

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Mark McCabe

Further to the Parliament's call for evidence on the Parliament's website, I am submitting my views in relation to the above Bill.

I am alarmed at the very wide and vague definitions in this Bill.

Dicey (Alder 2007: 158) stated that one of the features of the rule of law is that,

No man is punishable or can be lawfully made to suffer in body or goods except for a **distinct breach of law** established in the ordinary legal manner before the ordinary courts.

[ALDER, J. 2007. *Constitutional and administrative law*. 6th ed. Basingstoke: Palgrave Macmillan. ISBN 978-0-230-01345-2]

This has been brought into British law (in England) by *R v. Goldstein* (2006) at 32,33 and by section 1 of the Constitutional Reform Act 2005. Clause 1(2) of this Bill does not seem to accord to the rule of law in this respect.

In terms of sectarian behaviour, given that it is motivated by religion, clause 1(2)(a), (b) and (c) seems to amply cover the ambit of sectarianism. Clause 1(2)(d) and (e) are so vague as to be ill-defined and could lead to people being prosecuted for anything that another person is *likely* to find offensive; the implication here being that no-one need actually be offended. Under the rule of law, it could not be said – it seems fair to say – that a person prosecuted under clause 1(2)(e) has committed a “distinct breach of the law”, precisely because the offence itself is not clear and distinct.

What one person finds offensive, another does not. This is entirely subjective because each person has different sensibilities to the next person; it seems fair to say that clause 1(2)(e) will probably lead to prosecutions of people who did not intend to be offensive in any way, but which someone else finds offensive. This is not even to mention the unjustifiable infringement of the right to freedom of expression – unjustifiable because the only behaviour that is criminalised is that which another finds offensive. I find it offensive that the Scottish Executive should think it perfectly alright to try to infringe my freedom of expression with vague laws, but I would merely dismiss it as a typical government activity to ban what **it** doesn't like or agree with – and I certainly wouldn't go to the trouble of prosecuting them for having the brass neck to do so. For these reasons and considerations, I think clause 1(2)(e) should be deleted.

Behaviour under clause 1(2)(d) is already covered by numerous other crimes, including breach of the peace, and the recently-created threatening and abusive behaviour.

I hope the Committee considers these views.

Mark McCabe
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