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

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 – I feel OBAF legislation is unfair to football fans. It discriminates against football fans over all other people in society. It is subjective and an individual can’t be sure whether or not they committing an offence.

2. Did you support the original 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, existing provisions prior the OBAF are adequate. Possible pieces of legislation such as common law Breach of the Peace, Section 74 of the Criminal Justice (Scotland) Act 2003, Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010; which are used for all other sections of society can be applied, ensuring there is equality for all citizens, whether football fans or not. These provisions, in my opinion, are more than adequate to cover issues at football. This would also go a long way to remove the subjective nature of policing at football matches, and generate a better relationship between football fans and police, which Scottish football supporters generally enjoy across Europe, including England.

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?

There should be no laws specific to football fans, as mentioned existing provisions if policed and implemented properly are more than adequate.

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?

It is apparent that Section 6 has seldom been used in the whole period since it was enacted and that police and prosecutors have regularly used other legislation, such as the Communications Act, 2003. Therefore it is reasonable to assume that it is not required and there would be no gap in provision.

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?

There should be no further convictions with immediate effect, any cases that are not concluded, the charge should be changed to an existing provision, if that isn’t possible then the cases should be dropped.

Furthermore all previous convictions under this legislation should be quashed, as it is my opinion that a law that only applies to football fans should never have been enacted in the first place.

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

The act has done nothing to tackle sectarianism or racism, education is the only way to tackle the challenges of racism and sectarianism in our society, make it compulsory in the curriculum from Primary school through to secondary school.

All the act has achieved is criminalising and alienating a small section of society who being unfairly discriminated against.

It is entirely disingenuous for the Scottish Government to claim any success in tackling sectarianism with this clumsy, subjective piece of legislation with a very low conviction rate.

Brian McAuley
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