

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE FEDERATION OF WRITERS (SCOTLAND)

As Chairperson of the Federation of Writers (Scotland) I attach a paper in response to your invitation to groups to give feedback on the proposed Hate Crimes legislation. The Federation is an apolitical organisation whose aim is to provide writers with a platform to showcase their work.

I would like to stress that we are not opposed to legislation preventing genuine hate crime, or to this legislation per se, but only that if it is not very tightly drafted it could have unintended consequences for freedom of speech.

Thank you for taking the time to consider the points raised in this paper.

The Federation of Writers (Scotland) is a Scottish charitable organisation dedicated to making the written and spoken word available to the public of Scotland. Our Constitution states our purpose as: “the advancement of the arts, heritage and culture through providing opportunities for writers to associate together, organising relevant activities, events and practices, and causing to be written and printed or otherwise reproduced and circulated, free of charge or for payment, appropriate papers, books, anthologies, periodicals, pamphlets, newsletters or other documents or films.”

OVERVIEW: In response to your invitation, we would like to raise some concerns about artistic freedom that may be affected by the proposed new Hate Crimes bill. In particular section 4, but also in the other sections highlighted below.

Section 4 – Culpability where offence committed during public performance of play, etc.

- The Federation would like to see freedom of expression for writers and artists protected in the bill. We believe a flourishing arts and literary scene is vital for Scotland, and think it is a good thing if it reflects a diversity of experiences and attitudes.
- We are concerned that this bill would affect the arts in Scotland, and the right of writers and performers to freely express themselves. Books, theatre, poetry, comedy and performance could all be affected. As could events of international standing such as the Edinburgh Festival.
- Some of the most challenging theatre is great at making us question things, such as the acclaimed play *What Shadows* where the daughter of a Caribbean immigrant meets and talks to Enoch Powell about his Rivers of Blood speech, or the Citizen's Theatre's *Into That Darkness* production which tells the story of

the Commandant of Treblinka through his own self-justifying words. Both of these plays have quite controversial themes.

- The prison sentences are potentially severe, and, if the bill goes through in its current state, might mean writers self-censor on gender, sexuality, disability, religion, nationality and age - which could lead to reduction in interesting work across the board. It will almost certainly have a stultifying effect on the arts, and affect comedy, satire, poetry, books published, independent films, theatre, and arts and book festivals across the country.
- Section 4 also opens up the possibility of writers being tangled up in court cases or being persecuted for malicious, political or personal reasons. It would be undesirable to have the police authorised to act in this service.
- Freedom of expression is one of the most important conditions of literature and the arts. And literature and the arts deepen our understanding, broaden our horizons, challenge us, allow us to express who we are, and perform a function in society like nothing else does. A free and functioning arts sector is vital to society. If we look at history of banned works - some have gone on to become classics. There are lots of examples of books and plays that walk close to the edge but are great contributions to humanity.

In addition: Section (2) creates an offence of possession of inflammatory material in respect of a group of persons defined by reference to certain characteristics. It provides that it is an offence for a person to have in their possession threatening or abusive material with a view to communicating the material to another person, with either the intention to stir up hatred against a group of persons based on the group being defined by reference to one of the listed characteristics, or where it is a likely that, if the material were communicated, hatred will be stirred up against such a group.

- The problem here is that 'to stir up hatred' is not clear. What is 'likely to stir up' hatred? Literally anything could be said to do that - age jokes, inter-generational jokes, even being in possession of jokes about age or anything else protected in the laws could lead to criminal charges. This could include anything you've sent or shown another person such as an editor or friend or proof-reader. Everything counts as sharing material for writers.
- We would also like to bring up a question about 'possessing inflammatory material' - as we don't think it is clearly explained what would be considered inflammatory and what would not. Are copies of books inflammatory? What about notes for a play? There are many potential pitfalls in these laws because they are loose and vague in what constitutes a problem. Many people just won't understand what is within the law and what is not, and that could have the unintended effect of stifling creativity.

Plus: Offences of stirring up hatred (1) A person commits an offence if— (a) the person— (i) behaves in a threatening, abusive or insulting manner, or (ii) communicates threatening, abusive or insulting material to another person, and (b)

either— (i) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or 5 (ii) as a result, it is likely that hatred will be stirred up against such a group.

- This part includes 'insulting'. Behaviour is defined as speech in this part of the bill, so this is saying that saying something that ANYONE could find insulting is illegal. Lots of work could fall into this category. Lots of jokes do, such as millennials making fun of boomers, and vice versa. Satire against the English, against the Scots, self-satire would all be under threat. A gay man who satirises gay male life might be prosecuted. Muslims who joke about Muslim culture, etc.
- We note that genuine criticism is not protected in this bill which means debate and discussion and the exchange of ideas could be under significant threat.

And: For the purposes of subsections (1)(a)(i) and (2)(a)(i), a person's behaviour— 30 (a) includes behaviour of any kind and, in particular, things that the person says, or otherwise communicates, as well as things that the person does, (b) may consist of— (i) a single act, or (ii) a course of conduct. 35 (7) For the purposes of subsections (1)(a)(ii) and (2)(a)(ii), the ways in which a person may communicate material to another person are by— (a) displaying, publishing or distributing the material, (b) giving, sending, showing or playing the material to another person, (c) making the material available to another person in any other way.

- This part says that if you say or write something even once, you are liable to prosecution. Journalism could be under attack in this section as well as other writers, artists and individuals. Someone could be prosecuted for sharing a meme with their friend. This is such an open-ended bill that whether or not a person is prosecuted for something as simple as sharing a facebook meme would be left to the discretion of law enforcement, which could lead to possible mistakes and the prosecution of innocent people.
- It's only too easy for people to take offence, as we know, whether justifiably or not, and it is very concerning that the proposed laws might allow prosecution for unwittingly causing offence. This could lead to publishers becoming reluctant to publish work which they think might fall foul of the law, even if it wouldn't.
- Works of literature, theatre and art being censored in this way could prevent original takes on any subject deemed to be controversial (and even some non-controversial). It would have the impact also of criminalising views held by one person or section of the community which are found disagreeable by another person or section of the community.
- The Bill could even affect staging - is the Sound of Music not to include Swastikas even though this is an integral part of the story? Are we going to take legal action against the many theatre companies who bring their work to

Scotland but which might face prosecution if they inadvertently offend someone or cross the path of anyone who cares to pursue it? Are films exempt? What about independent films made in Scotland? These laws could put people off making films and producing plays here, instead choosing elsewhere to shoot and stage things, and since Scotland has been trying to entice big budget movies and TV shows to film here, censorship laws could put off creative people who want to bring their talents to Scotland.

- The new legislation also potentially criminalises gay men and women who inadvertently offend other members of the LGBTQ+ community. Similarly, many women writing about women's issues could be criminalised.
- Writers and artists should be able to write about whatever issues are close to them including gender, age, religion, race, politics, disability and sexuality.

IN CONCLUSION:

- No writer can control how a poem, book, essay or piece of theatre is perceived by a member of the public
- Writers should have the right to explore whatever subjects are close to them.
- The bill allows anyone to complain on someone else's behalf, which is concerning.
- Also concerning is that the police must become involved in what are essentially, in many cases, matters of opinion.
- We wish to protect the rights of writers.
- We are also concerned about the wider effects of a diminished arts, entertainment and literary scene on society as a whole.
- All disagreements run the risk of offending someone, and the same can be true of books, poetry, theatre, dance, art and films.
- With these laws, people's livelihoods could be adversely affected even for unintentionally writing something which another says is 'insulting'. This is not the same as an obvious hate crime such as shouting racial abuse, which is already illegal.
- Please note that drama hinges on writing up unpleasant characters and putting unpleasant words in their mouths, and placing people into difficult situations in order to unpack issues, themes and make audiences think. Are we to think twice about having a gay murderer? A black alcoholic? What about the use of gendered language such as 'mum and dad'? Are actors who perform these roles to be prosecuted? Such characterisations could potentially cause offence. The poem *Strange Fruit* has a graphic depiction of lynching. Is it to be banned? JK Rowling is one of Scotland's most famous writers, is she going to fall foul of the new law because of her recent comments? Are internationally renowned theatres such as the *Citizens* to be brought before courts or are police going to be instructed to apply the laws in an unequal way?

- Works performed at the Edinburgh Festival, and in large and small venues across Scotland, could be under threat with this new bill. Glasgow, in particular, has a blossoming, wonderful, diverse arts and writing scene. Is it to be quashed simply because the wording in the new bill is vague and anyone - whether writer, playwright, film maker or TV producer could potentially be complained about and have to face charges?
- The Federation of Writers (Scotland) is concerned that the laws could be used to brand innocent people as racists, transphobes, anti-elderly/young, or anything else when they are examining or exploring key issues or personal or societal issues through drama, comedy, poetry or prose.
- We are also worried these laws could be abused to satisfy personal grudges or vendettas.
- Note that many organisations affected by this legislation are currently furloughed so will not be able to draft feedback to you about these laws.
- While we recognise that everyone has their own views about what is acceptable speech, especially these days, we would like to invite the Justice Committee to consider freedom of expression within the law as an important part of our civilisation, and a necessity for a flourishing arts scene.

Federation of Writers (Scotland)
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