Justice Committee

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

Written submission from the Glasgow Bar Association

The Glasgow Bar Association is an independent body that for over half a century has been active in promoting, representing and protecting the rights and interests of its members in the practice of law and by extension those of its members’ clients and therefore the wider public including the most vulnerable members of society. It advocates on behalf of access to justice. It considers and monitors proposals for law reform and, if necessary, formulates responses to such proposals. In addition the Association operates an extensive professional development programme for members.

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

The Glasgow Bar Association agrees with the proposal to repeal the 2012 Act.

Rarely has there been legislation passed by a Government that has been so divisive. There is cross party support for repeal of this Act. It is noted at the outset that this was the only piece of legislation passed by the Scottish Parliament without any cross party support, having made it through the legislative process due to the SNP majority in the last session of the Scottish Parliament.

Prior to its inception the 2012 Act was opposed by every opposition party and by leading anti-sectarianism charities. There are still concerns about the legislation among lawyers, judges, civil rights groups, football fans and football clubs.

2. Did you support the original legislation?

The Glasgow Bar Association did not support the original legislation. Many court practitioners raised valid concerns regarding this legislation, and in particular section 1 of the Act. Within that section the government failed to properly define for the behaviour element of the offence. The definition was unclear and broad which, as predicted, has led to difficulties with its implementation, not just for Police Officers but thereafter for Lawyers and fact finders presiding over cases. The secondary issue of concern over that section was the lack of a requirement for intention to incite public disorder.

There were issues raised with the practical elements of the legislation relating to alleged incidents that may occur outside of a football stadium, such as in supporters clubs, licenced premises or whilst travelling to and from designated football matches.

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?
The Glasgow Bar Association does not accept that should this Act be repealed that there will be a “gap in the criminal law”. Offensive behaviour is either offensive whether it is within a football stadium or outside of its parameters.

There are a number of provisions which may be used by authorities to prosecute alleged offences. The provision’s available to the police or COPFS include:

- Common law breach of the peace and uttering threats.
- S38 of the Criminal Justice and Licensing (Scotland) Act 2010- threatening or abusive behaviour.
- These offences can be “aggravated” by s74 of the Criminal Justice (Scotland) Act 2003 in relation to religious prejudice or by s96 of the Crime and Disorder Act 1998.
- For offences raised under s6 of the 2012, COPFS can implement proceedings under s127 of the Communications Act 2003 for offences deemed to be improper use of a public and electronic communications network.

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?

This issue is one of the most contentious aspects of this legislation. In a liberal free society it has to be questioned as to how “behaviour” by football fans who may be watching a match or travelling to and from a match may commit a criminal offence that “may not be criminalised in other settings”.

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 per the response in section three above, there are several sources of legislation and common law offences available to prosecutors should there be the evidence to support a charge. As we understand matters to date with regards to s6, this is a section of the 2012 Act that is infrequently used with the COPFS electing to prosecute persons under s127 of the 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?

The Glasgow Bar Association submits that that COPFS and the Police Service of Scotland should cease using this Act from the date of repeal. In relation to ongoing cases, the COPFS should review each case on its own merits, however, on any given view, it would be unusual to continue prosecuting offences under an Act of Parliament after it has been repealed.
7. **To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?**

It is submitted that this legislation has not assisted in tackling the issue of sectarianism. The Association agrees with the sentiments of Jim Kelly MSP that the issue of Sectarianism in Scotland “has existed for hundreds of years but the government's approach was to try and fix it in 90 minutes”. Sectarianism doesn’t solely exist to those watching, attending or travelling to and from football matches.

When respected charities such as Nil by Mouth say that the law had been a distraction from implementing better ways to tackle sectarianism, then there is clearly a problem.

Glasgow Bar Association
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