

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM JANE HESKETH

Dear Justice Secretary,

I am extremely concerned that the proposed new offence of stirring up hatred in Part 2 of the bill will be used to inhibit and prevent people arguing for women's rights and the rights based on the protected characteristic of sex.

According to the World Health Organisation's definition: "Gender is used to describe the characteristics of women and men that are socially constructed, while sex refers to those that are biologically determined. People are born female or male, but learn to be girls and boys who grow into women and men. This learned behaviour makes up gender identity and determines gender roles." Many in the trans community would regard this definition as transphobic, as hate speech. Yet this is the foundation of how many feminists view the differences between the sexes and the consequences for women, girls, men and boys. If people cannot say this and explore those consequences they will be deprived of their Freedom of Expression to defend and maintain their rights. This is already happening. Women are losing their employment and being harassed for stating beliefs based on these definitions. The Hate Crime Bill as proposed will put them at risk of prosecution.

This is not an academic debate. The consequences of the WHO definitions of sex and especially gender are extensive and often devastating for women including poorer health, endemic discrimination, and significant risk of violence. Definition of gender as cultural and therefore changeable by a society is crucial to countering the problems that face not only women and girls but also boys and men.

It may sometimes be difficult to reconcile women's rights with the rights of the trans community but it is vital that women and men can freely argue for their rights based on biological sex and its societal gender implications. That is not inherently hate speech. In many cases they will be opposing cultural gender norms which are the basis of transgender identity. That too is not hate speech.

The WHO properly recognises that there are minorities with variations in sexual characteristics and transgender individuals, that they too have rights and are deserving of dignity. That is not disputed.

I am further concerned that there is no section in the bill recognising a right to Freedom of Expression relating to gender identity in the way that there is explicitly for religion and sexual orientation. This will limit any defence against an accusation of hate towards gender identity on the grounds of Freedom of Expression. In the background notes, there was reference to Article 9 of the Human Rights Act as being the overarching protection for Freedom of Expression. That is not convincing for the following three reasons.

Firstly, the Human Rights Act is UK legislation enacted to align with the European Convention on Human Rights, so if the UK parliament decides to repeal or alter it or indeed if Scotland becomes independent, that protection is lost.

Secondly, the Article 9 provision for Freedom of Speech is qualified by being subject to “law[s which] are necessary in a democratic society ... for the protection of the rights and freedoms of others” - such as might be claimed for the Hate Crime Bill.

Thirdly, if the drafters of the Bill believed that Article 9 protected Freedom of Speech, why was there any need for sections 11 and 12 to explicitly state that discussion and proselytising about religion and sexual orientation are not abusive or insulting?

The bill needs a section to protect Freedom of Speech on the topics of Sex, Gender (as defined by the WHO) and Women’s Rights to ensure that those speaking up for women are not intimidated by fear of prosecution.

Yours

Jane Hesketh

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20 July 2020