Justice Committee

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

Written submission from Declan McLean

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. It is an unnecessary piece of legislation that I believe duplicates the 2010 Criminal Justice and Licensing (Scotland) Act but specifically targets football fans unfairly. There is an incredibly low conviction rate. Having studied the Act as part of my law degree at Strathclyde I find it almost able to confuse and frustrate the justice process rather than help it.

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 a law student, I found it easier to class the offences that would exist in this Act as Breach of the Peace and, in my mind, secure a conviction which is much fairer. There is absolutely no risk of creating a gap.

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 takes a very judgmental and oppressive stance against football fans and doesn’t do anything to tackle sectarianism as a whole.

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?

As mentioned, older legislation from 2010 – along with others – is sufficient in seeking prosecution where necessary. There would be nothing lost in the law if section 6 were to be repealed.

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 more cases should be allowed and existing ones should be dropped.

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

I would argue that this piece of legislation has done very little – arguably nothing – in tackling sectarianism. Indeed, I think it is possible to suggest that the Act has done more damage than good. It has created a massive division and resentment between the police and football fans. Additionally, young football fans have been deprived of opportunity and experienced criminal records for partaking in things they may know no better in. On that point, education is my only solution to truly challenge sectarian behaviour. For as long as we try to criminalise a group of individuals as opposed to educating the many, we will never rid ourselves of sectarianism.

Declan McLean
17 August 2017