

## JUSTICE COMMITTEE

### HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

#### SUBMISSION FROM DAVID PHIN

I read with concern the details of the proposed Hate Crime and Public Order (Scotland) Bill proposed by the Scottish government, in particular several provisions which appear to give the state wide powers to search, detain and prosecute those suspected of any actions the state deems “likely” to be unpleasant or hateful.

That the question of any material a person possesses being “likely” to cause offence is simply left up to the state to decide in accordance with its own rules is worrying in itself, regardless of the rest of the provisions of the act.

I also note with concern the following provision concerning public performances:

**“4 Culpability where offence committed during public performance of play**

*(1) This section applies where—*

*(a) an offence under section 3 is committed during a public performance of a play by a person who is a performer in the play, and*

*(b) the commission of the offence*

*(i) involves consent or connivance on the part of a person who presents or directs the performance, or*

*(ii) is attributable to neglect on the part of such a person.*

*(2) The person mentioned in subsection (1)(b) (as well as the performer) commits the offence.*

*(3) For the purposes of this section, a person is to be taken to have directed a performance of a play given under the person’s direction even if the person was not present during the performance.*

*(4) In this section, “play” and “public performance” have the same meanings as in the Theatres Act 1968.”*

That the culpability for the offence applies **both** to the performer and anyone who presents or directs the performance will have a very obvious chilling effect on not just what those in the performing industries or any public speaker feels not just what they can say, but what those in charge of allowing others to perform will *allow* them to say, in fear of falling foul of this legislation.

The proposed power to grant a search warrant at the mere suspicion that someone may possess “threatening or abusive material” with an intent to communicate it in any form clearly sets an incredibly low threshold for the state to intervene in citizen’s lives, with the even lower threshold for conviction that simply if it “were likely that, *if* the material were communicated, hatred would be stirred up”.

That the punishment for this could be anything up to 7 years imprisonment is an incredible sentence, and coupled with the low threshold for both the granting of a search warrant and vague statements about “inflammatory material” and “likely” offence in the provision, gives real concern about the threat to civil liberties from the state.

The inclusion of a provision to abolish the crime of blasphemy, which incidentally the Scottish Parliament’s own website states is a crime that has not been prosecuted in Scotland for over 175 years, appears to be in my eyes an attempt to “sugar-coat” a bill which contains several provisions giving the state a near blank cheque to infringe civil liberties and intrude on its own citizens lives almost at will.

I have grave reservations about the restrictions on civil liberties this bill would impose and urge you not to allow this piece of legislation to pass.

David Phin  
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