

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM DR TOM WALKER

Dear Clerk of the Justice Committee,

I wish to comment on the current Hate Crime and Public Order bill that your committee is seeking views upon.

In general, I find the bill a legislative attack on the freedom of expression that borders on the creation of thought crime. Applying complicated and multiple layers of privilege to a broad section of the population will implement a mental roadblock and with it a hesitation to engage in debate. Self-censorship is the ultimate censorship.

My first specific concern is section 3 - "Offences of stirring up hatred". The statement "it is likely" in section 3(1)(b)(ii) and 3(2)(b)(ii) is an extremely vague and subjective term, and the deliberate removal of intent is a worrying step. I agree with Lord Bracadale when he recommended that "insulting" should not be used for 3(1)(a)(i) as the threshold of being insulted is lower than the level of being abused.

The defence for being in possession of inflammatory material is left open to extremely broad interpretation. Section 5(4) allows defence for the "possession of the material was, in the particular circumstances, reasonable". What is the definition of reasonable in this case? Anyone should be able to make up their own minds on any matter. To do this they may read, watch or listen to material that they do not agree with or is viewed by the public at large as distasteful. This material may be abusive or offensive to some, even to the individual watching, but their first hand interpretation should always be allowed. This part of the proposed bill does not give me confidence that an individual would be free to make up their own mind on contentious matters and it gives the Scottish government the power, via the courts, to mass censorship. Those making the decision of reasonableness determines what books must be burned.

The acceptance of evidence from a single source in section 1(4) is a weakness if the evidence is an unwitnessed allegation from the victim of a spoken abuse. Although I do not support the bill in its entirety, I believe that this removal of corroboration would lead to a lot of wasted time for the courts or police service. The suitability of this bill to facilitate mass surveillance of the Scottish populations digital communication for "wrong think" removes the need for this section as the majority of prosecutions will be put forward from digital evidence which is easily corroborated anyway.

Possession of inflammatory material under section 5 would have extremely broad consequences. Most people have their email address, social media and similar accounts for years, if not decades. Any material made or received 10 years ago is still in your possession. Even if you think that you have deleted it, it may still be recoverable or stored in a way linked to your account. Forgotten about accounts could be full of material that would lead to prosecution. The leaking of a private

account could lead to prosecution of the leaker for the digital crime and the account owner for having a distasteful joke sent in the early 2000's. No limitation could be applied as the material contained in each account could be forwarded on, printed or otherwise viewed for an indefinite period of time and therefore section 5(1)(b)(ii) or 5(2)(b)(ii) applicable indefinitely.

The definition of the protected characteristics is very wide. Section 14(3) states "A disability is a physical or mental impairment of any kind" and s14(4) goes on with "For the purposes of subsection (3) (but without prejudice to its generality), a medical condition which has (or may have) a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment". Obesity is a medical condition with substantial long-term effects. It is thought that 25 to 35% of the population is obese. A similar percentage of the population is thought to have mild mental health issues with anxiety and depression being the most common. If someone was called "mad" would a crime have been committed? Would it be a crime for someone to suggest that obese people cost more to the NHS to treat over a lifetime than the average non-obese individual, if obese individuals felt that the statement was abusive and caused them hurt?

I also object to the bill from the point of clarity. The bill uses language that goes against the idea of making the law as accessible as possible. It uses jargon which would rarely be encountered outside legal circles - in particular: evince and adduced.

I urge the committee to recommend that this bill is not progressed. It is contrary to the principles of freedom of speech and seeks to encroach in the freedom of thought.

Yours sincerely,

Dr Tom Walker