

JUSTICE COMMITTEE**HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM DUMFRIES AND GALLOWAY COUNCIL AND EQUALITIES AND DIVERSITY WORKING GROUP**

Further to the call for views on the Hate Crime and Public Order (Scotland) Bill, please find below a joint response below from Dumfries and Galloway Council and the Dumfries and Galloway Equality and Diversity Working Group.

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?

Yes, given the recorded incidence of hate crime as stated in the Policy Memorandum for 2017/18 and more recent figures for 19/20 reported in the press which also show an increasing incidence of hate crime. Globally, the recent prominence given to the “black lives matter” campaign especially following on from the death of George Floyd, demonstrates that the proposed legislation is timely and required. There is a need for a clear legislative underpinning of the criminal law in this area due to the many thousands of such crimes being reported. It is likely that many more incidences are going unreported. New legislation would raise the profile and may encourage better reporting. Current legislation appears to be piecemeal and lacks cohesion. New legislation allows a clear message to be given to society stating the type of behaviour that is not acceptable. Other non-legislative measures are being used and should continue to be used – education in schools, football teams trying to stamp out discrimination, other campaigns both national and international.

We note recent articles in the press where there have been calls for misogyny to be treated as a hate crime. Misogyny is defined as “dislike of, contempt for, or ingrained prejudice against women”- Oxford Languages. The inclusion of misogyny should be further considered and consulted upon. We think that its inclusion would send a powerful message that misogyny is not acceptable in modern Scotland.

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?

Yes, always easier from a legal point of view to have all the relevant legislation in one place. There is merit in consolidating the hate crime laws if the new legislation

will lead to better reporting, increased prosecution and ultimately less tolerance of hate crime in society.

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?

We support the statutory aggravation model for prosecuting hate crimes, however the offence of misogynistic harassment is necessary to provide increased protection for women, who are at higher risk of being victims of crimes related to their gender.

We agree the statutory aggravation model should be used in all categories of hate crime. The behaviour has to be of a certain level to attract police attention in the first place, and then, when examined more closely – the speech or actions used may constitute an aggravation. The police and prosecutors are used to dealing with aggravations – such as being on bail, on an ASBO at the time.

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?

Yes, all the characteristics deserve equal protection.

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?

Sectarianism is defined as “excessive attachment to a particular sect or party, especially in religion” Oxford Languages. The aspect of sectarianism which is rooted in religion is already covered by the Bill in relation to the religious hate crime aggravation. We see no need for a separate offence in relation to sectarianism. The existing criminal offences such as assault or breach of the peace can also be used where a religious hatred element is not clearly identified.

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?

Whilst it is said that anti-locution is the first step to genocide (Allport's Scale of prejudice) On balance, we are not persuaded that a new offence of "stirring up hatred" should be pursued in Scotland. Scotland is an open society and has a long and proud history of freedom of speech. The Crown does not require to prove intent (the mens rea) but only that it is likely that hatred will be stirred up by the accused's words or deeds. The proposed offence is too subjective and could be a means of stifling free speech and the free and frank exchange of views in a free society. Should the decision be to proceed with such an offence, the parameters of what "stirring up hatred" means and how the offence is committed should be more tightly drawn. It is noted below that the Protection of Freedom of Expression within the Bill should provide a measure of protection for legitimate criticism/discussion in a free society should the offence be made law, however the concern in relation to the offence remains.

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?

We consider the word "Insulting" is too subjective to be of great assistance as it depends on the receiver's feelings. Lord Bracadale was of the view, based on the experience of Prosecutors south of the border who had removed the term "insulting" from similar legislation, that the vast majority of relevant behaviour would be caught by the words "threatening or abusive" We agree with Lord Bracadale that it should not form part of the definition.

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

The Protection of Freedom of Expression provides that behaviour or material is not to be regarded as threatening or abusive for the purposes of the offences relating to stirring up of hatred solely because it includes discussion or criticisms of religion, religious beliefs or sexual conduct. The difference comes when comments threaten violence towards the followers of a particular religion or people of a particular sexual orientation. There could be some difficulties in determining what amounts to "discussions" and "criticism" as these are subjective terms. The inclusion of this protection is of assistance, but concern regarding the introduction of the stirring up offence in question 6 remains.

We believe it is very important to ensure that such a provision, if included, does not allow for hate crime to be disguised or excused.

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?

We refer back to answers in 2 and 4. It is better to have the law in one place and there is an argument that all protected characteristics should be equally protected. However, given recent events and the strength of feeling, it would seem inappropriate to consider repeal at this time.

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

Blasphemy is defined as “the action or offence of speaking sacrilegiously about God or sacred things; profane talk” Oxford Languages. Given that it has not been used for 175 years, and that there is planned protection in respect of hate crime in relation to religious hatred, we agree it should be abolished. In any event, blasphemy is highly subjective in a multi-cultural society and would be difficult to define or prosecute.

Dumfries and Galloway Council and Equality and Diversity Working Group
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