

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM BOB ANDERSON

The most concerning part of the Bill creates new ‘stirring up hatred’ offences. The existing law covers race, but extending it to cover religion, sexual orientation and transgender identity will have profound consequences for free speech and religious liberty. These new offences could very easily restrict our freedom to proclaim Christ as the only way of salvation or to call people to repent of sin – even in church.

As currently drafted, the Bill is particularly dangerous because it does not include the key legal safeguards contained in parallel legislation in England and Wales. Conduct need not be threatening or intended to stir up hatred for an offence to be committed. Instead, the Bill captures any abusive behaviour likely to stir up hatred. An offence could even be unwittingly committed in the privacy of your own home. And there is not nearly enough protection for free speech. Here are my thoughts on the matter.

New crimes that are too easy to commit

The stirring up hatred offences cover threatening or abusive behaviour that is intended or likely to stir up hatred against a group. The lowest threshold is therefore abusive behaviour likely to stir up hatred. No hatred needs to result. A similar offence in England and Wales covering religion and sexual orientation only covers threatening behaviour intended to stir up hatred.

This is a much more appropriate threshold. Crucially, there is nothing in the Bill that requires the person even to realise that their behaviour is abusive or likely to stir up hatred. This means the offences can be committed unwittingly. Crimes not requiring a significant mental element are called ‘strict liability’ offences.

They are usually used for matter-of-fact breaches where there can be no doubt a crime occurred, such as speeding. It is extraordinary to have strict liability offences that are so subjective and carry such a serious sentence. Similar offences in the UK always require at least some awareness of how the behaviour might be understood.

1 Existing provisions also include a defence of showing you had no reason to believe your behaviour would be witnessed by someone outside a dwelling.

2 But the new offences can even be committed in the privacy of your own home.

Inadequate free speech protection

Religion, sexual ethics and transgender issues are often highly contested in public debate. In a free society we should be able to challenge, criticise and otherwise robustly disagree with the beliefs and actions of others, even in ways that might offend them. We would be better off without any stirring up hatred offences in these areas. However, if they are introduced, strong protections for free speech must be included. Police Scotland has warned that it could be “burdened with vexatious reports” if free speech provisions are not included.

THERE IS NO FREE SPEECH CLAUSE INCLUDED ON TRANSGENDER IDENTITY

No free speech protection covers transgender identity, despite it being a high-profile, contentious issue. Prominent public figures are already labelled ‘transphobic’ simply for expressing their belief in the reality of biological sex. Disagreeing with the activist catchphrase “trans women are women” is interpreted as hatred. So it is dangerous to introduce a stirring up hatred offence covering transgender identity at all, and especially with such a low threshold.

Not including explicit free speech protection is completely reckless. Any stirring up hatred offence on transgender identity must include a robust free speech clause protecting the freedom to disagree with transgender ideology. This must protect the right to say that someone born a woman is not a man, and vice versa, and using a person’s birth names and pronouns.

FREE SPEECH CLAUSES THAT ARE INCLUDED DON’T GO FAR ENOUGH

The Bill does include two clauses to protect freedom of expression on religion (clause 11) and sexual orientation (clause 12). They must be strengthened. On religion, the free speech clause protects discussion, criticism, proselytising and urging people to “cease practising their religions”

But a previous offence of stirring up religious hatred had a noticeably stronger safeguard. It specifically protected “expressions of antipathy, dislike, ridicule, insult or abuse” towards religious beliefs or practices. This closely followed the free speech safeguard in the similar law for England and Wales. The Scottish Government has given no justification for watering down this protection.

The sexual orientation free speech clause protects discussion, criticism and urging people “to refrain from or modify” sexual conduct or practices.

But the equivalent in England and Wales specifically protects beliefs about same-sex marriage: “any discussion or criticism of marriage which concerns the sex of the parties to marriage”.

The term “abusive” is too vague

When this kind of language is used in legislation, it takes its ordinary meaning. Dictionary definitions of ‘threatening’ generally include connotations of violence, menace or intimidation. But ‘abusive’ tends to be defined as “offensive”, “rude” or “insulting”, making it highly subjective.

THREATENING AND ABUSIVE BEHAVIOUR IS ALREADY COVERED BY THE CRIMINAL LAW

Genuinely criminal behaviour in this area can already be prosecuted under the ‘threatening and abusive behaviour’ offence in Section 38 of the Criminal Justice and

Licensing (Scotland) Act 2010. To commit an offence under this section, the behaviour must “be likely to cause a reasonable person to suffer fear or alarm”.

The offender must also either intend to cause fear or alarm or be reckless as to whether they did. Not only does this section make further offences unnecessary, it establishes a clearer threshold for a criminal offence. The vagueness of ‘abusive’ is still a concern, but the section is less likely to result in someone being unjustly accused because of the reasonable person test and requirement for a perpetrator to be reckless.

Chris Sloggett, National Secular Society says this “ This vague law will undermine open debate, along with citizens’ confidence that they’ll be treated equally under the law... likely to be weaponised to restrict debate”

Emma Webb, Director of the Forum on Integration, Democracy and Extremism, says this “ The effect... will be to make everyone feel unsafe – unsafe to think, to speak, to discuss, to share ideas.”

Dr Stuart Waiton, Lecturer in Criminology at Abertay University comments, “ Today Scotland is leading the way in the criminalisation of wrong ideas... we face another fight for the most basic of freedoms expected in a democracy”

Dr Andrew Tickell, law lecturer, Glasgow Caledonian University has this to say, “ Drawing ragged lines between permissible and impermissible speech is a tricky business at the best of times... I can see it now. I’m braced for the deluge. ‘Is this tweet a hate crime?’ Report, report, report.”

Jim Sillars, former Deputy Leader of the SNP Note a former Depute leader, his remarks are, “ Scots are now locked in a woke chamber: virtue signalling, pandering to perceived victimhood, punishing any who assert biological fact, placing a halter of criminality on free thought when articulated by speech, abandoning common sense.”

But this is the most telling quote I could find. John McLellan, Director of the Scottish Newspaper Society, “ a golden opportunity for political activists to use its terms to close down opponents”

In short this is a disaster of a proposed bill and needs to be thrown into the bin without further time wasting.

Bob Anderson
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