

**JUSTICE COMMITTEE****HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM ANNE CLARKE**

I attach my response to the call for views on the proposed Hate Crime legislation in Scotland. I am a writer who fears that lack of clarity in drafting could lead to attempts to prosecute instances of legitimate exploration of issues around hate crime and hate speech. The views in the attached paper are my own and do not represent the views of any organisation.

**Hate Crime and Public Order (Scotland) Bill Call for Views***General***1. Need for the Bill**

Although legislation covering various forms of hate crime already exists in Scotland it makes sense to consolidate existing hate crime laws into one piece of legislation covering all such laws. I don't see the argument for having some forms of hate crime – e.g. misogyny – dealt with under separate legislation. A statutory aggravation for sex hostility would in my view be preferable.

**2. New statutory aggravation on age hostility**

I don't think this should be added to Scottish hate crime legislation. I am not entirely sure how this hostility would be supposed to manifest itself. I agree that there might be merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?

**3. Other forms of crime not included in the Bill**

I do think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation. Creating a standalone offence for *any* form of hate crime seems to single it out to make it a special case. Surely the principle of the Bill is to outlaw any form of abusive and/or threatening behaviour directed against and motivated by hostility towards *any* specific group I think the statutory aggravation route should be the one to go down in every case.

**4. New offence of stirring up of hatred**

I do not have strong views either way on whether 'insulting' should be retained in the definition. However I am concerned at the paragraphs in this section relating to *intention*:

A person commits an offence if—  
(a) the person—

- (i) behaves in a threatening, abusive or insulting manner, or
- (ii) communicates threatening, abusive or insulting material to another person, and
- (b) either—
  - (i) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or
  - (ii) as a result**, it is likely that hatred will be stirred up against such a group. 5
- (2) A person commits an offence if—
  - (a) the person—
    - (i) behaves in a threatening or abusive manner, or
    - (ii) communicates threatening or abusive material to another person, and
    - (b) either—
      - (i) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3), or
      - (ii) as a result**, it is likely that hatred will be stirred up against such a group.

In the above two paragraphs the first condition is entirely clear and I have no quarrel with it. The second condition does not require intention. Suppose, for example, that one person communicates to another ‘threatening or abusive material’ to facilitate research into such behaviour, or to provide material for a drama or fictional work exploring the causes of such behaviour without any intention to stir up hatred but it is deemed ‘likely that hatred will be stirred up’ by a single person? While it could well be argued that in those circumstances no-one would be likely to bring a prosecution the fact remains that it seems a prosecution *could* be brought if the current wording remains.

## 5. Freedom of expression

The freedom of expression section relates only to religion at present since the sexual orientation section appears to relate to religious attitudes too. I would like to see in this section that behaviour or material is not to be taken to be threatening or abusive when it is presented on stage or in written form as part of a legitimate exploration of such behaviour and its motivation. The committee itself has noted that Article 10 of the European Convention on Human Rights ‘protects expression which shocks, offends and disturbs other people’ while also noting that freedom of speech is not freedom from responsibility. I would welcome greater clarity on this issue in the Bill. It is the single biggest concern for the writing community, of which I count myself a member.

## 6. Abolition of the offence of blasphemy

I welcome this. But I would point out that this offence was created at a time when Christianity, in various forms, was the dominant religion in Scotland. How would the Bill apply to acts regarded as blasphemy by other religions – e.g. caricatures of the prophet Mohammed? Would they come under the inciting to racial hatred definition?

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