

JUSTICE COMMITTEE**HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM FiLiA****Do you think there is a need for this Bill and, if so, why?**

FiLiA welcomes the proposed addition of sex as a characteristic to be protected under Hate Crime legislation. We support the codifying and modernising of the legislation, and the proposition that criminal offences motivated by hostility toward someone because of a protected characteristic should be able to be identified as such and sentenced appropriately. However, we are concerned about the ways in which stronger Hate Crime legislation might be implemented in practice. We are keen to ensure that the delicate and sensible balance that the law is striving to achieve between freedom of expression and freedom from hateful speech or acts is maintained when characteristics that could potentially interfere with each other are included in the legislation.

Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland?

Women continue to be the victims of an alarming proportion of sexual assault, street harassment and domestic violence. Adding sex as a characteristic protected by Hate Crime Legislation will give proper recourse and recognition to victims of these crimes. However, an area of particular difficulty is the persistent, low-level harassment directed primarily at women such as cat-calling, whistling and unwanted touching where it falls short of sexual assault. It is the sheer frequency of incidents such as these in women's lives that means that each incident, however objectively small, contributes to a feeling of being a guest in male space, not being equal participants in society, of not being safe and not being equally free as men to pursue our lives in the way we see fit. FiLiA believes that these experiences present a particular difficulty because, although invasive, distressing and demeaning to women, they do not necessarily equate to an underlying criminal offence so could not be aggravated offences under Hate Crime legislation. In this way, perhaps simply adding sex as a characteristic under the legislation is not sufficient. The statutory aggravation model should therefore be considered alongside a standalone offence of harassment on the basis of sex and/or misogyny.

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?

There is a clear link between the proposed new offence of stirring up hatred and the proposed repeal of the blasphemy laws.

FiLiA wholeheartedly supports the intended repeal of outdated Blasphemy Laws, which will make a statement about freedom of expression and freedom of religion which are both highly valued in Scotland. FiLiA is interested to note that this is being repealed alongside the overall codifying of hate-crime legislation. There are, in our

view, important lessons to be learned from the way that Scottish society has made headway toward achieving the balance between freedom of religion and freedom of expression when applied to current tensions in the relationship between gender identity and sex.

For example, religious people who have the belief ‘my religion teaches that being gay is a sin’ are not, nor should they be, prosecuted for stating such a belief. This is not a criminal offence despite the fact that the portrayal of gay people as sinners can contribute to an atmosphere of hostility toward gay people, either perceived or real. It is well understood and established that freedom of religion exists to the extent that citizens retain the right to be critical of the views, lives and actions of others, even where those actions relate directly to a protected characteristic. Equally, and conversely, we do not prosecute people for saying ‘I don’t believe in God.’ It is easy to see how extremes of either of these views, ‘being gay is a sin’ and ‘I don’t believe in God’ could be phrased differently in a manner that tips them into being criminal, in terms of ‘stirring up’ under the proposed amendments or as a hate crime as part of some other offence. The law is finding a balance between freedom of expression and freedom of religion, and the proposed repeal of the blasphemy law confirms this.

Relating this to current potential conflict between gender identity and sex, FiLiA believes first and foremost that transgender identity and sex are both characteristics that should be protected under Hate Crime legislation. FiLiA welcomes the proposed inclusion of sex as a characteristic protected by this legislation at a later date. However, there are genuine concerns that the law in this area will not follow the sensible balance between belief in gender identity and freedom of expression that was described above in relation to freedom of religion. The pattern we have seen emerging in terms of prosecutions either brought or threatened in this area is that, either:

- i. Criticism of the belief in innate gender identity is considered a hate crime in itself, despite a lack of underlying criminal offence; or
- ii. Disagreement is seen as sufficient to constitute ‘hate.’

In a free, engaged and democratic society it is vital that even opinions some find objectionable may be lawfully spoken. ‘I don’t believe in innate gender identity’ should be no more unlawful, though objectionable to some, as a view than ‘I don’t believe in God,’ which is objectionable to others. Again, there is no need to give examples of what hate speech in this area would look like - it is clear how either of these statements above could be aggravated and accompanied by an offence such as harassment in order that they would tip over into criminal.

FiLiA urges the committee to emphasise the freedom of expression provision and provide examples of how this balance would be struck, in practical terms.

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?

FiLiA's view is that the word 'insulting' should not be included in the legislation, for the reasons outlined above. Authorities on the law of harassment, for example, have held that the statute should be read alongside the general proposition 'and the behaviour is so bad that it is criminal.' With offences outside of harassment, where no equivalent authorities exist, the threshold of being 'insulting' without qualification of 'and so bad that it is criminal' is a dangerously low threshold.

We reiterate our submissions in relation to freedom of speech, open debate, and the ability for differences of opinion to be aired and resolved rather than buried under threat of prosecution. Hate Crime Legislation by its very nature is designed to protect minority groups, and it would be ironically chilling if tyranny of the majority were able to preside over it by prosecuting and silencing dissenting voices on the basis that they 'insult' someone. Indeed, historically it has been those insulting, dissenting and objectional voices that have spurred social changes that we now celebrate.

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

As above, the protection of freedom of expression provision is finely balanced. A sensible general provision should include the protection of speech directed at ideas rather than people, either individuals or groups.

FiLiA
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