

## JUSTICE COMMITTEE

### HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

#### **SUPPLEMENTARY SUBMISSION FROM EQUALITY NETWORK/SCOTTISH TRANS ALLIANCE, ENGENDER, GLASGOW DISABILITY ALLIANCE, INCLUSION SCOTLAND, STONEWALL SCOTLAND AND LGBT YOUTH SCOTLAND.**

Some of the undersigned organisations have previously submitted evidence about the freedom of expression exemptions in the Bill<sup>1</sup>. This supplemental evidence is consistent with the positions that our organisations have taken previously. It should be taken alongside that evidence and not be seen as a replacement for it.

As organisations working for equality and human rights for everyone across Scotland, we know from our daily work and experience that even in 2020 there are people who continue to harm others for no other reason than that they are different from them. We welcome the ongoing commitment from the Scottish Government and MSPs of all parties to combat this kind of behaviour and to improve the lives of all people in Scotland.

The Hate Crime and Public Order (Scotland) Bill represents a step forward in addressing the type of hateful behaviour that breaches the threshold of criminality.

There has been considerable public discussion on the potential impact that the stirring up offences in the Bill might have on freedom of expression. The Cabinet Secretary for Justice has responded to these concerns by proposing to amend the Bill so that these offences would only apply when there is intent to stir up hatred.

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<sup>1</sup> For ease of reference here are the direct links to our previous submissions:

Engender -

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JS520HC402\\_Engender\\_.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC402_Engender_.pdf)  
(from section 5 p11)

Equality Network -

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JS520HC359\\_Equality\\_Network.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC359_Equality_Network.pdf) (p7)

Inclusion Scotland -

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JS520HC303\\_Inclusion\\_Scotland\\_.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC303_Inclusion_Scotland_.pdf)

LGBT Youth Scotland -

[https://www.parliament.scot/S5\\_JusticeSubCommitteeOnPolicing/Inquiries/JS520HC318\\_LGBT\\_Youth\\_Scotland.pdf](https://www.parliament.scot/S5_JusticeSubCommitteeOnPolicing/Inquiries/JS520HC318_LGBT_Youth_Scotland.pdf) (p4)

Stonewall Scotland -

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JS520HC320\\_Stonewall\\_Scotland.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC320_Stonewall_Scotland.pdf) (item 27)

The Bill also includes specific provisions on freedom of expression (sections 11 and 12), but these only cover the stirring up offences related to two of the protected characteristics, and only cover specific subjects of discussion, criticism etc. We are concerned that this is not sufficient, and is inconsistent with the overall aim of the Bill to introduce the same provision for all of the protected characteristics included in the Bill. We believe that extending the freedom of expression protection to apply consistently in relation to all the protected characteristics, and using more broadly inclusive language rather than specific examples, would be a more comprehensive and equitable approach. Considering the infinite number of things that are not criminal, it risks greater confusion and difficulty in the application of the legislation to include a non-exhaustive list of what is not a crime. In practice, the use of lists, regardless of whether they are designated as non-exhaustive prioritises certain behaviours over others and is contrary to the general principle of equality for all.

A similar debate regarding protection of freedom of expression took place during the passage of the Marriage and Civil Partnership (Scotland) Act 2014. Concerns were raised, for example, that the introduction of equal marriage would prevent those who believe that marriage should only be between a man and a woman, from expressing their views. In that instance, the Scottish Parliament found a solution that affirmed everyone's rights to the key freedoms under Articles 9 and 10 of the European Convention on Human Rights. The relevant language can be found in section 16 of the 2014 Act:

**16 Same sex marriage: protection of freedom of expression etc.**

(1) For the avoidance of doubt, nothing in this Part so far as it makes provision for the marriage of persons of the same sex and as to the persons who may solemnise such marriages affects the exercise of—

- (a) the Convention right to freedom of thought, conscience and religion,
- (b) the Convention right to freedom of expression, or
- (c) any equivalent right conferred by rule of law.

(2) “Convention right” has the same meaning as in the Human Rights Act 1998.

We therefore recommend that the current freedom of expression provisions in sections 11 and 12 of the Bill could be replaced with a new section as above (with the words introducing subsection (1) replaced with “Nothing in this Act affects the exercise of—”).

We thank you for your consideration of this supplemental evidence.

Equality Network  
Engender

Inclusion Scotland  
Stonewall Scotland  
Glasgow Disability Alliance  
Scottish Trans Alliance  
LGBT Youth Scotland

23 October 2020