

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM ABERDEENSHIRE COUNCIL

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?

It would be preferable for existing legislation on hate crime to be consolidated, insofar as possible, into one Bill. To this end, if such a Bill is to progress then it is agreed that it would also be necessary to take the opportunity to update these existing laws when pulling these into one Bill.

With regard to adding to the groups currently specifically protected by hate crime laws, it is also agreed that this would be necessary however it would have been good to see that group extended to all nine protected characteristics covered by the Equality Act 2010 (i.e. to also include marriage/civil partnership and pregnancy/maternity) – or as a minimum to have evidence that consideration has also been given to having those groups added to the currently specifically protected by hate crime laws.

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?

It is agreed that all provisions relating to hate crime and hate speech should be consolidated into one piece of legislation. It is agreed that this should cover all statutory aggravations and provisions relating to incitement/stirring up of hatred, including the subject-matter currently covered by existing legislation.

How to prosecute hate crime?

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?

No view.

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?

No view.

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?

It is not necessary to create any new offence or statutory aggravation to tackle hostility towards a sectarian identity at this stage, on the basis that the Bill should already cover such hate crime in the context of characteristics that are already protected by hate crime laws (for example, race and religion) and would continue to be protected by the provisions of the Bill. It is also noted that a Working Group on Defining Sectarianism in Scots Law is considering this separately.

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?

Agreed that the new offence be introduced. However, it is noted that the use of the wording 'or is likely to' within section 3(2)(b)(ii) of Part 2 removes the intent element from the proposed offence of stirring up hatred. This could be perceived as draconian in terms of the powers conferred on the Police to investigate individuals where there is no intention to stir up hatred. As such, it is recommended that the use of wording "or is likely to" needs further clarification in terms of who decides whether views are likely to stir up hatred. A further consideration to highlight is whether the removal of intent element aligns with Scots criminal law procedures?

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 viewed that removing 'insulting' from the scope of the racial stirring up of racial hatred offence would be preferred and would promote parity and consistency of wording amongst characteristics.

Other issues

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

It is noted that local authorities will have responsibility for implementing sentences as part of their wider responsibility for criminal justice social work. This would include

responsibility for planning and supervising unpaid work to be carried out by an offender as part of a community payback order and may also have one-off requirements and costs for updating training materials, guidance and IT systems.

The Financial Memorandum accompanying the Bill state that the costs on local authorities will be minimal and should be accommodated within the regular review and update processes. It should, however, be noted that any additional costs associated with training the community justice workforce and building capacity to undertake preventative work to ensure the success of the legislation may now come at a time where local authorities will have adopted medium term financial strategies as a result of events arising from the Coronavirus (COVID-19) pandemic, which has already had a detrimental impact on the financial positions of local authorities over the last three months and is likely to have a continuing detrimental impact for the foreseeable future.

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?

It is agreed that racially aggravated harassment should remain law, under the proviso that there is satisfactory evidence for retaining this within the 1995 Act rather than (a) expanding the offence to cover other protected groups, and/or (b) consolidating this offence within the new Bill.

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

If the offence of blasphemy has not been prosecuted in Scotland for more than 175 years then it is agreed that the Bill would provide an opportunity for this to be abolished.

Aberdeenshire Council
24 July 2020