Justice Committee

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

Written submission from Scott Macdonald

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

   No. The law is necessary and proportionate, and it has had a positive impact in tackling religiously-incited public disorder. Efforts at improving the existing legislation would be preferable to repeal.

2. **Did you support the original legislation?**

   Yes, at first cautiously and now with more conviction. Although imperfect, it was necessary, continues to be so, and has been effective.

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?**

   No, there is insufficient provision in law to most effectively combat football-related offensive behaviour and public disorder without the measures prescribed in this legislation. Breach of the peace laws were not sufficient to tackle this issue across the decades when it was an endemic problem. Improvement in current law is welcomed, but wholesale repeal will create a gap in the criminal law.

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?**

   Experience of football matches over some generations demonstrates that these are very specific occasions different from other sporting or recreational occasions. The history, across generations, of public disorder - particularly sectarian public disorder - in football means that it is not only appropriate but necessary that specific measures in criminal law exist to tackle football-related disorder.

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?**

   No, there is insufficient provision. This threatens creating a gap in the criminal law. Without alternative provision a gap in the criminal law will clearly exist.
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?**

Unlike in other parts of the UK - notably Northern Ireland which also has a history of and present challenges with religious hatred and sectarianism - there is sadly no specific provision in Scots law criminalising threats made to incite hatred on religious grounds. Any waiver of prosecutions would remove all deterrence.

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

The Act has indisputably assisted in tackling sectarianism and religiously-incited hatred and threatening behaviour. Although imperfect – and I would welcome constructive efforts to improve the law, not crass, partisan attempts to repeal it – much of its initial ineffectiveness was due to some reluctance and sometimes outright obstructionism from elements within the police and judiciary. In more recent years conviction rates have risen as authorities have taken the issue more seriously, which is a mark of the Act's increasing success. Furthermore, as I hope that this consultation will also demonstrate, the Act has overwhelming public support and its repeal commands little support, even amongst football fans. Repeal will leave a gap in the criminal law, sap authorities of the will and focus to tackle religiously-incited threatening and offensive behaviour and will reverse the progress made in raising awareness and directly tackling sectarianism, of which football matches and recreations attached to football matches remain a focus.

Scott Macdonald
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1. Source: [http://archive.is/HLGAG](http://archive.is/HLGAG)
2. Source: Table A in: [http://www.gov.scot/Publications/2016/02/6001/10](http://www.gov.scot/Publications/2016/02/6001/10)