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Adam Tomkins MSP
Convener, Justice Committee

By email - justicecommittee@parliament.scot

1 March 2021

Dear Convener,

I am writing to confirm the freedom of expression provision I will be seeking to add to the Hate Crime and Public Order (Scotland) Bill at Stage 3. In deciding what freedom of expression provision to add, I found the Justice Committee roundtable session on Monday 22 February extremely helpful in directly hearing from a wide range of stakeholders as to their views on what the appropriate approach should be in this sensitive area.

It was compelling to hear so many of those contributing at the roundtable indicating that the fundamental safeguard to freedom of expression were the thresholds of the stirring up hatred offences themselves. Changes made to the threshold to require an intention to stir up hatred for the new stirring up hatred offences safeguards freedom of expression. Making clear on the face of the Bill that a court will objectively assess whether behaviour or material is threatening or abusive safeguards freedom of expression. The availability of a reasonableness defence safeguards freedom of expression. Requiring each element of the stirring up hatred offences to be proven beyond reasonable doubt with corroborated evidence safeguards freedom of expression.

As was discussed, it is the case that specific freedom of expression provision can also provide additional clarity and reassurance. The provision I intend to lodge tomorrow (Tuesday 2 March) is contained in the annex to this letter¹.

¹ Please note there will be some minor technical and consequential amendments lodged alongside this provision which are not included here.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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I was persuaded through the contributions made at the roundtable that it is not necessary or appropriate to include race within the freedom of expression provision. In particular, I listened to the powerful testimony from Danny Boyle at BEMIS as to the harm such a step could cause and I do not consider it would be welcome for the freedom of expression provision to cover race as this would suggest a weakening of existing protection for groups targeted on the grounds of race. This perception could be damaging to community cohesion and it is not something I am satisfied is needed or desirable.

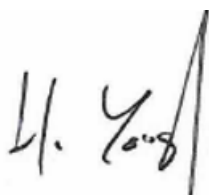
I was also persuaded that additional provision for religion was needed. This follows on from the Justice Committee very recently, at Stage 2, agreeing that additional provision was necessary. This decision of the Committee at Stage 2 reflected the nature of religion as a characteristic being distinctive and different to the other characteristics.

I intend to lodge my amendment, along with a small number of other minor technical and consequential amendments associated with the provision, tomorrow. I look forward to a healthy, robust and respectful debate at Stage 3 on freedom of expression with the focus of adding into the Bill freedom of expression provision that supports the fundamental protection for freedom of expression that is safeguarded by the operation of the stirring up hatred offences themselves.

Along with the amendments I intend to lodge, I am happy and look forward to debating other ways in which freedom of expression provision could operate. At the roundtable, there was some discussion about a proposal from Dr Tickell. I will certainly approach Stage 3 with an open mind as to whether any other options could complement the amendments I am lodging, though I do think the approach taken with freedom of expression provision does need tied to the threshold of the offences as this is the best way to provide the necessary clarity and reassurance.

As I explained during the roundtable, I am also open to considering how examples - similar to those contained within my letter to the Committee – for each characteristic might be included in the explanatory notes as to how the freedom of expression provision operates.

Can I finish by thanking you Convener and the members of the Justice Committee for your detailed and insightful approach on freedom of expression, and the Bill more generally, which I think has shown the very best of how Parliament fulfils your essential task in scrutinising legislation.



HUMZA YOUSAF

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire
Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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ANNEX

Humza Yousaf

After section 9 insert—

<Protection of freedom of expression

- (1) For the purposes of section 3(2), behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes—
 - (a) discussion or criticism of matters relating to—
 - (i) age,
 - (ii) disability,
 - (iii) sexual orientation,
 - (iv) transgender identity,
 - (v) variations in sex characteristics,
 - (b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards—
 - (i) religion, whether religions generally or a particular religion,
 - (ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,
 - (iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,
 - (c) proselytising, or
 - (d) urging of persons to cease practising their religions.>

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