

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH COMMUNITY SAFETY NETWORK

Thank you for the opportunity to feedback on the Hate Crime and Public Order (Scotland) Bill, which we very much welcome. In this letter, we wish to respond to the Committee's invitation to feedback on particular aspects of the Bill but also to provide some general reflection not limited to the issues the Committee has asked about and finally, we would like to offer some thoughts on where the Committee could explore issues further.

The Scottish Community Safety Network (SCSN) is the national forum for officers who are responsible for the strategic development of community safety at both local and national level, in the private, public and voluntary sector. We are the strategic voice for community safety in Scotland and through working collaboratively with our members and partner agencies, we champion community safety and influence the shaping and development of national policy and local delivery. In 2019 we became an umbrella organisation for community safety, also hosting [Neighbourhood Watch Scotland](#) and [Home Safety Scotland](#). You can find out more about us at our website <https://www.safercommunitiesscotland.org>

It has been highlighted by others, but the timing of the introduction of this Bill during a global pandemic which has occupied Committee business; combined with the volume and complexity of the Bill has made the scrutiny process challenging.

Nevertheless, we very much welcome and encourage legislation that works towards a safer Scotland where hate and prejudice are not tolerated and communities feel safe and are strong and resilient. In November 2018, we submitted a response to the first consultation regarding amending Scotland's hate crime legislation. You can find our response [here](#).

In the main, we welcome this Bill as we agree there is a need to consolidate, modernise and extend hate crime legislation, especially with regard to ensuring there is a consistent approach across the protected characteristics, including any new protected characteristics. We would encourage the committee, however, to explore whether some of the measures included in this Bill might be over-reaching the original policy aim. We also suggest that this Bill is not the sole route to achieving the policy aim of a Scotland where hate and prejudice are not tolerated and other work to tackle inequality and prejudice will be required.

For a Bill that was designed to simply consolidate and modernise hate crime legislation there has been considerable concern in the public domain about some of the perceived free speech implications. We feel some further clarity and reassurance may be necessary and the Committee could support this through the initial scrutiny process.

Particular issues raised by partners as well as citizens include:

1. The language around whether the accused's actions were 'intended' or 'likely' to stir up hatred
2. The need for a 'protection of freedom of expression' provision in the Bill
3. The Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of hatred.

While the Scottish Government has published ['myth-busters'](#) to give assurances on how the above numbered issues will not erode free speech, we strongly feel the Committee should consider further controls and measures to ensure this is not the case. Moreover, guidance around some of these contentious 'grey' areas, rather than legislation, might be a more flexible approach and prevent the possibility of the erosion of free speech or pulling people unnecessarily into the justice system. The committee should also take in consideration the impact the need for such clarification has had on the confidence in the Bill and that this issue must be handled extremely carefully.

As an organisation, we also feel that in order to tackle hate crime, prejudice and intolerance in Scotland, in general, legislation need not be the main or best means by which to achieve this and we would strongly encourage that addressing systemic inequalities alongside awareness-raising, educational campaigns and continued research and action into the root causes of these issues are prioritised.

With regards to particular aspects of the Bill:

We agree there is merit in the plans to introduce a new offence of stirring up of hatred towards all protected characteristics and any other measures which consolidate the legislation to create parity between each of the protected characteristics.

Regarding the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of hatred, we are in agreement with Lord Bracadale's recommendation that 'insulting' should be removed. We believe that with the inclusion of 'insulting' the threshold is too low for something to be classified as a hate crime and runs the risk of encroachment on free speech and unnecessary criminalisation of people. Whilst we appreciate that the Scottish Government has assured insulting would never be used as a standalone classification (from the Bill team at a Community Justice Scotland Policy forum), we feel that unless it is written into legislation that this is the case, then there is a chance in the future it could be used in this manner. We would query its inclusion if there are no plans to use it as a standalone classification.

We are keen that the original policy aim to "help ensure there is not a perceived (or real) hierarchy between the characteristics" is taken into account when considering whether sectarianism and misogyny should also be included and defined as statutory aggravations. While both issues have merit in being considered, we wonder if a precedent will be set for the inclusion of other associated issues of race, gender, religion will continue (e.g. anti-Semitism) and whether this is an over-reach of this piece of legislation.

We agree it could be worth considering a statutory aggravation for vulnerability but we encourage the Committee to consider what the purpose of the creation of a 'vulnerability' aggravation would be, and what some of the unintended consequences

(real / perceived) could be as a result. Again, we feel this may be extending the legislation beyond its original aims.

We agree with the plans for the abolition of the offence of blasphemy.

Finally, in light of the above comments and suggestions, we would like to reassert that we very much welcome and encourage legislation that works towards a safer Scotland and this Bill has an important role to play in this. We would encourage the Committee to explore whether all of these provisions and measures are necessary for meeting the original policy aim.

We thank the Committee for the opportunity to comment on the Bill at this stage.

The Scottish Community Safety Network  
23 July 2020