Justice Committee
Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill
Written submission from Kevin McGhee

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 original Act is unrealistic, discriminatory toward football fans and very poorly constructed. There is no need for such an act for one particular facet of a society when there is already sufficient legislation to prosecute offenders irrespective of whether they are a football fan or not.

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?

People (not just football fans) guilty of disorder in the street, at football matches, at music concerts or anywhere else have sufficient legislation to allow for their prosecution. People guilty of racism, sectarianism or any other hate crime can be prosecuted under other legislation such as Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Any threatening/abusive communications can be dealt with, and has been dealt with since 2010, by this existing legislation.

There is a common misconception that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (OBAF&TCA) is designed to tackle sectarianism, but, again, there is already legislation in place, namely Section 74 of the Criminal Justice (Scotland) Act 2003, that can prosecute offenders guilty of religious hate crime.

Since their inception, these pieces of legislation have been available for police officers to use country-wide. There is, therefore, no requirement for further legislation covering what has already been covered; except in this occasion, targeting one societal group. This implies that football fans are under more scrutiny and surveillance and are open to a wider range of prosecution possibilities.

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?

To the best of my knowledge, no other sports fans or societal group have their own designated laws that tells them that they can only commit their crime in the environment of their hobby/societal setting. It is abhorrent that football fans are
singled out and subject to prosecution based on their support for a football team. I see no such legislation for rugby, cricket, athletics or basketball fans. Perhaps, it could be argued that these sports, in Scotland at least, are not as popular as football. However, the minority of football fans who do engage in public disorder do not merit legislation which singles ever other football fan out. As already mentioned, there is legislation to deal with this behaviour. It is unacceptable that football fans and football fans only are subject to one particular act within a very particular timescale. Does this mean an individual cannot be charged under the Act during the summer break and officers would have to resort to other legislation to prosecute such individuals? If so, why is this not a possibility for the entirety of the year, football season or not?

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?

The Communications Act 2003 is more than efficient in covering any threatening communications. Thus, the repeal of the Act will not leave any gaps in the law. It is not necessary to have more than one law for the same crime. Football fans are the same as every other societal member and they are not a law unto themselves who require an entire legislation just to cover their journey to and from a football match, or any of their behaviour surrounding football.

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?

It is clear that the Act has had massive opposition from its first draft. No opposition MSPs supported the proposal and the majority of football fans, who this Act affects, are against its measures and impacts. The Act should be repealed with immediate effect. Cases that are not concluded should be dismissed, previous convictions should be uplifted and any current investigations being conducted with the legislation in mind should be halted. The great opposition of such an Act illustrates that there is a great disparity in what actually need to be done in Scotland to tackle hate crime. Targeting a societal group where the problem does not originate from is not the answer, and therefore anybody affected by the Act should be relieved of their charges, convictions or bail conditions immediately. Giving a police officer, who is a human being after all, the power to judge what is and what is not offensive is very, very dangerous. Personal prejudice, irrespective of profession, and unconscious bias are two things that this Act has illustrated. Thus, it is imperative it is repealed as it is targeting innocent people who are being criminalised based on one individual’s perception of some sort of communication, action or behaviour.
7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

Not at all. Sectarianism in Scotland does not originate from football matches. It is impossible to argue that it does not feature in football, but this is not its origin. It originates from society. It is a societal problem and burden. Football fans should not be punished or over-scrutinised for a societal problem. Some societal groups and even some individuals will break the law, but this does not make it acceptable to punish, or potentially punish the rest of society for an action committed by an individual.

Sectarianism manifests itself through organisations like the Orange Order. A deep-filled hatred instilled in its members who then attempt to spread their contemptible views at football matches, in pubs, at social excursions with their friends and everywhere else. At this point, I feel it necessary that sectarianism is wholly and exclusively related to religion. While the words ‘religion’ and ‘religious’ are mentioned in the Act, the word sectarianism is not. The Act’s goal is not to eradicate sectarianism. Those who created the legislation surely must know that sectarianism does not originate at football matches. It is deeper-rooted than this. More sinister. On a weekly basis, you’ll hear fans of Scottish clubs being up to their knees in Fenian blood, or telling Irish people to go home because the famine is over. These values, these views are not learned at Scottish football stadiums, they are learned at home, in Orange Lodges and elsewhere. These are learned behaviours, and thus the solution for sectarianism lies in education. Not through prosecuting innocent football fans at a football match where one police officer misinterprets a sentence or gesture. It should not be illegal to offend someone; one person may be offended at an action another person may find humorous.

Sectarianism is abhorrent, of that there is no doubt. But this Act is not a deterrent, it is simply about punishing people who are not necessarily sectarian, they are simply football fans. There is more than sufficient legislation in place to be dealing with those who feel the need to discriminate or hate against someone who’s Catholic, Protestant, Sikh, Jewish or Buddhist – there is no need for legislation that loosely covers the same things but solely for football supporters, who, on the whole, are very well behaved. Of the (approx.) 70,000-80,000 who attend Scottish football matches every weekend, 99% do not need to face being intimidated by police officers, extra surveillance, extra stops and searches and extra cameras recording their every move. The small minority who do engage in disorder can be dealt with through existing means which have not by any means been proven to fail.

Kevin McGhee
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