

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM PENCAITLAND PARISH CHURCH

I write on behalf of Pencaitland Parish Church with reference to the proposed Hate Crime and Public Order (Scotland) Bill

1. Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?

There is no need for it. Legislation is already in place. The proposed bill conflates the differing issues surrounding the various protected characteristics. They should be addressed differently.

*Consolidation*

2. The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

The bill attempts to provide a 'one size suits all' approach. We do not believe there is any significant merit in doing so in the form suggested.

*How to prosecute hate crime?*

3. Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?

There should be a distinction made between people belonging to the various protected characteristics. These can be categorised as follows:

Age, disability, colour and variations in sex characteristics are immutable matters of biology.

Race, ethnic and national origins are immutable matters of birth (nationality should be included in this category).

None of the above contain any element of choice on a person's part.

Although there may be elements of biology in Sexual orientation and transgender identity, they are mostly matters of the mind and emotions, as

evidenced by the most recent medical and scientific research. Personal conduct on the basis of these identities is a matter of choice.

Religion (including non-religious views) are clear matters of faith and choice.

4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?

Ageing is an immutable matter of biology and should be included alongside other physical and biological characteristics.

*Other forms of crime not included in the Bill*

5. Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?

No. It is a matter of belief and should be dealt with in a different way.

*Stirring up offences*

6. 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?

Hatred is notoriously difficult to define. The bill will effectively criminalize people on the basis of someone's subjective opinion, rather than on any genuinely objective standard. Honestly intentioned folk will be at the mercy of any accuser, regardless of the accuser's sense of reasonableness.

In relation to the stirring up of hatred, it is manifestly unjust to ignore a person's *intention*. To shift accountability to *likelihood*, regardless of *intention*, will seriously curtail legitimate academic, moral and political debate. Such debate is not only imperative to maintain an open and free society, it is essential to the progress and advancement of that society.

7. Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?

*Insulting* should be removed. Some people are liable to take offence at the merest thing. The police need to be free to tackle genuine hate crime rather

than having huge amounts of their time taken up chasing subjective and trivial complaints.

*Other issues*

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

Lord Bracadale emphasised the need to distinguish between legitimate debate and 'rabble rousing'. There are serious concerns about the terms of this Bill and the lack of robustly protected freedoms. Much emphasis today is placed on having 'resilient communities'. That will not be achieved by silencing anyone who disagrees with us. As a Christian church, members are frequently assailed by unfair and insulting speech and behaviour. We don't pretend to like it but we firmly believe there should be strong guarantees surrounding freedom of expression.

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

The Bill effectively creates a new 'secular' blasphemy law, and runs the risk of becoming a 21<sup>st</sup> century version of the Spanish Inquisition.

Pencaitland Parish Church  
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