

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM SUSAN FORREST

To the Justice Committee

I wish to raise my concerns about the content of the Hate Crime and Public Order (Scotland) Bill being considered by the Scottish Government via the Justice Committee

Some of the content is very alarming, I refer in particular to the following :

1. The confusion in the Policy Document between Gender and Sex. I was under the impression that the GRA Bill was now shelved, yet this Bill continues to put women and girls at risk by conflating the difference between biological sex, which cannot be changed, and transition (i.e. transmen and transwomen) which falls under gender identity. Anyone can identify as any gender they wish, and these rights should be upheld, they are indeed Human Rights and are protected under the Equality Act 2010.

However, it is impossible for a female to **change their sex** and become a male and vice versa, yet under your Hate Crime Bill, individuals could be charged and convicted for holding this view, airing it on Social Media platforms etc.

Lord Bracadale confused gender and sex in his review, it therefore gives me no confidence whatsoever in this Bill that the Scottish Government will not do the same. In answers to questions from Liam Kerr MSP, Humza Yousaf was unable to correctly identify the difference between sex and gender identity, which further makes me extremely worried – if the Justice Minister does not understand the difference, what on earth will the legislation look like ?

Question S5W-29943: Liam Kerr, North East Scotland, Scottish Conservative and Unionist Party, Date Lodged: 15/06/2020

To ask the Scottish Government how it defines "gender identity", as referred to in paragraph 80 of the Explanatory Notes to the Hate Crime and Public Order (Scotland) Bill.

Answered by Humza Yousaf (07/07/2020):

Gender identity as outlined in paragraph 80 of the Explanatory Notes refers to an individual's gender identity where this is different from their sex at birth.

Current Status: Answered by Humza Yousaf on 07/07/2020

Question S5W-29944: Liam Kerr, North East Scotland, Scottish Conservative and Unionist Party, Date Lodged: 15/06/2020

To ask the Scottish Government whether it will set out the difference between someone who has gender identity that is different from their sex registered at birth, and a person who does not have a gender identity different from their sex registered at birth, as referred to in paragraph 80 of the Explanatory Notes to the Hate Crime and Public Order (Scotland) Bill.

Answered by Humza Yousaf (07/07/2020):

In line with the definition of gender identity in the answer to S5W-29943 on 7 July 2020, someone who has a gender identity that is different from their sex at birth may include someone whose perception of their own gender does not correspond with their sex at birth, such as a trans man, a trans woman, or a non-binary person.

Someone who does not have a gender identity different from their sex at birth may include someone whose perception of their own gender corresponds with their sex at birth, such as a non-trans person.

All answers to written Parliamentary Questions are available on the Parliament's website, the search facility for which can be found at: <http://www.parliament.scot/parliamentarybusiness/28877.aspx>

Current Status: Answered by Humza Yousaf on 07/07/2020

2. The section on Stirring Up Hatred seems to make any play or song which, when performed, someone then objects to a crime under the Bill. Yet a Hate Crime under current legislation is a "crime aggravated by prejudice" – how therefore could someone be carrying out a crime (e.g. an assault) while performing a play ? This section is meaningless and ill-thought out. Creativity works by appealing to some people but not others. Are people going to report actors and performers because they did not like a message in a play ? As with much of this Bill, the ambiguity is worrying and dangerous.
3. Finally, I give you a quote from Amnesty International on proportionality on freedom of speech and freedom of expression. The fact I have to quote this to the Scottish Government astounds, horrifies and disappoints me – I hope therefore you will reflect on this in your deliberations

Any restrictions on freedom of speech and freedom of expression must be set out in laws that must in turn be clear and concise so everyone can understand them.

People imposing the restrictions (whether they are governments, employers or anyone else) must be able to demonstrate the need for them, and they must be proportionate.

Yours faithfully

Susan Forrest
21 July 2020