Justice Committee

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

Written submission from Krystofer Kujawa

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 fully agree with the proposal to repeal the 2012 Act. The idea that "offensive behaviour" is something that can be quantified is ridiculous in itself. Simply put, offense is taken and not given, and what is offensive to one may not be offensive to another. The added problem with this specific law is that only applying in the limited surroundings of a football context means that the same law cannot be applied in other situations of similar behaviour.

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?

Yes. Common law breach of the peace has previously been used to deal with the majority of actual minor issues. Where the problem is one of religious prejudice, as is often the case with "offensive" behaviour at football matches, Section 74 of the Criminal Justice (Scotland) Act 2003 is sufficient. When the problem is one of racial prejudice, Section 96 of the Crime and Disorder Act 1998 covers these. Sexual orientation is covered by Section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

More generally threatening behaviour, which I believe is the underlying issue rather than simply offensive behaviour which is often used in a football context to wind up opponents rather than anything less benign, can be covered by Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

Most importantly, all of these can be applied in all scenarios and not just in a football related context. As such, where applied correctly, these existing laws cover everything that the 2012 Act was put in place to deal with purely in a football context.

Simply put, the 2012 Act is not required and its repeal would not create a gap.

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?
As I have stated previously, laws such as the 2012 Act which limit the context in which they can be applied are needless. Football may well be a high profile area in which offensive behaviour is perceived to occur, but to suggest it is the only place where such behaviour occurs is a ridiculous notion. The laws which existed prior to the introduction of the 2012 Act rightly cover all scenarios.

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 “threatening communication” aspect of the legislation has rarely been used, and is often even forgotten when the 2012 Act is mentioned in the media. Indeed, where threatening communication has taken place since the 2012 Act was introduced, the police and prosecutors appear to prefer using the Communications Act 2003, thus demonstrating that existing legislation is sufficient. In addition, as with section 1, this aspect could also be covered by Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

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?

Upon repeal the 2012 Act should cease to be used against football fans with immediate effect. All existing cases that have not been concluded should be dropped immediately. If a conviction could not be dealt with under previously existing legislation, then that conviction should be quashed. Indeed, if it could be dealt with under previously existing legislation, then questions should be asked as to why that legislation was not used instead.

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

Sectarianism is not a football problem, it is an underlying problem within Scottish society itself. Football may well be an outlet to air sectarian views, but it is not the source of the problem itself. Therefore, bringing in the 2012 Act purely to deal with the outlet and not the underlying problem has done nothing to tackle sectarianism. At best it will drive it underground in search of another outlet.

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