Justice Committee

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

Written submission from John P Kelly

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.

The impossibility of defining of what does or “could” cause offence has been seen to make the law an ass, as evidenced by the number of sheriffs who have dismissed prosecutions brought under this legislation.

The legislation fails to address the problem of anti-Irish racism which is at the heart of the sectarian behaviours and attitudes which underlie Scottish society. As evidence, refer back to the 2011 Scottish League Cup Final, played during the consultation on this legislation, where the then-Cabinet Secretary for Justice, Kenny MacAskill MSP, spoke of a wonderful spectacle after the outlawed and patently racist “Famine Song” was sung repeatedly by the majority of the supporters at the Rangers end of the stadium. (Coverage of the Minister’s comments can be found at [http://www.sconews.co.uk/latest-edition/7689/new-goals-on-bigotry/](http://www.sconews.co.uk/latest-edition/7689/new-goals-on-bigotry/) )

Similarly, the police have justified inaction on the provision that they cannot arrest “thousands” of perpetrators. This is self-evidently true and an illustration of the impracticability – and consequent futility – of the law.

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?

The provisions on hate crime, discrimination or breach of the peace should be invoked whether the offence occurs in a workplace, on the street or at a football ground. What happens if an offensive behaviour takes place at a hockey or a rugby 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?

See response to 3. Additionally, this legislation further reinforces the class discrimination in Scottish society which demonises young working class men and women who are not deemed responsible enough to consume alcohol at sporting events, as evidenced by the differing restrictions in place at stadia hosting events
other than football – viz the sale of alcohol at Hampden, Celtic Park and Ibrox stadium during the Commonwealth Games in 2014 and the continuing ability of spectators to buy and consume alcohol at rugby matches.

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?

Pre-existing breach of the peace and anti-discrimination laws suffice.

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?

Agree.

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

It hasn't. Indeed, it has actually made the problem worse by obfuscating the anti-Irish and anti-Catholic prejudices in Scotland by doing what Christine Grahame MSP proposed in designing a law which should arrest “even numbers” of Celtic and Rangers fans, once again framing the issue as a largely class-based football phenomenon.

It has also caused an unnecessary drain on limited police resources through the formation of “Unacceptable Behaviour” teams. This constant “kettling” and video surveillance are having a corrosive effect on relations between the police and the communities they are designed to serve.

The dawn raids, workplace arrests and criminal records produced under this legislation are having a disproportionate and unacceptable impact on the lives and life-chances of young working-class men and their families.

Finally, the entire Act is based on the false premise “one side is as bad as the other” which fails to distinguish between legitimate political expression and anti-Irish racism. This is clearly displayed in the new and increasingly popular chant aimed at Celtic fans by thousands of supporters of at least three other clubs (among whom Aberdeen and Hearts cannot be said to be part of any “West of Scotland problem”) that we, as a support containing many Catholics of Irish descent, are “in the wrong f**king country”.

John P Kelly
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