Equality and Human Rights Commission Consultation response to the repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Creating a fairer Britain
Equality and Human Rights Commission response to the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

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The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).
1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

The Commission believes that these proposals need to be considered within the wider context of the work going on to reduce hate crimes in Scotland.

The available statistics that have been published since the Act came into force would suggest that the Act has provided some additional focus and potential tools in identifying and prosecuting unacceptable behaviour.

The Morrow report ‘Review of the Implementation of the Recommendations of the Advisory Group on Tackling Sectarianism in Scotland’¹, published in 2015, noted that “It is clear that a strategic and measured response to Scotland’s remnants of sectarian attitudes and behaviour cannot succeed without squarely addressing the sectarian problem within and around football”.

The subsequent Report of Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion² made a number of wide ranging recommendations including a review of the current landscape of hate crime legislation in Scotland.

There are a number of current pieces of legislation that seek to address the issues relating to hate crime in Scotland. The Commission welcomed the subsequent setting up of the Lord Bracadale Review into hate crime legislation, and has accepted an invitation to be part of this review. The Bracadale review will report in 2018.

The Commission also notes and supports the proposals set out in the Proposed Football (Strict Liability) (Scotland) Bill³. Our response states we feel it is appropriate to introduce expectations of good conduct, and sanctions against poor conduct which are already in place in England and apply to Scottish clubs playing in UEFA tournaments. Currently the law criminalises only individual’s conduct.

Given this context and these various initiatives we would propose that it would make sense to await the outcome of the Bracadale review and recommendations. This is likely to provide more information and analysis that could assist in the consideration of the proposal to repeal the 2012 Act.

2. Did you support the original legislation?

Our evidence submission for the original legislation was submitted in June 2011. In summary the EHRC;

- Welcomed the Scottish Government’s commitment to challenging sectarianism in Scotland.
- Expressed concern that the process of the Bill’s passage through Parliament was being dealt with as an ‘emergency procedure’ and viewed this as unnecessary stating that the Bill would have benefited from standard Parliamentary procedures being applied.
- Reminded Scottish Ministers on their obligations under the statutory public sector equality duties.

² http://www.gov.scot/Publications/2016/09/3565/downloads#res506074
A full copy of our evidence submission can be found on our website⁴.

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?

See our response to question 1.

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 our response to question 1.

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?

There have been many fewer prosecutions under section 6 of the Act that for other sections. The most recent statistics available report that in 2016-17 there were six section 6 charges reported to the COPFS.

This is broadly in line with previous years. In 2015-16, there were seven, in 2014-15, there were four and in 2013-14, there were eleven.

We would propose that further research should be carried out to assess the impact of the repeal of this provision.

The effectiveness of the legal framework for hate crime currently in place in Scotland is currently being considered by the Bracadale Review. The review is to carry out a consultation on all aspects of the legal framework including the Offensive Behaviour at Football and Threatening Communications (Scotland) Act and report on its findings and recommendations in early 2018. We would suggest that it might be sensible for the committee to ensure that it considers the outcomes of the Bracadale Review as they may address some of the questions and issues that have been raised and have led to the proposal to repeal this Act. The Bracadale Review may also highlight other consequences of repeal and address the issue of whether gaps may result.

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?

The Commission has no view on this provision.

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

The Commission’s Triennial Reviews, ‘How fair is Britain?’ and the corresponding “How fair is Scotland” report, published in 2015, identified ending identity-based or targeted violence and harassment as one of the five most important objectives that must be met if we are to create a society in which every individual has an equal chance in life; human rights are respected; and prejudice is replaced by greater understanding.

Offensive conduct in football grounds discourages some fans from attending so the tackling of hate crime would have a positive impact on those fans who would like to, but currently do not, attend frequently. More broadly the tolerated persistence of this type of offensive conduct every weekend in Scotland could be seen as a “permissive” encouragement to those who wish to continue acting in this way. We believe that this sort of conduct would not and should not be tolerated in Scotland’s pubs, clubs, or other sporting arenas, and so therefore football clubs should come into line with other environments in condemning and eliminating it.

Overall statistics for hate crimes for 2016-17 report that there were over 5700 charges were reported to the Crown Office and Procurator Fiscal Service of Scotland (COPFS). There were 377 charges (6% of the total) under section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 32 percent higher than in 2015-16 and the highest annual number of changes reported since this legislation came into force.

This would suggest that the Act has had some impact in raising the awareness and providing some additional tools in the prosecution of these type of offences and in tackling sectarianism.

6 http://www.copfs.gov.uk/media-site/media-releases/1557-hate-crime-in-scotland-2016-17-an-official-statistics-publication-for-scotland
7 http://www.gov.scot/Publications/2017/06/7620