

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Supplementary written submission from the Equality and Human Rights Commission Scotland

1. Introduction

The Equality and Human Rights Commission (the Commission) was established in statute in the Equality Act 2006 and came into being on 1st October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and build good relations, ensuring that everyone has a fair chance to participate in society.

The Commission believes that addressing sectarianism requires a broad response from across civic society. We acknowledge the good work that the voluntary sector, Church groups, Police and Councils (amongst others) have undertaken to build good relations in Scottish communities.

The Commission recognises that there is a particular problem with sectarianism-related violence and aggression at football games. We agree with the Government that this is unacceptable and requires urgent attention.

We welcome the decision to extend the Bill's timetable to allow for further consultation and scrutiny by the Justice Committee. This paper builds on our earlier submission to the Committee. In this next stage we would we ask the Committee to consider:

- Given the range of law already available is the Bill proposed a proportionate means of achieving a legitimate aim?
- What action needs to be taken to address the lack of robust research and data relating to sectarianism?

2. Public Sector Equality Duty and Equality Impact Assessment (EQIA)

The Commission is the regulator responsible for the enforcement of the Equality Act. It is important to highlight the role that Scottish Ministers have in meeting the requirements of the public sector equality duty (the general duty) set out in s149 Equality Act 2010. Scottish Ministers are required to pay due regard to the need to:

- Eliminate discrimination, victimisation and harassment or other unlawful conduct that is prohibited under the Equality Act 2010
- Advance equality of opportunity between people who share a characteristic and those who do not
- Foster good relations between people who share a relevant protected characteristic and those who do not.
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The Commission welcomes the publication of the equality impact assessment for this Bill although we are concerned that more robust evidence about sectarianism was not available to the Government.

3. Evidence and Data

The Commission believes that access to robust evidence regarding sectarianism (including issues such as alcohol misuse and poverty) is crucial to underpin an effective strategy for tackling the issue. The Commission would encourage the Committee and Scottish Government to ensure that the development of a strategy to address sectarianism involves taking steps to increase the availability of a range of reliable and systematic evidence on the incident of, as well as the causes and outcomes from, sectarianism.

In addition we would question if there is evidence that the football clubs, the SPL and SFA have explored all avenues of sanction available to them to address football related sectarianism amongst their fans, for example points fines and playing games behind closed doors.

4. Existing Legislation

As mentioned in the policy memorandum and the SPICe briefing that accompany the Bill, there are a number of relevant pieces of legislation passed in Scotland in recent years which are directly relevant to the policy aims of the Bill:

- Section 74 of the Criminal Justice (Scotland) Act 2003 introduced statutory aggravations for offences motivated by religious prejudice and requires courts to take any aggravating factors into account when passing sentence.
- Part 2, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 allows for football banning orders of varying lengths to be applied to offences of violence, disorder and stirring up hatred towards a range of protected characteristics.
- Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 introduces a new offence of threatening or abusive behaviour, punishable on conviction on indictment to up to five years in prison, or on summary conviction to up to 12 months and/or a fine. The offence has been in force since October 2010.

Therefore, given that there is currently a range of responses available in Scots criminal law, and that previous changes in the law in this area have come at the end of extensive consultation and scrutiny, it is important that the Justice Committee is satisfied that the further provisions proposed in the Bill are a necessary – as well as a lawful and proportionate – means of achieving a legitimate end.

5. Substantive Provisions of the Bill

5.1 Section 1 Offensive behaviour at regulated football matches

The commission agrees with the Government that sectarianism is not the only type of prejudice expressed at football matches. We welcome the proposal that if a new offence is introduced, it should cover not just religion but also colour, race, nationality, ethnic or national origins, sexual orientation, transgender identity and disability.

We also welcome the definition of 'transgender identity' provided in section 4(3) of the Bill that is consistent with the wording in section 2(8) of the Offences (Aggravation by Prejudice) (Scotland) Act 2009).

In our submission to the Committee on the 23 June we highlighted that the absence of 'sex' in the list at s1(4) seems at odds with how broadly this provision has been drawn and we would ask that the Committee considers this point again or justify its exclusion in the policy memorandum.

Section 1 introduces into Scotland the crime of inciting religious hatred. We note the inconsistency in sentencing between the incitement to racial hatred, which is subject to a maximum sentence of seven years, and this new offence of incitement to religious hatred which is subject to a maximum sentence of five years. The consequence is that the choice of one word could result in a two year sentencing difference. We would question whether this is the Government's intention, and if so, what the rationale for such a difference would be.

5.2 Section 5 Offence: Threatening Communications

Section 5 is a much broader offence that goes beyond the scope of a football match.

The Racial and Religious Hatred Act 2006 in England, which was subjected to the usual scrutiny processes by Westminster, chose to list the different circumstances in which a communication would not be considered incitement in order to protect freedom of expression (Schedule 3, paragraph 29J). The Commission would like the Government to explain why it has instead elected to use a 'reasonable person' test for this Bill, and we question whether this is the right choice given the concerns about freedom of expression that this Bill raises.

We note that Condition B relates only to material that is threatening and intended to 'stir up religious hatred'. We find this at odds with existing Scottish legislation on statutory aggravations which covers not just religious but also racial, homophobic, transphobic or disability-related prejudice. It is also in contrast to Offence 1 of the Bill which is broadly drawn to cover these aspects of prejudice and harassment. We would expect further explanation of why this has been confined to religious hatred only.

The Commission would also like clarification on whether s74 of the Criminal Justice (Scotland) Act 2003 (Offences Aggravated by Religious Prejudice) would be applied where an individual is found guilty of stirring up religious hatred set out in Condition B of this legislation.

6. Conclusion

We welcome the Scottish Government's commitment to challenging sectarianism in Scotland. The Commission shares the Government's concern about the detrimental impact that football related sectarianism is causing to Scottish citizens and to Scotland's international reputation.

In addition to the specific points we raise about the Bill's provisions in section 5 of our submission, we believe that the Government should urgently seek to improve its evidence base on the causes and impact of sectarianism, and on the extent to which existing powers are being used effectively to tackle it; that robust evidence should inform the Government's strategy and the next legislative steps taken.

The Equality and Human Rights Commission
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