

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM DANIEL POWELL

Dear Justice Committee members,

Firstly, let me state that I'm not a lawyer, I've only read the bill and surrounding literature as a layperson. However, if I understand things correctly, then I have some serious problems with the proposed legislation.

I do not believe that such a bill is necessary. Although the stated aim of the bill is to consolidate existing hate crime bills, section 9 of the Policy Memorandum states: "The Scottish Government recognises that legislation in and of itself is not enough to build the inclusive and equal society that Scotland aspires to..." If the objective of this legislation is to build a more "inclusive and equal society", throwing people in jail is not the solution. In the same way that criminalisation of drugs has limited impact on drug use, criminalisation of prejudice will not lead to reduced prejudice. In fact, it may exacerbate hate. If a criminal's sentence is more severe because of whom the crime was directed against that will only further ingrain hatred of that people group. As such, the statutory aggravation model doesn't lead to the objectives of the hate crime bill and will increase prison numbers and the resultant costs with limited benefit. A better solution would be further investment in education and promotion of liberalism from an early age. The idea should be promoted that all people have their own viewpoint and opinions and that they should be respected. This education could also be provided to new parents discussing how to prevent discrimination and bullying, how to promote tolerance and diversity of backgrounds, beliefs and circumstances. Framing of recent interventions, in particular, the One Scotland campaign in 2018, has been aggressively intolerant and divisive, failing to promote unity against bigotry but instead, attacking people in protected groups.

The major problem with hate crime legislation is that it attempts to read the thoughts inside the heads of perpetrators with the evidence being how someone's words are perceived. For example, the example given by [Lord Bracadale](#) is as follows: "A man who was annoyed at the noise his gay neighbour made putting out the bins in the early morning engaged in abusive shouting, in the course of which he made comments about the neighbour's sexual orientation including hoping that "people like you die of AIDS"" stating that: "This would amount to a breach of the peace aggravated by prejudice in relation to sexual orientation in terms of section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009". However, the obvious flaw in this is that it assumes the meaning of "people like you". It assumes that in the fictitious individual's head "people like you" are gay people. However, perhaps "people like you" refers to people who get up early to take out the bins. Short of a confession, you can't prove what someone is thinking. We don't have tools to do that and trying to determine if someone is guilty of thinking the wrong thing is very reminiscent of George Orwell's "1984". Perhaps one could argue that the majority of people would think that these words were indicative of prejudice, which would be fine, but under this legislation, jury trial is not guaranteed, and an individual can be jailed on summary conviction. My recommendation would be that any aggravated

offence be escalated by default to a criminal indictment for the protection of justice.

Offences of stirring up hatred fall into this category of perception. The way stirring up hatred is defined in this bill is so absurdly broad that effectively anyone who says something slightly controversial could be charged. For example, part 2, section 3 (1) (b) (ii) states "it is likely that hatred will be stirred up". This is open to so much interpretation as to make a judge a legislator of what is a crime and what isn't. There is no good definition for a multitude of cases of what is likely to stir up hatred and often, statements of fact are deemed by individuals as stirring up hatred. For example, the author JK Rowling recently took umbrage at the statement "people who menstruate". For her, this dehumanises women (a characteristic which is no longer protected by this legislation but should be as sexual discrimination is a real and present issue in the world) and she could perceive this statement as stirring up hatred. Likewise, those who have responded to her complaints have said that she is creating a hostile environment against individuals who identify as transgender which could also be perceived as stirring up hatred. There is no logic to this legislation, it opens the door to anyone who is aggrieved by another opinion to wield the power of criminal law against those they disagree with. The Scottish government released a blog entitled "Justice and Safety" in relation to this proposed bill (<https://blogs.gov.scot/justice-safety/2020/06/15/the-hate-crime-and-public-order-scotland-bill/>). When presented with the suggestion that the bill poses a risk to freedom of speech they state: "The Bill will not prevent people expressing controversial, challenging or even offensive views, as long as this is not done in a threatening or abusive way that is intended to stir up hatred or likely to stir up hatred." All the terms given in the legislation are totally subjective but threatening is particularly open to interpretation. Threatening is completely based on the individual being threatened (or not, as the case may be). Walking along an empty street when a group of rowdy young men walk past can feel quite threatening, regardless of actual threat. A heated, robust discussion can feel very threatening. Indeed, expression of ideas which one finds disagreeable can feel very threatening. A gay person who walks into a mosque where Sharia is preached may find that very threatening. A trans person who walks into a church sermon on gender may feel threatened. Without a robust definition of what threatening means, the term becomes useless as a basis for prosecution and then falls on the interpretation of the judge. While I'm glad there are some protections for freedom of expression, this must include transgender identity and discussions of sex differences between men and women. The conversation about trans rights is ongoing and this legislation could be used to shut down the discussion on serious issues such as bathroom access and transgenderism in young people.

In conclusion, the bill is extremely flawed in its core principles and will not improve justice or unity in the country. It requires significant changes to be fit for Scotland in the 21st century. I hope you will give serious consideration to these concerns.

Kind regards,

Daniel Powell