Justice Committee

Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

Written submission from Anonymous 8

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 fully and wholeheartedly agree with the bill to repeal the 2012 Act. Fundamentally it treats football fans differently in law from other people. It results in football fans being criminalised for singing songs that are legal and available to buy in high street shops and on the internet. It criminalises political opinion and songs that remember and recount historical events. It makes ‘offence’ a criminal offence even though no-one actually need be offended. It makes opinion a legal weapon against someone else’s political ideas. It makes the police judge and jury over what constitutes an offence even if no-one has actually been offended.

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, there have long been, and rightly so, laws against racist abuse, homophobia and bigoted behaviour. Laws such as Breach of the Peace, Section 74 of the Criminal Justice (Scotland) Act 2003, Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010; could easily of being used against people abusing others on the grounds of protected characteristics. And other similar behaviour

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?

The 2012 act openly and quite explicitly treats football fans differently not only from other sports fans but others in wider society. Songs which are considered ‘offensive’ by the law at a football ground are not treated as such at rugby, hockey, cricket or any other sport. It enables the police to view football fans as less legally protected for their behaviour than other sports fans. It reduces the rights of football fans to express their opinion on certain matters than others in society as a whole or spectators at other sports/sports arenas. As such that treats football fans as second class citizens in the eyes of the law with their being subject to more police/legal scrutiny that others in society and other sports.
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?

Section 6, since it’s being on the statute books, has hardly been used. Such a fact surely begs the question why it was brought in in the first place? This is especially relevant given the regularity that police and prosecutors regularly use the 2003 Communications Act rather than section 6.

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?

If the law is being repealed then it should cease to exist immediately upon repeal. It has since its inception been explicitly discriminatory against football fans and as such must not be used any longer against fans. I would also go further and make a very clear argument that everyone convicted under this act should have their convictions quashed immediately upon repeal or if necessary an amendment be inserted into the bill calling for the quashing of all those convictions. I would contend that this is clearly necessary because if the bill is to be repealed that it has not upon repeal become a bad piece of legislation it has since its inception been bad legislation and as such anyone convicted of this bad and discriminatory legislation should have their convictions quashed, bad legislation can never lead to acceptable and safe convictions.

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

I would contend that a law that does not even mention sectarianism neither seeks to explain or define what sectarianism is and how it manifests in modern society is not fit for this job. A law that effectively defines sectarianism, (whilst not actually explicitly defining it) as a song sung by a football fan but not someone else in society can never have any meaningful input into reducing sectarianism. A law that implicitly argues that sectarianism is something A N Other sees as offensive whilst completely refusing to define anything even close to sectarianism is fundamentally both a poor piece of legislation and explicitly discriminatory and counter-productive in tackling the issue.