Justice Committee

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

Written submission from Dr Philip Glover, School of Law, University of Aberdeen

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

I agree. Although untested at UK Supreme Court, or European Court of Human Rights level, the provisions of the Act would not pass the established tests for being in accordance with the law of either ‘necessary in a democratic society’ or proportionality.

The Act’s duplicative provisions are unnecessary and damage legal certainty. Neither the UK legislature nor any other devolved legislature has felt it necessary to add offences such as those at s1 and s6 to their statute books. Even my native Northern Ireland (the “home” of sectarianism as currently understood) has saw no need to enact similar legislation.

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?

As regards s1, there is no risk whatsoever of a gap. S38 of the Criminal Justice & Licensing (Scotland) Act 2010, correctly libelled and interpreted by the courts, read in conjunction with the various statutory aggravations available, is a more than adequate framework for addressing the targeted behaviours. Common law breach of the peace also exists as a fall back provision.

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 Act almost certainly breaches the European Convention on Human Rights, Article 10.

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 feel that s127 of the Communications Act 2003 read in conjunction with the current (excellent) Scots aggravation by prejudice regime is sufficient. S38 Criminal Justice and Licensing (Scotland) Act 2010 can also be favourably interpreted to catch the offences targeted by s6. S6 is dreadfully drafted and s7 renders s6 risible.

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?

No

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

In my view, the passing and implementation of this Act has inflamed Scotland’s sectarianism problem. It has heightened tensions and drawn unnecessary and ill-advised attention to sectarian differences in Scotland. It has been divisive and has merely entrenched in Scotland’s statute book the notion that Scotland has a problem at least as bad as that in NI, which is simply not the case. Sectarianism does not need symbolism or publicity; it needs snuffed out by education and use of the general law.

Dr Philip Glover
4 August 2017