Justice Committee

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

Written submission from Marie McCusker

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. Because this legislation discriminates against one group within society namely football supporters, and criminalises certain behaviours by members of this group which is perfectly legal by others and in every other setting. This is blatantly unjust. In the time, it has been in existence I have noted the steep deterioration in relations between supporters and the police leading to intense dislike and total lack of trust.

I have also witnessed court proceedings which should never have been brought and shamefully have seen police officers give false and misleading evidence during these proceedings in an attempt perhaps to get a conviction and bolster figures.

2. Did you support the original legislation?

No, I opposed it and listened to those in the legal profession who predicted how unjust and unworkable it was. This has been emphasised on several occasions by Sheriffs one of whom called the Act “mince”.

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?

How can “offensive’ be defined? It is a ridiculous term because what one person would find offensive would never appear so to someone else. It is subjective while the law demands objectivity.

If there is behaviour which is dangerous or unlawful then there is ample existing legislation to deal with this. The time honoured Scottish offence of Breach of the Peace is one way as are the provisions of Section 73 of the Criminal Justice (Scotland) Act 2003 or Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010

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.

I have a strong view that selecting one category of people and dreaming up offences with which to charge them is totally wrong and offends simple justice. I
am a retired professional woman who has attended football matches all my life but now find I am treated completely differently in that context compared to every other part of my life. Yet I do not act differently nor do I observe others doing so. How can this be justified?

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?

Again, there was and is sufficient existing legislation in this area so no gap is likely. Is it not the case that where persons have been pursued for the offences mentioned above that the Communication Act 2003 has been used rather than Section 6 of the Act?

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?

My view is that all proceedings under this Act should be halted immediately no matter what stage of the legal process they have reached. I also believe there is a case for reviewing every conviction under this Act with a view to having them deleted from the record. I further believe that history will record this Act has an affront to the democratic process which was forced through the Scottish Parliament for disgraceful party-political reasons.

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

Nowhere in the wording of this Act can one find the words sectarian or sectarianism yet its supporters claim it is an ‘anti-sectarian’ piece of legislation. How can it oppose what it does not define? Sectarianism certainly exists in Scottish society, I have had personal experience of it, interestingly in situations which have nothing to do with football. It would be beneficial if those who claim to be concerned about sectarianism dealt with the actual problem and stopped trying to suggest it only exists in the context of football which is blatantly untrue and does nothing to tackle the real problem.

Marie McCusker
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