Justice Committee

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

Written submission from Fraser Barclay

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 unfair – targets football fans while fans of other sports or other citizens would not be charged for doing the same things. It is unworkable – Sheriffs have made it clear that it is badly drafted; there is a very low conviction rate – lower than the legislation it was meant to improve on. It is criminalising people who would never be in court if it were not for the Act. It is affecting studies and employment opportunities. It has politicised the Crown Office Procurator Fiscal Service who now treat ‘football’ cases in an entirely different way to all other crimes. They prosecute them to the harshest extent under all circumstances. Waste of public monies.

2. Did you support the original legislation?

No. The legislation makes a dangerous leap between words and actions. Society has long made the distinction between thoughts and words on the one hand and actions and deeds on the other. This law assumes that offensive words inevitably lead to sectarian or violent deeds without any evidence whatsoever to prove that. Linking them is misleading and dangerous.

These laws are an attack on the fundamental right of us all to free speech. Of course there is nothing noble about much that is shouted at football games but free speech means just that - the freedom to say what you want to say without fear of censorship or repression. Anyone who knows or cares about protecting the right to free speech will know that the test of support for this principle always lies in whether you are prepared to extend it to those whose speech you do not like or agree with.

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?

Yes. Refusal to use sufficient, existing legislation to cover issues at football eg, common law Breach of the Peace, Section 74 of the Criminal Justice (Scotland) Act 2003, Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010; has impacted very negatively on football fans, this is a discriminatory effect that will end if the Act is repealed.

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?
All laws should be measured and proportionate. This law can result in football fans serving jail terms greater than those for rape or violent crime for an offensive chant at a football game or high jinx heading to or from the match. This is clearly disproportionate.

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?**

It should be noted that Section 6 has been seldom used in the period since it was enacted with police and prosecutors regularly using other legislation, e.g. Communications Act, 2003.

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?**

Immediate effect, I agree that cases that are not concluded should be dropped and my wish, given personal experience, that previous convictions should be quashed (understanding that this is not in the draft Bill but could be inserted by amendment). My thoughts are based on the fact that the law that only applies to football fans should never have been enacted in the first place or any version of that argument.

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

It hasn’t. Not condoning the action at all, but, most chanting especially sectarian chanting is more than ever restricted to games. While many football fans might indulge in some near to the knuckle banter or traditional sectarian chants from the terraces in the course of a 90 minute game, most now go back home or into work the next day with partners and workmates of a different persuasion.

You do need to go to Celtic/Rangers games to see football rivalry in action. Yet now Celtic and Rangers fans, in between declaring support for either side of a middle-eastern conflict I suspect they know little about are able to seize on this law as another stick with which to beat their rivals, scouring each other’s social media outlets searching for crimes to report to the police.

Football terraces are not for the faint hearted. Despite many attempts to sanitise football in recent years it remains the case that football stadiums are a place where passions run high and you can hear a thousand uncouth shouts. Part of the problem with the nature of these laws is the notion that sectarianism is a bigger problem than ever in Scottish society & football hooliganism is as widespread as in the 1980’s.

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