Justice Committee

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

Written submission from Paul Kavanagh

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   Yes the act should be repealed.

   As a solicitor I have defended numerous people who have been prosecuted under this act. Indeed, I have lost count of the number of trials I have undertaken. The vast majority of those prosecuted have never been involved in the criminal justice system.

   It would be wrong to suggest that there is not a problem of sectarianism in Scotland. It should not exist and indeed should never have existed. This act though does not tackle it.

   The implementation of the act is left to, amongst others the subjective opinion of police. It would seem there has been a significant lack of training for the police, or at the very least poor implementation of any given or lack of direction and clarity from the authorities.

   The act is specifically aimed at football fans. For others to suggest that sectarianism only exists in football grounds or where fans gather to watch games or on their way to and from such games is ludicrous. The place sectarianism occurs or is said to happen should not be prosecuted on the basis of where it is said to occur.

2. Did you support the original legislation?

   Given the above I do not support the legislation.

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 there always has existed other legislation that of a common law breach of the peace. One has to merely look at what people were charged with before the Act was implemented to establish that there was sufficient legislation. After the Hampden football game between Hibs and Rangers numerous fans entered the field. In normal course they would have been charged with a breach of the peace or a charge of mobbing and rioting. There was no need to charge any of those arrested under the 2012 Act. If it had been at a rugby game the fans would have been charged, no doubt, under common law crimes.
Further in my opinion there exists s38(1) of the Criminal Justice and Licensing Scotland Act 2010. This was introduced to cover any gap that existed in the interpretation of case law in breach of the peace cases.

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?**

In my respectful opinion no.

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?**

Yes. As mentioned the majority of the people I have represented whether they have been male or female have never been involved with the police before, and are in full time employment. Should the act be repealed all cases currently being prosecuted should cease with immediate effect.

Paul Kavanagh  
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