

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM COSLA**

COSLA welcomes the opportunity to provide evidence to the Parliament's Justice Committee on the Hate Crime and Public Order Bill.

We are supportive in principle of the Bill's aims to simplify current hate crime legislation and consolidate it into one new hate crime statute. However, we also recognise that any changes in legislation ought to be combined with early intervention, prevention and multi-disciplinary approaches involving awareness raising and educational activities in local communities and places of learning.

#### **Restorative justice and diversion from prosecution**

- Restorative justice and diversion from prosecution could present alternatives to use of the legislation in some circumstances. This is because they have been proven to be effective tools to empower victims, address the underlying causes of offending and to support the rehabilitation of offenders. The availability of alternatives to prosecution is largely dependent on funding available to local authorities and their partner agencies.

#### **Statutory Aggravation Model**

- The statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland. The model offers clarity to victims and the wider public by recognising the specific harm caused by hate crimes, whilst also providing consistency across all types of hate crime and allowing clear and consistent records to be kept and monitored over time to identify emerging trends.
- Statutory aggravations, including any new ones, should also continue to apply where an offence is motivated by, or demonstrates, hostility in relation to people who are presumed to have an identified characteristic and in relation to persons who have an association with someone with the protected characteristic.

#### **Equally Safe**

- As an Equally Safe co-signatory, COSLA is committed to eradicating all forms of violence and abuse against women and girls and to tackle the attitudes that help perpetuate them with the support of our partners, at a national and local level. To that end, we welcome the inclusion of Equally Safe as a non-legislative approach to address misogyny and gender hostility.
- We value and support prevention and early intervention approaches to raise public awareness of the nature, dynamics and impact of gendered abuse as a human rights issue at local and national level, online and offline, in our schools, workplaces and communities. However, we believe this activity should be accompanied, in the short term, by the creation of a statutory

aggravation for gender hostility. This aggravation provides consistency throughout hate crime legislation, is universal and relatively straight forward to enforce. That said, a number of our member councils have raised the distinction between gender and sex, suggesting a statutory aggravation based on the latter be considered separate from gender hostility. This is a matter that the Parliament's Justice Committee might wish to come to a view on given the current debate in this area.

### **Age Hostility**

- A statutory aggravation for age hostility should be added to the statute, in recognition of the hatred, prejudice and discrimination experienced by people because of their age. A separate offence for the exploitation of vulnerability should also be introduced, out with hate crime legislation. It would be useful to clearly draw the difference between exploitation of vulnerability and hostility in relation to age-based offences and provide clear guidelines for police and prosecutors to avoid operational confusion.

### **Sectarianism**

- Our view in relation to sectarianism is that current legislation tackling offences motivated by racial and religious prejudice appears to capture the nature of sectarian behaviour, making the addition of an ad-hoc statutory aggravation superfluous. That said, the underlying causes of sectarianism and the societal attitudes leading to it require to be targeted through non-legislative responses at a local community and school level with local government having a significant role in delivering these responses.

### **New Stirring Up of Hatred Offences**

- We were supportive of Lord Bracadale's view that stirring up of hatred offences where the perpetrator's conduct is threatening or abusive should be introduced in respect of each of the protected characteristics including any new ones that are introduced. This would enable data to be gathered about different types of groups being targeted and provide consistency in the legislation.
- Online hate crime also continues to be a growing trend that merits attention and action, out with criminal law. This might involve improved monitoring and regulation of social media companies and awareness raising initiatives on how online hate crime is reported and dealt with by police and prosecutors.

### **Retaining the Threshold of "Threatening, Abusive or Insulting" Behaviour**

- Thresholds should be the same for all of the "Stirring Up" offences in the Bill to achieve consistency and parity. "Threatening or abusive" behaviour is an appropriate level to set the criminal threshold for stirring up offences as these are easily understood and should protect freedom of expression, disagreement or criticism on the grounds of religious beliefs or practices, legitimate political and public debate. However, the threshold of "insulting" behaviour could be problematic due to the subjectivity of what can be classed as insulting. A further concern is that the adoption of different thresholds may give rise to a perception that it is acceptable to insult some groups.

**Protection of Freedom of Expression**

- In a democratic and diverse society, a variety of opinions co-exist and the right to express these views is legitimate and should be protected. This includes the right to make criticisms of religious beliefs and practices, providing that they do not interfere with the rights of individuals to hold and manifest their religious views, and criticisms of the actions of others because they are incompatible with one's religious doctrine, again providing that this does not interfere with other rights.

**Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995**

- Part of the policy intent behind the Hate Crime and Public Order Bill is the consolidation and simplification of legislation. As a result, the purpose of consolidation through the Bill should be to render equivalent legislation on the same topic obsolete. That said, given recent events and the strength of feeling, it might seem inappropriate to consider repeal at this stage.

**Abolition of the Offence of Blasphemy**

- The offence of blasphemy is an outdated offence that is no longer relevant to modern Scottish society. We understand the offence has not been prosecuted in Scotland for nearly two centuries.

**Other Points**

- The introduction of the legislative changes in the Bill have the potential to place additional demands on a number of council services e.g. community safety, youth provision and community services and social work, all of which are already facing resource constraints. Given eroded core budgets due to reduced funding to Local Authority budgets over many years and more recent Covid 19 responses, additional resources would be needed if local government and local partners are to sustain the likely increased pressures and enact a further step change on this agenda. COSLA has reflected these points in our response to the Financial Memorandum of the Bill.
- Given the complexity of the existing legislation and the proposed changes, it is felt that the public should be adequately informed through awareness raising campaigns and public education at a local level, to avoid being unaware of the potentially criminal nature of their behaviours. This is also in recognition that some of the attitudes, beliefs and language that manifest themselves in hate crime can be inter-generational and widely used in specific local areas.
- Criminal justice responses are important in addressing divisive behaviour but cannot on their own resolve the issue. They need to be accompanied by initiatives at a local level in civic society, to foster good relations and build inclusive communities and services. To that end, it is key to enhance interagency understanding and joint working locally, with local government providing leadership in co-ordinating community justice, youth justice and community safety services.

We trust our response will be useful to the Justice Committee's considerations of the Hate Crime and Public Disorder Bill.

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