

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM HEBRON EVANGELICAL CHURCH

*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 are not convinced that there is a real need for this Bill or the increased subjectivity of what is to be considered criminal. Given that genuine offences within this area can already be prosecuted (see the ‘threatening and abusive behaviour’ offence in Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010) the addition of this Bill simply serves to diminish the threshold for a criminal offence. The current intentionality or recklessness provides a clearer standard to be measured against rather than what is being proposed in the Bill.

*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?

The offence of stirring up of hatred is a most troubling addition. It is clear that such an offence can be committed unwittingly by someone who intended no offence and acted without hatred. It is particularly troubling when the Bracadale recommendation on a free speech clause appears to have been disregarded. There needs to be room for genuine criticism without it automatically being construed as hatred. There needs to be a distinction between a rational argument and offensive behaviour. Neither of which is apparent in the currently proposed legislation.

Any legal restrictions on the freedom of speech needs to be clearly defined and offences need to be proportionate to what has transpired. As the United Nations made clear last year:

*“Addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous...”*

(Secretary-General António Guterres, Strategy and Plan of Action on Hate Speech, page 1)

This is not the standard that has been applied to this Bill. Indeed, the Bill goes beyond this definition when it seeks to limit permissible speech based on the subjective response of hearers rather than the measurable intention, likely outcomes, or actions of the speaker.

A nation that enshrines free speech acknowledges the right to shock or even offend others. This is important because we need to maintain the right to say that we think someone is wrong. For example the exclusivity claim of most religions is offensive to those who hold to a different belief. This is a right that needs to be maintained alongside the right of others to say that such a belief is wrong. Such statements can be viewed as offensive, regarded as insulting and both sides can claim offence.

However it is important that such debate remains legal. In comparison, the Bill takes an area of debate, even robust debate, between individuals and makes it a matter for a subjectively defined criminal offence. As such, if there is to be a stirring up of hatred offence it needs to come with clearly defined, robust freedom of speech protections as Lord Bracadale recommended.

It is of particular note to our organisation that church services are not excluded. As a matter of course, each Sunday the Bible is read aloud and has sermons frequently declaring Jesus Christ as the only Saviour of mankind. It is of great importance that such gatherings have clear and specific protection against vexatious claims of offence.

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?

We have real concerns over the inclusion of subjective language in the Bill. There appears to be a descending level of severity when it comes to threatening, abusive and insulting. The term threatening has connotations of menacing and intimidating behaviour and quite rightly has no place in any forum. However, the freedom to express a disagreeing point of view, however politely, is under threat with the more subjective descriptions of abusive and insulting. Fore whilst threatening is based in the actions of the perpetrator the other two describe the interpretation of the perceived victim. Abusive has a significantly wide range of meaning and at the lower end can be used to define something which is simply perceived to have been offensive or rude. However, the inclusion of insulting is the most disconcerting as it is the most nebulous. It is not rooted in intention or in what anyone actually says but in the interpretation of hearer. When it comes to the highly contentious issues of religion and sexual ethics there needs to be the freedom to challenge criticise and robustly disagree with the beliefs and actions of others. This, by its very definition will offend some and claims of insulting behaviour can only lead to a level of censorship that is unhealthy in a free society.

Hebron Evangelical Church  
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