Justice Committee
Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill
Written submission from Anonymous

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

Yes. I do not believe the act has fulfilled its purpose of tackling sectarianism and has instead needlessly criminalised many football supporters without tackling the root causes of sectarianism. The act is over zealous and gives too much discretion to the authorities through the use of broad terminology such as "offensive". Offensive goes way beyond what was intended to be covered. If only sectarianism was meant to be covered then much narrower and explicit language should have been used in the statute in order to create properly and narrowly defined offences in order to give the law proper force. Instead people's free speech is being hampered at the football as it can all be covered under the broad nature of the act if deemed offensive by an enforcer.

2. Did you support the original legislation?

No.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

Yes I believe the existing criminal law was well equipped enough to deal with the issue. Existing breach of the peace laws under the common law meant that offences could have been covered under a sectarian or religious breach of the peace. Section 74 of the Criminal Justice (Scotland) Act 2003 could also have been used for crimes aggravated by religious prejudice. Since sectarian issues are crimes of a religious nature then I personally believe this would also have covered many of the offences which the 2012 act was enacted to cover. Both of these pieces of law would have had usual application to the football as if it were any other public place and I therefore believe failure to enforce rather than failure of the law was at issue. Repealing section 1 will not create a gap in the law unless that gap is crimes of an offensive nature. The very purpose of the 2012 act was to tackle sectarianism, not offensive behaviour. I therefore believe that a gap for offensive behaviour is not an issue. Offensive is far too broad a term for the criminal law which leaves far too much discretion for definition. The definition of the law should not take place in the broad language we see at present and especially not under the guise of tackling sectarianism, in my opinion.
4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?

I see this as highly problematic. It effectively creates a lower freedom of speech for football supporters because of the context in which they express their opinions. Songs and words which may be criminalised at the football carry no such punishment in other walks of life, i.e. orange marches or republican parades. Creating this two-tier right in society is a dangerous precedent to set and extremely unfair on football fans. If the criminal law was used before the enactment of the act then proper sectarian offences could be dealt with at the football and in other contexts. Instead we now have a hampering of all kinds of speech at the football.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

I believe so. The threatening communications act was already in place to deal with such offences. S6 of the act has not been one of the prominent provisions used when charging people and instead s1 has been relied upon. I therefore feel that repealing s6 would have no great effect on the criminal law and the previously enacted provisions which still exist in the criminal law could be enforced at the football to deal with such offences.

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?

I believe there should be no further convictions under the act from the date on which the repeal takes effect. I also believe consideration should be given to the repeal in current cases which may be settled before the repeal has actually been taken effect. Many of the cases still running may become evidently unjust once the law has been repealed and this must be considered when people's livelihood and futures are at stake.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

I think the Act has had very little effect on tackling the societal problem of sectarianism. Sectarianism in Scotland is not a football issue, football may be a symptom but the issue goes much deeper to the heart of Scottish society. When organisations such as the orange order are still allowed to march around the streets and sing sectarian songs then the issue must be examined more closely. We need proper education and tackling of the issue on a much larger scale. The Act instead criminalised many people who were not guilty of sectarianism but an act which was instead deemed offensive. This is far too broad a definition and gives much more
power than it ever should have been afforded. We must tackle the sectarian mindsets which still exist in Scottish society, not football fans. I of course am not denying that sectarian behaviour exists in Scottish football, however in the grand scheme of things football is a smaller issue than the sectarian mentality which still exists in society. If the root problem can be tackle then these sectarian attitudes may not be as prominent and we may have a far more inclusive and better shaped society.

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