

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM LGB ALLIANCE

We are writing to you in response to your call on 28 April this year for views on the proposed Hate Crime and Public Order (Scotland) Bill.

We are a group of lesbian, gay and bisexual men and women, many of us veterans of the campaigns against discriminatory laws and policies such as the unequal age of consent, Section 28 (2A) and the campaign in favour of equal marriage. We come from all walks of life including law, medicine, academia, the arts, sciences and media. We are same-sex attracted and our group exists to advance the interests of lesbians, bisexuals and gay men at a time when they are under threat as never before from concerted attempts to introduce confusion between biological sex and the unscientific notion of gender identity. We have serious concerns about the Bill in its present form, and ask that it be withdrawn and rethought.

We understand the intention of the Scottish government in introducing the Bill is to provide for the 'modernising, consolidating and extending of hate crime legislation in Scotland'. These are laudable aims but this Bill has serious flaws which potentially could have dangerous consequences for the tenor of Scottish public debate, free speech in general, and the rights of LGB people in particular.

We are of the strong opinion that the solutions proposed in this Bill to the problems cited by the Justice Minister (of contradictions between different laws and the lack of user-friendliness) would introduce an entirely new set of problems, that potentially may be far worse than those it was designed to solve.

In your call for views you suggested respondents might structure their response in answer to a series of questions, but were not required to answer all. Here are our answers to those questions we considered relevant with additional information of our own, as suggested, after those answers.

Do you think there is a need for this Bill and, if so, why?

We are not convinced there is any need for this Bill, which appears to be as much an exercise in legislative tidying up as anything else. We are deeply concerned that the proposed changes are so badly thought through they could introduce even more confusion.

Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

It is precisely because this /s an exercise in consolidation that it is critical it be done properly. We believe this Bill introduces innovations (not least in relation to sexual orientation and 'stirring up hatred'), that are dangerous and unsupportable. Inserting these innovations into the structure of this large-scale consolidation multiplies the dangers they present. They may cascade through numerous other areas of legislation.

Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?

We strongly oppose the introduction of a new offence 'of stirring up hatred'. It is defined so vaguely it is open to wide misinterpretation and potential abuse. What exactly is 'hatred' and by extension what is 'stirring up hatred'? You would think that both these questions would have simple answers. The Bill doesn't provide them. The answers are also even more unclear because of the existing behaviour and actions of politicians and political activists in Scotland.

If we as an LGB group decided to protest a visit of the Pope to Glasgow on the basis that the Roman Catholic Church, in our opinion, has a long record of homophobia, would we be 'stirring up hatred' against Catholics? If we protested against a visit of a DUP politician who campaigned against gay marriage, would we be accused of 'stirring up hatred' against Protestants? If we protested against a visit by a Muslim imam we considered homophobic could we be accused of 'stirring up hatred' against Muslims?

These are not fanciful questions. We have as a group have already been accused of effectively stirring up hatred by our political opponents. As an organisation involved in the debate about the proposed Reform of the Gender Recognition Act this year we were often slandered and accused (despite all the evidence to the contrary) of being a 'hate' group merely for opposing the Reform or for doing our other work in defence of LGB rights.

Here are just some examples of the accusations made about us. In January 2020, a supporter of our organisation was thrown out of a gay club in Glasgow for wearing a T-shirt with our logo. This action was defended by our opponents on social media, including prominent LGBT activists, high-profile public figures such as politicians and actors, and even columnists such as Owen Jones - all claiming we were a hate group that encouraged hateful views because we argue for LGB rights and not LGBT.¹ Might the woman who was thrown out of the Glasgow club for wearing a T-shirt now be accused of 'stirring up hatred'?

When we held a meeting in Glasgow to launch our campaign against the Gender Recognition Act Reform in January 2020 the venue was accused of hosting a

¹ <https://medium.com/@notCursedE/lgb-alliances-transphobia-and-polo-glasgow-ejecting-transphobes-1a0b453599d7>

hateful event organised by a hate group and a boycott was widely promoted. Would that event now be accused of 'stirring up hatred'? The Bill makes clear that those involved in putting on a play or a performance that is later accused of 'stirring up hatred' can also be prosecuted. This would make venues less likely to allow access to groups such as ours which are accused wrongly of 'stirring up hatred' and thereby further narrow the realm of political debate and hamper free speech.

It is often argued in defence of the offence of 'stirring up hatred' that no one would be so malevolent as to misuse it. Yet we have regularly been on the receiving end of targeted abuse by activists and politicians who are already highly motivated and biased. In April 2020 in a series of public tweets the SNP Westminster MP, John Nicolson not only described us as 'sinister' and a hate group but tweeted directly to Police Scotland asking them to investigate us.² It's worth pointing out that Mr Nicolson's accusations didn't stop there. His assistant then took up the charge and declared publicly on social media that he had written to the online fundraising service, JustGiving to have our fundraising page taken down.

If a parliamentarian (and a colleague of the Justice Secretary introducing this Bill) can order his staff to write to a digital company to close down their opponents' fundraising and himself demand publicly that the Police investigate them - based on an entirely false accusation - how can anyone claim that it is unlikely the offence of 'stirring up hatred' will be misused to try to bully opponents?

We are convinced that the offence of 'stirring up hatred' will be used to close down free speech because in all the examples above, the word 'hatred' itself was politically defined to mean specifically the point of view we were arguing.

Our offence was to deny that the notion of 'gender identity' is based on any evidence or science. We were called hateful for rejecting the view that sex is a spectrum, for challenging the notion of 'gender identity' and for defending the scientific reality of two sexes. We defend this basic scientific reality in part because we believe we have the right to defend the truth but also because our rights as LGB people are rooted in the binary nature of the sexes.

'Gay' and 'lesbian' mean attracted to one's own sex. If the law then redefines 'sex' to mean a spectrum, then it is essentially redefining gay and lesbian to mean attracted to any sex, or to anyone who calls themselves the same sex. The logical consequence of that is to erase lesbians and gay men as a category, which erases the legally protected characteristic of 'sexual orientation'. In fact, some believers in 'gender identity' and the notion of 'sex as a spectrum' do actually claim that homosexuality is itself an outdated idea. When we criticise this and defend our rights and our orientation based on the reality of there being just two sexes, we are accused of stirring up hatred.

² <http://archive.vn/6nAuG>

It would be a bizarre and wholly unwelcome consequence of this Bill if organisations like ours, which seek to prevent the bullying and erasure of lesbians, gays and bisexuals, were to find themselves unable to defend our rights. We find ourselves increasingly and daily on the receiving end of homophobia, yet this Hate Bill would conceivably limit our ability to fight that homophobia.

Do you have any comments on what should be covered by the 'protection of freedom of expression' provision in the Bill?

We believe that the 'stirring up of hatred' offence will undermine our ability to express our point of view. It may also limit other organisations or individuals who take a similar position: that is, defending scientific reality and opposing the notion of 'gender identity'. The Justice Minister's definition of 'stirring up hatred' is unable to put our minds at rest. In interviews, he has defined 'stirring up hatred' as an offence which 'contributes to a social atmosphere in which discrimination is accepted as normal'. But that is such a vague definition it is easy to see how opponents on the opposite side of an argument might accuse each other.

Take, for example, the thoughtful and humane essay by the writer JK Rowling which explained her reasons for defending the dictionary definition of woman as an 'adult human female'. The campaigning organisation GLAAD responded by saying 'JK Rowling continues to align herself with an ideology which wilfully distorts facts about gender identity and people who are trans. In 2020, there is no excuse for targeting trans people.'³ Surely this ludicrous accusation of 'targeting trans people' could be turned into an accusation of 'stirring up hatred', despite the fact Ms Rowling did no such thing; and was at pains to explain why she supported trans people and their existing legal rights, as do we.

The prominent trans activist Munroe Bergdorf compared Ms Rowling's defence of single sex spaces for women to colonisation and white supremacy,⁴ while another transactivist, Katie Montgomerie, claimed her comments online 'will ruin tens of thousands of people's lives including my own, and put trans people ... in danger'.⁵ If Ms Bergdorf and Ms Montgomerie are willing to describe a carefully-considered essay in such inflammatory terms, why would they or others who agree with them NOT claim that that same essay, in the words of the Justice Minister, 'contributes to a social atmosphere in which discrimination is accepted as normal'?

What is your view on the plans for the abolition of the offence of blasphemy?

³ <https://www.hollywoodreporter.com/amp/news/glaad-responds-tweets-ik-rowling-is-no-excuse-targeting-trans-people-1297412>

⁴ <https://twitter.com/MunroeBergdorf/status/1269563177131487234?s=20>

⁵ <https://medium.com/@ecompletelykaty/addressing-the-claims-in-jk-rowlings-justification-for-transphobia-7b6f761e8f8f>

The original justification for the introduction of this Bill was the need to abolish the offence of blasphemy. The Bill is in grave danger of replacing one form of blasphemy with a series of other sacred cows, which journalists, writers, artists and campaigners will be prevented from challenging.

Our Other Specific Concerns

We note with deep disappointment that the Scottish Government has taken the opportunity of this Bill to redefine sexual orientation in ways that undermine our rights. This is a startling derogation of duty and an insidious attack on a vulnerable group in society.

In the existing legislation, the Offences (Aggravation by Prejudice) (Scotland) Act 2009 Section 2, subsection (7) sexual orientation is defined as sexual **orientation towards persons of the same sex or of the opposite sex or towards both**. That is clear, understandable and based on science.

However, in the proposed new Bill in Part 3, Section 14, subsection (6) this has now been changed to say: A reference to sexual orientation is a reference to sexual orientation towards:

- (a) persons of the same sex,
- (b) persons of a different sex, or
- (c) both persons of the same sex and persons of a different sex.

Our concern is that by changing the wording from 'opposite sex' to 'different sex' the Scottish govt could imply there are more than two sexes. How many 'different' sexes are there? Heterosexuals (i.e. the vast majority of the Scottish population) will be surprised to discover that they are being defined as potentially no longer interested solely in the opposite sex.

Bisexuality is even more mangled by being defined as a sexual orientation towards both persons of the same sex and persons of a different sex.

Perhaps the Scottish Government is inspired by the controversial updated (2017) Yogyakarta Principles plus 10, which pioneered the term 'different' sex. However, the YP have no legal status, and act merely as suggestions drawn up by human rights lawyers.

We note too that in Part 3, Section 14, subsection (7) of the Bill, the word transsexual has been removed. No explanation has been given for this. This is most unfortunate since the Gender Recognition Act (2004) only references transsexuals.

It also introduces the term non-binary, which it fails to define. How will it be possible to measure the stirring up of hatred towards a group that the public barely knows exists - and if they do would be hard-pushed to define.

Non-binary people include groups who define themselves as neutrois, some of whom (called nullos) choose to have their genitals removed and believe their deep inner 'gender identity' means they will never be happy while they retain genitals. They are not trying to transition to the opposite sex... or even a 'different sex'... they want to be sexless. Would it be stirring up hatred for someone, perhaps even a psychiatrist, to argue that this person may benefit from counselling?

The inclusion of the new-fangled term 'non-binary' is precipitous and is strangely at odds with the failure to retain the word transsexual, with which the public is familiar.

This gives the Bill the sense of being an exercise in innovative ideological language which may be part of an agenda very far from the 'tidying up' exercise the Justice Minister promised.

LGB Alliance

21 July 2020