

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM GLENURQUHART & FORT AUGUSTUS FREE CHURCH OF SCOTLAND

Dear Sirs,

I write on behalf of Glenurquhart & Fort Augustus Free Church of Scotland congregation in relation to the above. I would respectfully request that the Committee take into account the following submission in its consideration of this Bill.

Firstly, by way of a general comment on the need for this Bill, we would maintain that there is no real requirement for this Bill. Presumably the intended target for the types of offences found in the Bill would be those who seek to incite hatred and acts against those with the listed characteristics. But the general law already provides appropriate safeguards in relation to these matters at present. Our concern is that by seeking to offer this proposed further protection to such groups, there will be no real benefit secured; but only the substantial erosion of rights of debate and freedom of speech. As existing criminal provisions already cover threatening and abusive behaviour where it is likely to cause fear or alarm, one can see that any limited benefit for additional protections comes with the potential cost of striking at core freedoms of expression which are fundamental aspects of our society.

Secondly, and specifically in relation to the proposed new offence of stirring up of hatred (on the basis that the committee determine to proceed with this Bill), it is essential that adequate safeguards are put in place with regard to freedom of expression. These freedoms are important for the congregation on behalf of whom I write this submission. Our main concern in that respect is the new offence of "stirring up hatred". This new offence could be committed by some-one without the intention of stirring up hatred, or even without it being known by them that their words were being considered as abusive. That is part of what makes this law as currently drafted one which can rightly be criticised as a "bad law". The lack of certainty in its application places potential "offenders" in a position where they cannot know whether what they may wish to say (for entirely legitimate reasons) will be received in such a way as to mean that they have broken the law. In the context of a church congregation it is significant that beliefs in regard to morality and religious belief are frequently both sincerely and strongly held. They are often the subject of debate and even argument with those out-with the church. The Christian faith has particular moral teaching associated with it, which many might now find offensive, insulting (or even abusive). Furthermore, it proclaims the exclusive claim of the Lord Jesus Christ as the only Saviour for the sins of the whole human race. Saying that an action, course of conduct, or lifestyle is sinful has never been well received by those outside the church, but that is what Christians are called to say as a matter of love to those around them (so that their hearers too might come to know the one who can take away their sins). This new offence would stop people giving an account of what they believe (or meaning that they commit an offence when they do so). The same point can be made by simply stating that a very real problem with the draft legislation is

that it is not an essential pre-requisite for the commitment of an offence to intend to stir up hatred. In order to protect free speech, it must be a requirement of any offence that what was done, was being done with the intention of stirring up hatred.

In addition the following should be included in the Bill:

- (I) The free speech provision in regard to religious belief must be adjusted to make clear that people are entitled to vigorously challenge the religious beliefs of others;
- (II) The free speech provision concerning sexual orientation should provide that beliefs about same sex marriage are protected, and may again be vigorously debated; and
- (III) Free speech provisions must be extended to transgender identity. They should specifically protect the freedom to use a person's birth name and pronoun, and say that some-one born a woman cannot be a man and that some-one born a man cannot be a woman.

Thank you for considering the foregoing. If I may conclude with pointing out that since Roman times it has been a well known legal maxim that *ignorantia juris non excusat*. But the corollary is that the state is under a duty to pass laws which are accessible, comprehensible and sufficiently certain so that the concerned citizen may know them, and regulate his conduct accordingly. As currently framed this Bill does not achieve this, as such a citizen acting with good motives, but speaking on sensitive moral religious and ethical matters has to make an almost impossible assessment as to whether his action will be likely to stir up hatred, when what motivates others is often arbitrary, unpredictable, and capable of being misrepresented, and thus consequently out-with his control.

Yours faithfully,

Andrew Murchison
Session Clerk

Glenurquhart & Fort Augustus Free Church of Scotland
18 July 2020