution to be brought when the Sheriff Appeal Court disposes of a “stated case” by setting aside the verdict of the inferior court and grants authority for a new prosecution.
12. Accordingly, if a person is convicted (or acquitted) of a 2012 Act offence before the “relevant date” (i.e. the date on which the 2012 Act is repealed), the convicted person (or the Crown) appeals and the appeal court, in disposing of the appeal, grants authority for a new prosecution, then any such new prosecution (whether it is brought before, on or after the relevant date) cannot result in a conviction for the 2012 Act offence or the imposition of a penalty in respect of it, on or after the relevant date.

Subsections (3) and (4) – ability to convict of a different statutory offence

13. Subsection (3) applies where proceedings have begun for a 2012 Act offence but have not been determined by the time of the repeal. Existing legislation allows for the amendment of charges, so as to substitute a charge under the 2012 Act for a different statutory or common law offence, prior to the determination of a case. A court also has a power to convict a person charged under any enactment of a common law offence, where the facts proved amount to that common law offence. The courts have no general power to convict a person charged under an enactment of a different statutory offence. Subsection (3), read with (4), addresses this in relation to proceedings for a 2012 Act offence, allowing the court to convict the person of a different statutory offence if the facts proved in the proceedings amount to that different offence.

Section 3

14. [Section 3](#) makes clear that the Act does not remove a person’s liability to a penalty imposed prior to repeal in respect of a 2012 Act offence.

Section 4

15. Section 3 of the 2012 Act inserted a reference to offences under section 1 of that Act into the table of fixed penalty offences in section 128 of the Antisocial Behaviour etc. (Scotland) Act 2004. The effect of this was to allow section 1 offences to be dealt with by the issuing of a fixed penalty notice, payment of which discharges the person’s liability to prosecution. Under section 131 of the 2004 Act, a person given a fixed penalty notice who, within a period of 28 days, neither pays the penalty (currently £40) nor opts to be tried for the offence becomes liable to a sum of one and a half times the original penalty (i.e. £60).
16. The Act, by repealing the 2012 Act, removes (from the relevant date) the ability to issue any further fixed penalty notices for 2012 Act offences. Section 4 is a consequential provision to repeal the entry in section 128 of the 2004 Act.

Section 5

17. The definition of “High Court” adopts that used in the Criminal Procedure (Scotland) Act 1995 (section 307). Accordingly, it means “High Court of Justiciary” and includes any court held by the Lords Commissioners of Justiciary, or any of them.
18. “Relevant offence” means either an offence under section 1 of the 2012 Act (offensive behaviour at a regulated football match) or an offence under section 6 (threatening communication), as the case may be.