

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from the Scottish Justices Association

General

1. The Scottish Justices Association (SJA) represents over 90% of JPs in Scotland, whose sentencing powers include fines up to £2,500 and imprisonment up to 60 days (subject to the recent restrictions upon short sentences) and the Community Payback Order (CPO).
2. It is thought that, although sectarian offences have generally gone to the Sheriff Court in the past, if the offences in the Bill are enacted, the JP Courts would be required to deal with the lower end of the range of prosecutions. They will, in any case, be required to deal with enforcement of the “fixed penalty” alternatives to prosecution.

The Bill

3. The SJA is aware of the considerable problems of sectarian behaviour related to football in Scotland, though notes it is largely a West of Scotland problem.
4. It notes that there is a considerable existing range of offences which the Policy Memorandum accompanying the Bill concedes cover many of the instances of behaviour complained about. While it recognises a possible argument for at least the first of the proposed two offences in terms of the denunciatory function of the criminal law, the SJA is also concerned at the possible proliferation of new offences covering the same ground as existing offences, exemplified in the Emergency Workers (Scotland) Act 2005.
5. It therefore remains to be persuaded that the problem which this Bill addresses is not best dealt with by sentencing considerations applicable to existing offences, such as the Crime and Disorder Act 1998 s96 and Criminal Justice (Scotland) Act 2003 s74.
6. It is re-inforced in this conclusion by consideration of the Bill itself, which contains offences defined with extraordinary detail. This degree of detail is understandable given the protean nature of the problem addressed, but carries a considerable price in comprehensibility.

Conclusion

7. Thus, the SJA sees the Bill as an expensive (noting the costs outlined in the Financial Memorandum) and complicated way of addressing a problem which is already addressed in existing offences.
8. In any case, it detects a certain contradiction between, on the one hand, the creation of new offences with potentially very heavy penalties as a means of denouncing such behaviour and, on the other, the use of “fixed penalties” for some such offences, which almost entirely remove any such denunciation.
9. It also notes that judgment on public order “fixed penalties” should perhaps be suspended until the outcome of the summary justice reform research into the enforcement of “direct measures”.

Scottish Justices Association

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