

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUPPLEMENTARY SUBMISSION FROM THE FREE CHURCH OF SCOTLAND

On the 23rd July 2020, the Free Church of Scotland submitted our response to the Call for Views from the Justice Committee of the Scottish Parliament in relation to the Hate Crime and Public Order (Scotland) Bill. We note that in opposing certain key aspects of the Bill we are joined by a diverse range of bodies including The National Secular Society, The Peter Tatchell Foundation, The Catholic Church, The Faculty of Advocates, The Law Society of Scotland and the Scottish Police Federation.

One of the issues we raised in our response to the Bill was the fact that the proposed new offence of “stirring up hatred” did not require that the perpetrator intended to commit the offence and accordingly the offence could be committed unwittingly by someone who had no intention at all of stirring up hatred. Accordingly, we welcome the announcement by the Justice Secretary, Humza Yousaf on the 23rd September 2020 that a requirement that the perpetrator intended to stir up hatred would be introduced into the Bill. We recognise that removing the strict liability nature of the offence as drafted significantly improves the legislation. However, we are still deeply concerned that a number of issues we raised with the Bill have not been addressed.

Ultimately, although we recognise that requiring an intention to stir up hatred is an improvement, we note that intention is a legal test and that the courts can take into account the full facts and circumstances to infer intention. This means that although the person may never have “intended” in the everyday sense of the word, to stir up hatred, the Court might infer from the circumstances that he or she did so intend. This will, therefore, continue to have a chilling effect on Free Speech. The nature of the offence is still too vague, and it is too easy for someone to fall foul of the legislation simply by disagreeing with someone else’s opinion. Too many in our society today perceive legitimate disagreement as hatred and would seek to accuse people of stirring up hatred just because they disagree. We still worry that ministers will have to take care as to what they say each week, perhaps consulting their lawyers before speaking on controversial ethical issues in society. The proposed offence will drive debate and discussion underground and be dangerous for our civil society in the long run.

We believe it is likely that there will be a presumption in favour of prosecution stemming from the political interest in hate crime. Even where someone might successfully defend themselves against the accusation, the stress, anxiety and cost associated with defending themselves is completely unwarranted. It will alienate law abiding citizens and represent an unproductive, or even counter-productive use of police and court resources.

We agree with the comments by the Scottish Police Federation that asking them to police speech would seriously damage the relationship between the police and the public. We note that encouraging a culture where citizens report one another for perceived hate crime will lead to more division in society. We also note that the police would record reported hate crime for intelligence purposes even where they do not believe an individual is guilty of the offence of stirring up hatred. However, if they received 2 or 3 complaints about an individual, that might be sufficient for them to apply to the Court for a warrant to search the person's private home for inflammatory material which can then be confiscated and destroyed. People possess material for a variety of reasons including material they do not personally agree with. Many historical works express views that are not acceptable in society today but that is not a reason to confiscate them. Surely in a liberal society we do not want to be in a situation where Freedom of Speech is being radically undermined by the banning of books.

We continue to believe that Part 2 of the Bill is unnecessary and will have a serious detrimental effect on Freedom of Speech. There are already several avenues available in law to address genuine hate crime. We believe the aggravation model of increased sentencing where another crime was motivated by hatred is adequate (as set out in Part 1 of the Bill). We also note that there are sufficient protections in law under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 which provides that threatening or abusive behaviour is an offence if it would be likely to cause a reasonable person to suffer fear or alarm and a person either intends or is reckless as to whether their behaviour would have this effect. This has the benefit of an objective "reasonable person test" and requires corroboration. We note that a section 38 offence can also be aggravated by prejudice.

As the Free Church of Scotland, we have an interest in promoting debate and discussion. We believe that this is not only in the interests of Christians but is in the interests of society as a whole.

In conclusion, despite the Justice Secretary's concession, we still believe Part 2 of the Hate Crime and Public Order (Scotland) Bill is at best unnecessary and ultimately has the potential to seriously undermine our democratic and liberal society by dampening Free Speech. We do not consider the protections to free speech offered in the draft in anyway strong enough to prevent a major erosion of this fundamental tenet of a democratic society. Too many people automatically view disagreement as hatred rather than engaging in civilised debate over differing opinions. We want to encourage genuine debate and discussion in our society and that will not be achieved by criminalising perceived hatred. Instead this Bill will drive legitimate debate underground and alienate ordinary citizens, including many members of the Christian community.

Free Church of Scotland
26 October 2020