

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE ELDERS OF SANDYFORD HENDERSON MEMORIAL
CHURCH OF SCOTLAND

As part of the consultation process we (Elders of Sandyford Church) wish to submit our response to the intended Hate Crime and Public Order Bill. There are a number of points we would draw attention to as part of the consultation process.

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?

Answer: Existing criminal law already covers the offence of threatening or abusive behaviour or speech. The term 'hate speech' and 'prejudice' in the Bill can be interpreted subjectively, and could readily lead to wrongful arrests and restrict freedom of speech in an unwarranted manner. In drawing up the Bill there has been a shift in emphasis from the existing legislation. As a result it is recommended that no new legislation should be brought in.

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?

Answer: In trying to bring together the legislation, the Bill fails in a number of respects. Different aspects of hate crime need to be dealt with in different ways. It has become clear that sectarianism legislation has become contentious in the matter of respecting freedom of speech; religious comment can lead to accusations of prejudice and even hate crime; expressions of opinion on sexual orientation or gender identity can be interpreted as hate speech; etc. The Bill has only specified a limited range of 'protected characteristics' and is deficient in that respect alone.

How to prosecute hate crime?

3. Do you think that the statutory 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?

Answer: See above. Hate crime should be more specifically defined as behaviour that is threatening and/or abusive rather than as 'causing offence' or 'holding prejudice'. Simply stating an opinion differing from others does not constitute abuse, but it may still cause 'offence', whether necessary or not.

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?

Answer: *This is just another example of a potential 'protected characteristic', that could be one of many others. It is adequately covered by existing legislation.*

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?

Answer: *Again, this is just one other potential 'protected characteristic' that is adequately covered by existing legislation*

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?

Answer: *The term 'stirring up of hatred' could be interpreted subjectively. It is too open to prejudiced reporting. In particular, religious beliefs and views on morality are very important matters, on which people can have vigorous debate and often offer differing opinions. Everyone must be free to disagree and hold their own beliefs without being accused of hatred. The proposal is likely to affect the freedom of religion and belief, and the expression and practice of them. There is also a serious risk that politically-motivated complainants will label disagreement as hatred to try to silence their opponents.*

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?

Answer: *We agree with Lord Bracadale that 'insulting' should be removed as it is too subjective and could be subject to prejudiced reporting.*

Other issues

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

Answer: *The protection of freedom of speech section in the Bill is broadly inadequate, and it would be very difficult to cover it adequately owing to the limited content and subjective nature of the language of the Bill as a whole. Open debate should be valued and cherished.*

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?

Answer: *This is a complex issue. It is an example of how specific legislation is needed for a particular issue, and trying to absorb it into a unified hate crime and public order Bill is not satisfactory.*

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

Answer: *As a Christian organisation, we view blasphemy as an offence against God not against individual people or organisations. So this issue, in particular we believe, should not be a part of this Bill to alter hate crime & public order*

legislation. As a country with a constitution and legal system that was originally formed on the basis of Christian beliefs, we believe that the offence of blasphemy against God should still stand, although implementation of the law should be applied appropriately. Although it is maintained that no prosecutions have resulted from the law over the last 175 years, it has had a restraining effect on the media, in particular, and should continue to have this influence.

Sandyford Henderson Memorial Church of Scotland
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