

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM KERR MCDOUGALL

Herein contained in this missive are my views for the current consultation regarding the Hate Crime and Public Order (Scotland) Bill

General

1. *Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?*

No, the 2010 Criminal Justice and Licensing Scotland Act already adequately protects what the current bill is trying to do so. In my opinion, nothing else is necessary.

How to prosecute hate crime?

3. *Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?*

I have my doubts as to if it would even be effective. It has the characteristics of effectively increasing ones sentence for motive alone, adding an element of *mens rea* for a statutory offence. As you may be aware, the legal tradition within Scotland is that motive has no effective relevance in any part of the criminal conviction process. [A, Norrie, *Crime, Reason and History*, (3rd Edn Cambridge University Press, 2014), p.42] In a practical sense it does not matter why the crime was committed, it only matters that a crime was committed. An erudite individual stated as such: "*the thing that is good about the Samaritan is not that he is from Samaria, but that he helps the person who is injured. What matters in morality is not that I kill a person because he is black, or a Hindu or disabled, but that I kill at all. Who is your neighbour? Who should you help? And who should you not do wrong to? Everyone.*" However, if it *had* to be on the statute books it **MUST** be utilised equally in all circumstances as demanded by the rule of law. All must be treated equally under the law and it would therefore be in my opinion unduly discriminatory to exclude certain characteristics or approach certain characteristics differently - for instance, having the statutory aggravation for misogyny but not misandry. This is because I think it would be incompatible with Article 14 of the European Convention on Human Rights and thus the bill itself would be in jeopardy of being struck down as it is out with your legislative competence as per the Scotland Act 1998 s.29(2)(d). Therefore, "sex hostility" would be an improvement because it would be applicable to all sexes including male and female etc.

4. *Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?*

Under no circumstances should the aggravation on age hostility be placed on the bill beyond perhaps having an aggravation for the victim being of an elderly age and thus theoretically weaker than a younger assailant.

Other forms of crime not included in the Bill

5. *Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?*

No, it would merely be a waste if it can already be effectively covered by the provisions regarding religion. Worst case scenario, the common law can deal with it.

Stirring up offences

6. *Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?*

Fundamentally this has no merit whatsoever. It depends upon the subjective opinion of the "victim" if threat was perceived. This is open to all kinds of abuse and can result in a lot of wrongful prosecution because of how widespread the types of *behaviour* can be encompassed due to the very vague wording of the bill. For instance, if a satirical cartoon of the Prophet Mohammed or Jesus Christ were published and only one person or a very minute proportion of the population takes offence to this, it would be censored. Consequently, it would also cripple the rule of law in that religions and their adherents would be better protected than say an atheist.

7. *Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?*

Mostly covered by my previous answer and as a result I agree with his Lordship's opinion that 'insulting' should be removed.

Other issues

8. *Do you have any comments on what should be covered by the 'protection of freedom of expression' provision in the Bill?*

The most important thing to be covered in this section of the bill is satire, being that Scotland is one of the homes of comedy. This bill would allow a comedian to be prosecuted for a lot of things such as merely joking about an age group or religion. It

is my belief that criticism whether in an official capacity or for comedic purposes should be permissible regardless of who expressed it or how it was expressed.

10. *What is your view on the plans for the abolition of the offence of blasphemy?*

The abolition of blasphemy is good, but the above provisions make it hard to criticise any religion unless the freedom of speech sections are strengthened drastically. If not, it essentially has the same effect of swapping the method in which one can be effectively convicted for blasphemy. Therefore, it makes the removal of the common law offence pointless if these issues persist.

Kerr McDougall
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