

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE FEDERATION OF SCOTTISH THEATRE,
INDEPENDENT THEATRE COUNCIL, PLAYWRIGHTS' STUDIO SCOTLAND, THE
SCOTTISH SOCIETY OF PLAYWRIGHTS AND UK THEATRE

Introduction

We welcome this opportunity to provide input to the Committee's scrutiny of the Hate Crime and Public (Order) Scotland Bill at Stage 1.

It is important to state from the outset that we are in complete agreement with the intention behind this legislation as a whole. We are utterly opposed to hate crime and discrimination in all its forms and fully uphold the rights of individuals to be protected from it in law.

However the Bill as introduced has raised serious concerns among our members about the extent to which the proposed legislation will allow for the free and frank exploration of some of the most vital and contentious issues in society today. This submission makes some specific points where we believe that clarification and ultimately change are required.

Consultation

Section 4 of the Bill makes provision for persons associated with the public performance of a play to be held criminally liable for committing the offence of stirring up of hatred.

We consider that the changes proposed by the Bill are sufficiently significant as to have warranted specific consultation with representatives of our industry. The Committee will be aware that neither the policy memorandum nor the impact statement make any reference to theatre and we regret to say that there has been no consultation with those involved in the creation, production or presentation of plays in Scotland prior to publication of the Bill. **It is therefore particularly important that appropriate scrutiny be given during the Stage 1 to the impact of the proposed legislation on the public performance of plays.**

Freedom of expression

The provisions in the Bill in relation to protection for freedom of expression are only stated to apply to sections 3 (2) and 5 (2). Whilst we recognise that this covers the offenses themselves we believe it is essential that freedom of expression should be explicitly seen to apply to the public performance of plays, in order that they can properly explore some of the most pressing issues of the day. **We consider that provisions for the protection of freedom of expression in relation to plays should be included on the face of the Bill.**

Defences

Section 20 of the Public Order Act 1986 c.64, which makes provision for the offence of stirring up racial hatred in relation to the public presentation of a play and on which section 4 of this Bill appears to be in part based, states that such an offence shall be committed if ‘having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby’.

The Hate Crime and Public Order (Scotland) Bill as introduced provides at section 3(4) for a defence of ‘reasonableness’ to the offence of stirring up hatred and in relation to the offence of possession of inflammatory material. The wording here is simply ‘...in the particular circumstances, reasonable’. We consider that the loss of a specific reference to ‘taking the performance as a whole’ is a significant one for those presenting and taking part in plays. **We therefore consider that the Bill should be amended to include a defence for the presentation of plays which specifically references ‘taking the performance as a whole’.**

There is a further current defence in Section 20 of the Public Order Act 1986, which would be repealed by this Bill, as follows:

- (2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove—
 - (a) that he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour, or
 - (b) that he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting, or
 - (c) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

Because there is no reference to the presentation of plays in the Policy Memorandum it is not possible to determine whether the Scottish Government specifically wishes to repeal this defence or whether it is simply a casualty of the ‘tidying up’ process. **We consider that the Committee might wish to explore this as part of the scrutiny process at Stage 1.**

Conclusion

Theatre is a model for a way of engaging with one another that is vital to the heart of democratic life. It builds our skills for listening to different sides of a conversation or argument, and for empathising with the struggles of our fellow human beings whatever their views may be. It is therefore essential that legislation which may affect our ability to do so freely is properly considered. We would be happy to explore the issues raised above further with the Committee during its consideration of the Bill.

The Federation of Scottish Theatre, Independent Theatre Council, Playwrights'
Studio Scotland, The Scottish Society of Playwrights and UK Theatre

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