Justice Committee

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

Written submission from Sean McCluskey

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

I firmly believe that the repealing the 2012 Act is in the best interests for the public, which the laws of the nation are in place to protect. This act however in practise has been used in a way to isolate and better serve the powers whom indeed to benefit from it.

The legislation has been set out to single out one group within Scottish society, football fans, in its attempt to reduce the issue of sectarianism as a wider issue. This is inherently wrong as the root cause of sectarianism and all forms of bigotry within Scotland do not stem from the football stadiums across the country. These issues stem through the socialisation of many through their families, local communities and education. In an environment where public spending is at its tightest funds should be directed to eradicate it from the source not react at the end when it is too late.

2. Did you support the original legislation?

From its inception the Act looked flawed from the outset in my opinion. A legislation that was hurried together by a new government trying to make their impact as the first majority of the Scottish parliament.

These feeling however were not just felt by myself but by the parliament as a whole as every MSP outwith the SNP voted against, leading to the statement:

"Members of all political parties are determined to wipe the blight of sectarianism from Scottish society. It is of real regret that the first piece of legislation passed by this new parliament has been railroaded through by the SNP. The SNP has used its majority to force through bad law that risks doing more harm than good. It sets a worrying precedent for this parliament.”

For the elected officials from all parties crossing the political divide to highlight their concern for the Act only but reaffirm the view that it is not fit for purpose.

As the legislation was implemented there were calls for early reviews of the Act. One example being Dundee Sheriff Richard Davidson described the Act as “horribly drafted” and “mince”, following with the Scottish Conservative Justice spokeswoman Margaret Mitchell stating: “Clearly there is a widespread problem with the Act in operation and the various difficulties it is presenting”

During that period there were numerous calls for a review of the legislation to see if it was still fit for purpose.

1 http://www.bbc.co.uk/news/uk-scotland-scotland-politics-17214369
2 http://www.express.co.uk/news/uk/441351/MSPs-plan-early-review-of-mince-anti-bigotry-laws
Independent MSP John Finnie discussed that “When we're down to a sizeable group of people feeling that a piece of legislation disproportionately impacts on them, then I'd like to have an early review.” Furthermore Conservative MSP Margaret Mitchell backed his proposal and said: "Clearly there is a lot of concern about how this legislation is operating in practice and about the drafting of it initially. It concerns me too about the amount of resource going to it.”

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?

Legislation that was previously in place gave the Police and the Justice system more
than adequate powers to prosecute individuals who have been deemed to broken
the law through religious hate crimes. Legislation already in place such as breach of
the peace, Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 for
anti-social threatening and abusive behaviour, sectarian hatred or religious prejudice
were covered by Section 74 of the Criminal Justice (Scotland) Act 2003.

The question has to be asked why was new legislation required? One major reason
for Police Scotland is the extra funding it managed to draw from it. As a result of the
act the police were allowed to set up a specialist unit to enforce the law at
stadiums. This unit known as Football Co-ordination Unit Scotland (FoCUS) which,
with a £1.8 million budget separate from the existing police budget, holds the role “to
promote and coordinate a consistent and effective approach to policing at football
across Scotland”

The new legislation introduced the idea that football fans are the issue of
sectarianism and that is inherently wrong. Sectarian crimes that are committed within
the environment of a football match have no more of an impact to those committed in
local communities or at schools across the nation. This piece of legislation however
created the stigma of that similar to football fans in the 1980’s throughout the British
Isles. The stigma of football fans being criminals lead to a complete distrust and
contempt between fans and the police service which has been directly linked to the
events of Hillsborough.

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?

I hold a firm view that the focus of this legislation by the Police authorities within
Scotland has led to the targeting of football fans to heighten crime statistics rather
than trying to eradicate the issue of Sectarianism itself. The idea that one action can
be considered a crime within a football environment but not in a “normal” daily
activity is nothing short of bewildering.

An example of the Police force targeting football fans is at an incident in the
Gallowgate area of Glasgow in 2013. Fans organised a march from the city centre to

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3 http://www.bbc.co.uk/news/uk-scotland-scotland-politics-24825094
Celtic park but were met by a major police presence of around 200 officers. With 13 arrests made, the police faced criticism from both politicians and lawyers alike. Brian McConnachie, QC, describe how “It’s a fine line between an unlicensed procession and a police state”\(^4\), with Labour councillor George Ryan announcing he believed the behaviour and tactics used by police as “totally disproportionate”\(^5\). These opinions of outrage were not isolated with Lothians Labour MSP Neil Findlay having said: “As predicted in parliament Offensive Behaviour at Football Bill being used to criminalise working class young men – Old Firm fans singled out”\(^6\). In the aftermath of the event a grand total of ZERO convictions for disorder or any type of violence or aggression against the 13 who were arrested, despite the police stating they were acting in self-defence. Furthermore to this two officers after the incident were investigated for perjury for their accounts of the incident. During the trial of Scott Johnson one of the officers was warned by prosecutors that he was in danger of incriminating himself.

The legislation itself has impacted my experience attending football matches around Scotland. The idea that watching a football match could result in you getting arrested, losing your job or worse incarcerated makes you question the value of following the sport I love. Having to assure my partner that I will be coming home that evening and not getting arrested despite holding no previous convictions or cautions is the stark reality of watching football in Scotland. This is not the way any other person in society would feel going to engage in their hobby.

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?

Through reports I have investigated the use of Section 6 in regards to the Act 2012 have been minimal at best when cases have went to trial. Despite this the previously legislation mentioned within the questionnaire will highlight that it is unlikely to have a gap that has not resulted from a cross over with the legislations. With these points made I feel that this question does not hold substantial weight to be a major factor in repealing the act.

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?

With the understanding of how the legislation is being implemented and the strength of previous legislations it is clear that the act should be repealed immediately to reduce the negative impact it is having on normal law abiding football fans within Scotland.

For those who are pending trial, and indeed those who have been convicted under the act, it is only but right to have their charges dropped. If it legislation is deemed not fit for purpose then inherently any possible convictions associated cannot cover validity.

The very idea of a piece of legislation being designed for a sole social event does beg the question would any other event have one imposed? Deaths of festivals and various anti-social behaviour incidents happen every year at music events and yet they are not targeted specially for drug related legislation.

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

The 2012 act has NOT had impact in tackling sectarianism within Scottish society. Arresting men and women at football stadiums has not stopped the issue of religious hate crimes within Scotland. In a recent publication of the hate crime statistics for the year 2016-2017 the number of religiously aggravated charges reported, at 673, is 14% higher than in 2015-16 and at the highest level since 2012-13. Including charges that are now reported under the Offensive Behaviour at Football legislation, there were 719 religious related charges, up 12% from 2015-16. These higher figures show that it is not having a major impact in tackling the issue and it could be argued that it is indeed having a negative impact.

The funds to discuss and maintain the failing legislation should be redirected to area that can have a major impact on the next generation within Scottish society. The use of education through our younger generations will be the bedrock in eradicating the issue of sectarianism, not a handheld camera held towards a football crowd.

Sean McCluskey
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