

## JUSTICE COMMITTEE

## HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

## SUBMISSION FROM CHILDREN IN SCOTLAND

Giving all children in Scotland an equal chance to flourish is at the heart of everything we do. By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland. We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

Children in Scotland is pleased to be able to respond to the Scottish Parliament call for views on the Hate Crime and Public Order (Scotland) Bill. The response draws from a range of our work, including direct work with children and young people, and our views and experience in relation to inequalities. Our response will focus on questions that we believe directly relate to our work.

*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?**

Yes, Children in Scotland supports the consolidation of different elements of hate crime into one Bill. We hope that this will help to make hate crime legislation more consistent and easier to use and understand.

Children in Scotland believes that when tackling any significant issue in society, a holistic approach is required, of which legislation is one part. However, legislation alone is not sufficient.

In order to truly embed change and ensure that issues such as hate crime are dealt with, there must be comprehensive education and awareness-raising that aims to:

- Ensure that a hate crime can be identified, including by children and young people, when it occurs.
- Reduce the instances of hate crime.
- Ensure that when hate crime does occur, the reporting process is transparent and accessible, including to children and young people.

We would support the recommendation of Together in its State of Children's Rights report 2019, that awareness-raising and education for children and young people cannot simply happen at school, but must also involve families in order to be truly effective.

We would support Together's summary recommendation regarding hate crime that:

*"Scottish Government should involve children in all steps to tackle hate crime and ensure that law and policy is clear and reflects children's lived experience."<sup>1</sup>*

Children in Scotland would support BEMIS' call regarding the collection of information regarding hate crimes:

**BEMIS Scotland calls for a legal requirement to be integrated into the Bill that places a duty on the Scottish Government, Police Scotland, and any other relevant duty bearers to develop a bespoke system of Racist and Religiously aggravated hate crime data collation and disaggregation.** *This data should be published on at least an annual basis and be broken down to reflect all of the ethnicity options in the Scottish census. Were we to integrate this requirement into the Bill, Scotland would become an example of international best practice in using data to take a joined-up approach to tackling hate crime that involves and informs both legislative and non-legislative interventions. An integration of data collation and disaggregation as a legal requirement would ensure that Scotland's institutions were operating in compliance with the International Convention on the Elimination of All forms of Racial Discrimination and provide society with a much clearer picture of the nature and prevalence of the different types of racism that manifest in Scotland on a daily basis on the grounds of religious hatred or colour, nationality, ethnic or national origin.*

Clearer data collection is also required to give an accurate picture of the status of children and young people as perpetrators of hate crime. Data included in the Child Rights Wellbeing and Impact Assessment suggests that perpetrators of hate crime are likely to be young people under the age of 25,<sup>2</sup> although it is indicated that further work is needed on hate crime statistics.<sup>3</sup>

Where young people are perpetrators of hate crime, we need to make non-legislative measures available to ensure that this legislation does not lead to an increased criminalisation of children and young people. Children in Scotland would support Lord Bracadale's recommendation that:

*"Dealing with hate crime by children required a multi-agency response. The focus should be on diversionary and behavioural change programmes in order to avoid putting children and young people through the criminal justice system."<sup>4</sup>*

<sup>1</sup> Together State of Children's Rights in Scotland 2019, p 31

<[https://www.togetherscotland.org.uk/media/1436/socrr\\_online\\_version.pdf](https://www.togetherscotland.org.uk/media/1436/socrr_online_version.pdf)>

<sup>2</sup> Hate Crime and Public Order (Scotland) Bill, Child Rights Wellbeing and Impact Assessment, p.18 <<https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2020/04/hate-crime-public-order-scotland-bill-child-rights-wellbeing-impact-assessment/documents/hate-crime-public-order-scotland-bill-child-rights-wellbeing-impact-assessment-crwia/hate-crime-public-order-scotland-bill-child-rights-wellbeing-impact-assessment-crwia/govscot%3Adocument/hate-crime-public-order-scotland-bill-child-rights-wellbeing-impact-assessment-crwia.pdf>>

<sup>3</sup> Ibid, p.14

<sup>4</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/progress-report/2018/05/independent-review-hate-crime-legislation-scotland-final-report/documents/00535892-pdf/00535892-pdf/govscot%3Adocument/00535892.pdf>

*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?**

Yes, as stated above, Children in Scotland believes that consolidating legislation in this area and having appropriate education and awareness-raising alongside, will make the law more accessible to understand and use when needed.

**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?**

Children in Scotland does not have the expertise to comment on the most appropriate model for prosecution.

However, we believe that communication of the model of prosecution is of key importance to ensure proper understanding, identification and reporting of hate crime. It is also important that communication on how hate crime links to other related issues, such as discrimination under the Equalities Act, is made clear.

**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?**

Children in Scotland supported the inclusion of a statutory aggravation on age hostility in our response to the consultation on amending Scottish hate crime legislation in February 2019 and this remains our position.

*“Children in Scotland is not currently aware of any situations where being a child or young person has been a specific driver of a hate crime. However, we believe it is important that children and young people receive the same protection from the law as other groups should this occur. We also believe it is important for the law to be flexible enough to respond to these issues should the need arise.*

*We agree with the Scottish Government assessment that this change in Scottish Hate Crime legislation will clearly identify that hate crimes against children and young people based on age would not be tolerated.”*

We would also like to take this opportunity to emphasise that children and young people can be the victims of hate crimes that may not be motivated by age, although we would suggest that children and young people’s age may be a vulnerability factor in them being victims of hate crimes more generally.

For some children and young people, being a victim of hate crime is normalised or minimised:

*“We used to have bricks thrown at us and called names every day at one site, but you just get used to it.”<sup>4</sup>*

*“As with other minority or marginalised groups, BAME young people face the challenge of believing their own interpretation of comments, attitudes and judgements as being related to their racial, ethnic or cultural identity. In pursuit of a quiet life, it is often easier for BAME young people to imagine that a racist comment was misheard or not intended ‘in that way’, rather than raise issue with the person who made the comment.”<sup>5</sup>*

This last quote comes from Intercultural Youth Scotland and EDI Scotland’s *Insight* report<sup>6</sup> which highlights the issues identifying and dealing with hate crime in a school context. The report discusses the impact on children and young people of their experiences being dismissed or minimised, which can impact on a willingness to report incidents in the future.

*“I feel as if my school doesn’t really do any more after a first complaint on racism and discrimination.”*

*“Multiple racist incidents occurred and the pupils who were responsible were not held accountable.”*

The link between bullying and hate crime was also one raised by Lord Bracadale as an age-related consideration for this legislation.<sup>7</sup>

Children in Scotland feels strongly that all services that support children and young people should be equipped to identify, address and if needed to report hate crime and bullying. Children and young people should be supported to safely disclose issues and bullying and these disclosures should be taken seriously.

*Recommendations from IYS include:*

- *Pre-emptive action and effective resolution relating to Race Hate incidents and Race Hate crimes by improvement of Schools practice and procedures for reporting racism*
- *The recognition of race-related incidents in school as distinct in law from other forms of bullying, bad practice or harassment*
- *The knowledge of human and legal rights for BAME young people and their families, including the procedures and accountabilities for taking effective action*

Regarding a statutory aggravation for exploiting the vulnerability of the victim, Children in Scotland highlighted in our previous response that this is a complex area

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<sup>5</sup> Guyan, K. *In sight* 2019 <  
<https://static1.squarespace.com/static/5b9aaa1c0bdba3921bdda433/t/5dc2cdb26ad765150b8959c1/1573047736181/IYS+EDI+Report+Artwork+1+1.pdf>>

<sup>6</sup> Ibid  
<https://static1.squarespace.com/static/5b9aaa1c0bdba3921bdda433/t/5dc2cdb26ad765150b8959c1/1573047736181/IYS+EDI+Report+Artwork+1+1.pdf>

<sup>7</sup> Child Rights Wellbeing and Impact Assessment, p.16

that requires further consideration. However, we would suggest that due to the structural power imbalance between children and adults, there is an intersectional issue where children could be more vulnerable because of their age to being victims of hate crime. This was also reflected in the *One Scotland: Hate Has No Home Here consultation*:

*“Respondents suggested that young people regularly feel discriminated against because of their age. They also raised the issue of intersectionality where children from groups as defined by reference to one of the existing characteristics protected by hate crime legislation being more likely to experience hate crime and that this could be compounded because the offender sees them as additionally vulnerable on account of their youth.”<sup>8</sup>*

**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?**

We would refer to our response to the 2019 consultation:

*“Children in Scotland is not in a position to provide detailed comments on how to appropriately tackle the stirring up of hatred. However, we are concerned that children and young people may be vulnerable to being drawn into hate crime by others who seek to stir it up.*

*Children in Scotland believes that children and young people need support to recognise hate crime and how to respond if they witness a hate crime or are the victim of one. Aspects of the school curriculum including PSE could be used in this regard with support from relevant partners including Police Scotland and other relationship-based and equalities organisations. This would be supportive of other work already underway to support children and young people to respond to bullying.”*

**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?**

It is the view of Children in Scotland that given the historic and systemic nature of racism, which has been brought to the fore of global debate once again in recent months by the Black Lives Matter movement, we would support retaining the threshold of “threatening, abusive or insulting”.

Children in Scotland  
24 July 2020

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<sup>8</sup> Child Rights Wellbeing and Impact Assessment, p.17