

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE CHURCH OF SCOTLAND

General Comments

The Church of Scotland has a presence in each community in Scotland with a network of 1300 congregations spanning Shetland to the Scottish Borders.

The Church of Scotland is one of Scotland's largest voluntary sector organisations with over 300,000 members creating regular engagement with up to a quarter of Scotland's population. It has members, buildings and staff present in every part of Scotland. On a weekly basis, the Church provides a wide range of activities which contribute to the wellbeing of those in the communities it serves - from chaplaincy services, Parents and Toddlers Groups to Elderly Care (both residential and community-based), in addition to counselling, pastoral care and emergency food provision. In many parts of Scotland, churches and church halls remain vital community hubs.

The Church has a particular commitment to tackling poverty and social injustice, and it has consistently contributed to the discussion around hate crime legislation and how it should be implemented.

We welcome the opportunity to comment on the Hate Crime and Public Order (Scotland) Bill and strongly support the intention of the Justice Committee to create a more transparent and consistent approach to tackling hate crime in Scotland.

Age as a new characteristic

We would like to reiterate the Church of Scotland response to the Scottish Government consultation on Hate Crime legislation submitted in February 2019¹ which supported the addition of a new statutory aggravation on age hostility to Scottish hate crime legislation. This would also be consistent with the provision of age as a protected characteristic under the Equality Act 2010.

The Church believes that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one of more protected characteristic. Protection of those presumed to have a particular characteristic or who have an association with it would also reflect the protections afforded to such individuals under the Equality Act 2010.

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<https://www.scpo.scot/consultations/sectarianism/>

Other forms of crime not included in the Bill

In the Church of Scotland's consultation response in 2019 on Hate Crime legislation², the Church stated that there was a need for sectarianism to be specifically addressed and defined within hate crime legislation, as there may be a limited number of cases in which a separate provision for sectarianism in criminal law may be necessary.

The Church of Scotland has defined sectarianism as a complex set of attitudes, actions, beliefs and structures at personal, communal and institutional levels that involves religion, and typically involves a negative mixing of religion and politics. It arises as a distorted expression of human needs, especially for belonging, identity and the freedom of expression of difference, and is expressed in destructive patterns of relating (cited from Joseph Leichty of the Irish School of Ecumenics).³

We believe that all religions should be included when defining sectarianism. The Church of Scotland is involved in building community alongside people of other faiths including, but not exclusively, the Roman Catholic Church. Sectarianism creates barriers between religions that the Church of Scotland is working with others to tackle. The Church recognises that sectarianism arises from cultural differences that may manifest alongside religious or political characteristics, and that it presents as a broader societal issue, rather than merely a matter for criminal law.

We therefore believe that a broad range of measures are required to tackle the problem and that creating a specific criminal offence in the context of hate crime legislation is one such measure. However we do not believe that a standalone offence relating to sectarianism should have been added to the hate crime legislation as it is important to ensure a consistency of approach across all characteristics.

The Church believes it is important to note the prevalence of online abuse and its effect on individuals. This must also be considered in the formulation of this Bill as it is the medium in which people may use to perpetrate hate crime.

Stirring up offences

The Church of Scotland agrees with the recommendation of Lord Bracadale that stirring up of hatred offences should be introduced in respect of each of the protected characteristics, including any new protected characteristics.

However we do not agree with Lord Bracadale's recommendation that any new stirring up hatred offences should require that the conduct is "threatening or abusive".

Conduct can have the effect of stirring up hatred towards those with particular characteristics, without necessarily reaching the threshold of being threatening or abusive.

We accept that conduct which is merely "insulting" should be protected by the Article 10 right to Freedom of Expression and should not have criminal consequences, but

² <https://www.scpo.scot/consultations/sectarianism/>

³ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/9/>

we suggest that conduct which is “grossly insulting” is likely to have the intention or effect of stirring up hatred and that this should be included.

Other issues - Blasphemy

A report was published by the Church of Scotland in May 2013 entitled, ‘Human Rights: What Does God Require Of Us? Justice Informed By Love,’ which concluded that human rights are relational and that our duty and responsibilities to one another are based on love-informed justice. The 2013 General Assembly of the Church of Scotland also affirmed the Universal Declaration of Human Rights, and the European Convention on Human Rights, reiterating the Church’s commitment to love our neighbours, defined as “every person, in every place and in all times.”

Therefore, the Church’s commitment to human rights and to the protection of specific characteristics, including religion and belief under the Equality Act of 2010, now supersedes legislation relating to the common law offence of blasphemy, which has not been prosecuted in Scotland for more than 175 years.

Over the past number of years, the Church of Scotland has regularly expressed concern at the blasphemy laws which exist in other parts of the world that persecute Christians and other religious groups.

In 2018, the Church welcomed a landmark decision to overturn the death sentence of a Pakistani Christian woman convicted of blasphemy.⁴

Over the past decade, the former World Mission Council of the Church has called for the repeal of the Blasphemy Law in Pakistan. In 2012, the General Assembly of the Church of Scotland urged the Government of Pakistan to repeal the Blasphemy Law, particularly section 295C, which makes the death penalty mandatory upon conviction, and to release and pardon all charged under the misuse of the Blasphemy Law.

It therefore makes sense that the Church of Scotland would also support the abolition of the offence of blasphemy in Scotland as it does across other parts of the world.

Church of Scotland
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⁴ <https://churchofscotland.org.uk/news-and-events/news/2018/landmark-decision-to-overturn-blasphemy-conviction-welcomed>