

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE KIRK SESSION OF THE CONGREGATION OF
KNOCKBAIN FREE CHURCH OF SCOTLAND**General**

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?

We recognise that there are issues in our society of genuine hatred which are wrong and should be addressed. As a church we follow the teachings of Jesus Christ who taught that not only are we to love our neighbours but we are to love our enemies. We are concerned that this attempt by the Scottish Government to address hate crime will have far reaching consequences beyond the aim of the bill. We believe it is possible to disagree with someone while loving and respecting them as a person and not displaying any hatred towards them. Indeed, we believe that an understanding that people hold a wide range of opinions and beliefs on a wide range of issues, and acceptance (even encouragement) of free debate about such opinions and beliefs is an essential feature of a mature democratic society. The issue we have with this particular Bill is that it encourages a recourse to law where there is a legitimate disagreement. This Bill therefore silences debate and prevents reconciliation between people as it undermines any efforts to understand those you disagree with.

We believe Part 2 of this Bill is not required as there are already 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. Aggravations can (and are currently) be added to this offence if it is deemed a hate crime therefore no separate offence as detailed in Part 2 is necessary.

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?

We can see that there may be merit in consolidation of existing hate crime laws into one statute for ease of reference by legal professionals. However, it is clear that the scope of the Bill goes well beyond consolidation. Our real concerns with this bill are related to the desire to extend hate crime legislation in part 2.

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?

We believe the aggravation model, which currently operates in Scotland, goes far enough in protecting all characteristics against hate crime. It has the advantage of combining the more subjective element of hatred with another recognised offence, such as s.38, assault, etc. which requires corroboration to establish the substantive offence. We accept that hatred involved in an offence should be taken into account at the point of sentencing and the aggravation model achieves this already.

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?

We do not believe it is necessary to add a new statutory aggravation on age hostility as it is our understanding that Scottish sheriffs and judges already take age into account when sentencing, where it is relevant to an offence. We note that the Crown Office and Procurator Fiscal Service have publicly published their ‘Older Person’s Policy’ on their website addressing their aims of talking exploitation of age vulnerability which is sufficient.

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?

We are not clear as to what the distinction is between aggravation relating to sectarianism and aggravation relating to a “religion or, in the case of a social or cultural group, perceived religious affiliation” which is already covered in the Bill. It is worth noting that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 had similar provisions relating to sectarianism and was repealed for being badly worded and due to its failure to address the problem of sectarianism. Accordingly, we do not think it is necessary to add another form of aggravation.

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?

This is the area of the Bill which most concerns us as a church. We are not at all persuaded there is a need to introduce a new offence of “stirring up of hatred.” The difficulty is what exactly is meant by “stirring up” and “hatred”. The wording in the Bill is incredibly vague and subjective. Good law should show itself to be both necessary and clear. We are not convinced there is sufficient clarity in the terms in this bill to allow the law to operate effectively.

We are concerned that the offence does not require people to intend to commit the offence – all that is needed is that it was likely that hatred would be stirred up. This is

creating a 'strict liability offence' which is potentially far reaching and means that someone could unwittingly commit the offence even where they had no intention at all to stir up hatred.

In our society often people take any disagreement in relation to religion, sexual orientation and transgender as "hatred" of the individual and so would likely feel "hatred" simply because someone disagreed with them. Any person can state that they felt hatred was stirred up against them and this would have to be taken seriously by the police and the courts. Given the offence can be committed unwittingly or unintentionally we are deeply concerned for Freedom of Speech in our society. The obvious example in the context of a church is the potential undermining of the right of ministers to preach the whole range of Biblical views on ethics which are part of mainstream Christianity. We accept that our beliefs are not shared, nor necessarily understood by everyone. We welcome challenge, debate and open discussion of our beliefs both from within our Christian community and the wider community. The effect of the Bill is that, notwithstanding the fact that we do not undertake preaching and discussion of our beliefs with an intent to stir up hatred (whatever that means), normal activity becomes criminalised and debate of any sort is closed down by individuals who simply disagree with our views. Their mere disagreement is construed as a "feeling" that we are "stirring up hatred".

We also worry that in general such an offence will have a chilling effect on free speech making all of our members concerned about speaking up in relation to their faith for fear of committing the offence of "stirring up hatred." We would question whether this offence is compatible with the European Convention of Human Rights, in particular in relation to our rights of freedom of thought, conscience and religion and freedom of speech.

While we note that there are protections built into the Bill for freedom of expression we think this is an implicit recognition that the Bill limits freedom of speech and this concerns us. As Christians we fundamentally believe that people should be free to disagree and debate with us. We might sometimes feel offended by the way people speak about our beliefs, but we invite such debate and discussion as we want people to genuinely engage with our beliefs. We value our own freedom of speech and the freedom of speech of others made in the image of God. We recognise that freedom of speech must include the right to express the unpopular opinion, otherwise it is not truly freedom of speech. In a free society we should be able to challenge, criticise and robustly disagree with the beliefs and opinions of others, even in ways that might offend them.

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?

While we don't want people to be insulted because of their race we are concerned by the lack of clarity in relation to what is meant by 'insulting' in law which introduces a more subjective element to the offence and so we are inclined to agree with Lord Bracadale that "insulting" should be removed.

Other issues**8. Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?**

If this Bill is introduced then it is our view that the protections given in the Bill do not go far enough and appear to seek to limit our protections under the European Convention of Human Rights. We note that in relation to religion, the protection of freedom of expression can be interpreted in a narrow sense of only offering a defence where confined to the areas listed. We are concerned that certain positions adopted by mainstream Christianity in relation to ethical issues might not be protected by this provision.

In relation to sexual orientation the protection of freedom of expression is particularly narrow, confining itself to discussion of sexual conduct or practices and urging people to refrain from those practices. Nothing is said about criticism or discussion of the wider issues of identity that are associated with sexual orientation. We appreciate that people’s behaviour is often so closely connected to their perceived identity that it is not always possible to draw a distinction between identity and practice and yet this Bill appears to attempt to draw a distinction.

We also note that no protection is given to allow someone to disagree with same sex marriage. We also note that there is no clause protecting freedom of expression relating to transgender issues. This is particularly concerning as there is already wide-ranging debate in society about issues connected to self-declaration, the impact of transgender rights on safe spaces for women and the impact transgender ideology is having on children. Our society needs to be free to continue to debate these areas, especially as new research emerges and the lack of provision to protect freedom of speech in this area has the potential to curtail debate and discussion.

9. Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?

We agree that the offence of racially aggravated harassment should be maintained.

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

The Free Church of Scotland declared in Act 12 of our General Assembly of 1846 that “she disclaims intolerant or persecuting principles, and does not regard her Confession of Faith, or any portion thereof, when fairly interpreted, as favouring intolerance or persecution, or consider that her office-bearers, by subscribing it, profess any principles inconsistent with liberty of conscience and the right of private judgment.”

We therefore believe that people should be completely free to disagree with our faith in any way, including mocking and ridiculing us. We are convinced that our faith is true and has a sufficient evidential basis to withstand and we invite people to engage us in debate. However, we have concerns that it is being replaced with a new blasphemy in the form of “stirring up hatred.”

The Kirk Session of the Congregation of Knockbain Free Church of Scotland
24 July 2020