Justice Committee

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

Written submission from Andrew D Moffat

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.

How a reasonable person might behave or feel is the foundation of Scots Law. The idea that we take into consideration the feelings of unreasonable person breaks hundreds of years of jurisprudence.

I know that act always refers to the ‘reasonable person’ in it, but the wording of section 1(2)(e) pushes this to its limits.

Also, it reads as thought someone could be prosecuted even if no one was there to be offended – again, this breaks with the tradition of Scots law.

2. Did you support the original legislation?

I, of course, support the principle of the act – tackling offensive behaviour and threats, i.e., sectarianism, but laws need to work in practice, and be seen as fair to all the relevant parties as working – this act fails on all fronts.

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?

Breach of the Peace is an adequate law and relies on the good common sense of our police officers.

Also, existing laws on threats and assault are used by the police all year round, not just on the day of a football match.

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?

Yes, really concerned that we are making criminals out of groups of people for behaviour that would be acceptable in other circumstances, e.g., singing going to or from a rugby match or rock concert.
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?

Common laws and existing statutory laws that exist for violent acts such as assault, or threats, have evolved in Scots law over centuries. These are very serious offences, and are no more or less serious if they happen on the day of a football match.

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?

Yes, and we should go back the powers the police used before, e.g., breach of the peace.

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

It raised the profile of this problem, which may be a good thing, but very concerned it has made criminals out of people that could have been dealt with by a stern warning from the police.

Andrew D Moffat
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