

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM CALL IT OUT

We are an organisation set up in 2018 to address the long-standing issue of racism/discrimination against one of Scotland's oldest and largest ethnic minority communities and the associated bigotry against the religion of most of its members.

We do not suggest that all Irish people are Catholic or vice versa but there is a clear relationship between those two characteristics on the basis that most members of our community are both. Moreover, the hatred that we continue to face often makes no distinction between our ethnic identity and our religion.

As a minority ethnic community we are, presumably, intended to be provided with additional protections under this proposed legislation. The latest available crime statistics provide evidence that we are disproportionately represented among the victims of racially and religiously aggravated crime. We have a vested interest in legislation which seeks to protect us and to address the hatred that we continue to face.

We have organised our consultation response in line with the suggested questions on the Call for Views section of the Parliament's website with some additional points at the end.

General

1. We are in favour of Lord Bracadale's proposals to extend the Section 74 aggravations to cover age and sex. We note that sex has not been added to the current draft but that the Bill contains the power given to Scottish Ministers to add the characteristic of sex by regulation. We believe that the characteristic of sex should have been added and see no justification for ignoring Lord Bracadale's recommendations. The women of our community, like women generally, are, more than any other group, the victims of violence both in the domestic and the public sphere and deserve the protection afforded to those with other protected characteristics.

Consolidation

2. We have no opposition to hate crime law being collected in a single act.

How to prosecute hate crime?

3. We believe the statutory aggravation model is clear and well understood by the public, the police and prosecutors alike. If an action would not currently be a crime then, then this Bill, if passed, should not create new crimes. Hatred on its own should be dealt with by education and not by the criminal justice system. Hatred as a motivator for an accompanying criminal act should be recognised by the courts as meriting special attention as is currently the case.
4. The vulnerability associated with age and aging deserves special attention and we agree that this should be a new statutory aggravation.

Other forms of crime not included in the Bill

5. No we do not agree that 'sectarianism' should have been included in this Bill. This is a poorly defined term which is routinely used in public discourse to distract from the evidence of anti-Irish racism and anti-Catholic bigotry in Scottish society. The use of race and religion are perfectly clear and existing law offers adequate protection in this regard.

Stirring up offences

6. The existing standalone offence of stirring up racial hatred (Public Order Act 1986) has been in existence for a very long time and we see no evidence that it has been used to protect our community. We understand that there have been a very small number of cases (single figures) involving this legislation. We do not have strong views about its removal from the Public Order Act 1986 but see considerable danger in extending this legislation to other characteristics. The concept of 'stirring up' was also contained in the Offensive Behaviour at Football and Threatening Communications (Scotland) Act, 2012, now thankfully repealed and there was a similarly small number of cases involving Section 6 of the Act in its lifetime.

Stirring up offences are inherently dangerous in themselves in that they limit the right of citizens to express themselves and their views and this is not acceptable in a democratic society. People ought to have the right to express their views even if those views are unpleasant as long as those words are not accompanied by threats or violence.

While this proposal may appear to offer our community protection against the hatred of us expressed by others, in fact, the inherently illiberal nature of it constitutes a threat to all citizens. In particular, in respect to our community, the proposed definition of a 'group defined by reference to religion' would potentially criminalise criticism by us of the so-called Loyal Orders in Scotland, who we define as anti-Catholic. While there is a good legal basis to argue that the Loyal Orders are not a religious organisation, or are certainly not practicing their religion when parading in a militaristic fashion past Catholic churches (Sheriff S Reid, Apprentice Boys of Derry, Bridgeton against Glasgow City Council, B1175/19 30/5/2019, pp78-79 <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019scgla80.pdf?sfvrsn=0>) the wording proposed here in Section 14(5)c are sufficiently general to give rise to a fear by us that they could be stretched to include anti-Catholic, militaristic marching organisations whose members/followers are known to engage in criminal actions against the Catholic community and its priests and church buildings. Our vigorous condemnation of them and our peaceful verbal response to their hatred could, perversely, become the subject of criminal charges if these proposals become law.

In terms of a number of the other characteristics which are proposed to be covered by a 'stirring-up' offence, there are other similar problems. There are reasonable discussions/views which should be possible to have without fear of being criminalised and these proposals are, in our view, a threat to that position and an assault on the right of free speech of Scottish citizens.

Indeed, our community, many of whom were active in the campaign against the 2012 Act, are well aware that these are not simply theoretical possibilities. We have evidence from recent times, that the dangers we are highlighting here can and do become realities when you have unclear, poorly defined and fundamentally illiberal legislation on the statute book.

Our minority community will not be better protected under these proposals but is actually more likely to face the danger of criminalisation and imprisonment from this specific proposal.

7. We agree with Lord Bracadale that the word 'insulting' should be removed from the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred. People should not have a right, in a free society, not be insulted and, more importantly, the definition of what is insulting is so subjective (unlike the stronger terms of threatening or abusive) that there is a danger that it will be interpreted too strictly by police officers and courts to the detriment of the rights of citizens to express themselves robustly.

Other Issues

8. It is our view that the 'protection of freedom of expression' element is only required if the 'stirring up' offence is introduced. Since we are fundamentally opposed to that part of the Bill, our preferred route is to remove that element and therefore render the protections redundant. It should raise alarm bells, when legislation that is proposed requires legislators to include safeguards for free speech. It would be better if they did not endanger free speech in the first place, rather than do so and then seek to protect it elsewhere in the same legislation.
9. This appears to go against the intention to consolidate all relevant legislation into a single act.
10. We have no specific view and regard this element as an irrelevance given that it has long fallen into disuse.
11. We are strongly opposed to Section 6 (Powers of Entry) and Section 9 (Where organisation commits offence) of the Bill. Section 6 seems unduly draconian in terms of powers to enter premises in relation to a crime involving the written or spoken word. Section 9 is fraught with danger for small, campaigning organisations such as ours own, whose officers or public spokespersons may find themselves criminalised in relation to legitimate and peaceful campaigning activities and materials which others find problematic.

12. We have concerns about Section 1(1)(b) which talks about circumstances where there are no specific victims of an offence. As with the ill-fated and detested 2012 Act, the concept of a hate crime against no one in particular is regarded by the general public as wrong in principle. Hatred, in itself, should not be criminal but actions, motivated by hatred, which blight the lives of individuals should be. The presence of a specific victim is a necessary part of the offence.
13. We have serious concerns regarding Section 1(4) which states that evidence from a 'single source' is sufficient to prove that an offence is aggravated by prejudice'. This appears to us to allow for the possibility that a single social media post or t-shirt or banner could be used to convict someone of an aggravated offence. This appears to us to be overly-strict and, combined with the interpretation which some of the looseness of language in the Bill will necessitate, lead to someone being unjustly burdened with a conviction for a hate crime.

Call it out
24 July 2020