

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM MISNEACHD

[’S e buidheann-choiteachaidh a tha ann am Misneachd a bhios ag iomairt airson dìon agus adhartachadh na Gàidhlig mar chànan coimhearsnachd agus airson còraichean is leas a luchd-labhairt. Misneachd is a pressure group which campaigns for the protection and promotion of Gaelic as a community language, and for the rights and welfare of its speakers.]

Coitcheann General

1. A bheil thu a’ smaoineachadh gu bheil feum air a’ Bhile seo agus, ma tha, carson? A bheil roghainnean eile ann an àite an reachdais seo a bhiodh èifeachdach, leithid cheumannan neo-reachdail, ath-leasachaidhean nas fharsainge air modhan poileis no ceartas eucorach? A bheil ullachaidhean eile ann a bu mhath leat a bhith air fhaicinn sa Bhile no leasachaidhean eile a bu chòir a bhith air an dèanamh air an lagh air eucoir gràin?

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?

Tha sinn a’ cumail taic ris a’ Bhile seo chun na h-ìre ’s gu bheil na buidhnean aig a bheil feartan dìonte airidh agus feumach air dìon bho ana-cothrom agus gràin anns a’ chomann-shòisealta. Ge-tà mar bhuidheann adhartach air an làimh chli tha sinn mothachail air cho mì-èifeachdach is cho cronail ’s a tha siostam nan cùirtean is nam prìosan, gu h-àraid a thaobh na buaidh a th’ aca air mion-bhuidhnean ceannsaichte, is b’ fheàrr leinn atharrachadh radaigeach fhaicinn aig a’ cheann thall a dh’ionnsaigh ceartas eiridneach no cruth-atharrachail seach ceartas breitheanasach.

We support this Bill insofar as groups with protected characteristics deserve and need protection from injustice and hate in society. However as a progressive left-wing group we are mindful of the ineffectiveness and harmfulness of the carceral state, in particular with respect to its impact on oppressed minorities, and we would ultimately prefer to see moves towards restorative or transformative justice rather than retribution.

Cruinneachadh Consolidation

2. Tha am Bile a’ toirt còmhla a’ mhòr-chuid de laghan eucoir gràin ann an aon phìos reachdais. A bheil thu a’ creidsinn gu bheil luach ann a bhith a’ cruinneachadh laghan eucoir gràin a tha ann agus am bu chòir a h-uile lagh den t-seòrsa a ghabhail a-steach?

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?*

Tha agus bu chòir.

Yes.

A' togail casaid eucoir gràin? How to prosecute hate crime?

3. *A bheil thu a' smaoinichadh gum bu chòir am modail tromachadh reachdail a bhith na phrìomh dhòigh air casaid gràin a thogail ann an Alba? Am bu chòir a chleachdadh anns a h-uile suidheachadh no a bheil feartan dìonta ann ris am bu chòir dèiligeadh ann an dòigh eadar-dhealaichte agus carson? Mar eisimpleir, tromachadh reachdail airson nàimhdeas gnè seach eucoir air leth airson sàrachadh bhoireannach?*

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?*

Tha sinn sàsaichte leis a' mhodail a tha air a mholadh. Tha sinn a' cumail taic ris a' phròiseas a tha a' gabhail àite a thaobh buidheann-obrach an Riaghaltais air fuath-bhan agus tha sinn a' feitheamh toraidhean a' phròiseis seo.

We are satisfied with the proposed model. We are supportive of the ongoing process in relation to the Government's Working Group on misogyny and await the outcome of this process.

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?*

4. *A bheil thu a' smaoinichadh gum bu chòir tromachadh reachdail ùr air nàimhdeas aois a chur ri reachdas eucoir gràin na h-Alba? Am biodh dòigh sam bith eile air a thomhas èifeachdach? Mar eisimpleir, am biodh luach ann a bhith ann a bhith a' toirt a-steach tromachadh reachdail (taobh a-muigh reachdas eucoir gràin) airson a bhith a' gabhail brath air so-leòntachd an neach-fulaing?*

Tha sinn ag aontachadh ris an tromachadh reachdail ùr a thaobh nàimhdeas aois. Tha e cudromach gu bheil daoine air an dìon bho ghràin air stèidh aois, gu h-àraid daoine aosta. Tha sinn ag aontachadh ri beachd a' Mhorair Bracadail (*Independent review of hate crime legislation in Scotland: final report* §4.70; moladh 11) gum biodh luach ann a bhith a' toirt a-steach tromachadh reachdail (taobh a-muigh reachdas eucoir gràin) airson a bhith a' gabhail brath air so-leòntachd an neach-fulaing. Mar bhuidheann a tha mothachail air a' bhuidhe eadar-ghearrachail a tha aig bochdainn, clas agus ana-cothrom sòisea-eaconamach air a' chomas a th' aig daoine an cuid còraichean is buannachdan a sheasamh, tha ùidh air leth againn ann am beachd a' Mhorair Bracadail (§4.88) gum biodh a leithid de thromachadh feumail ann a bhith a' dìon dhaoine a tha

fo ana-cothrom sòisea-eaconamach. Tha sinn a' brosnachadh bhall-pàrlamaid gu beachdachadh nas fhaide air a' mholadh seo mar sin.

We agree with the new statutory aggravation on age hostility. It is important that people are protected from age-based hate, especially the elderly. We agree with Lord Bracadale's view (Independent review of hate crime legislation in Scotland: final report §4.70; recommendation 11) that there would be value in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim. As a group that is aware of the intersectional impact of poverty, class and socioeconomic disadvantage on the ability of people to defend their rights and interests, we are especially interested in Lord Bracadale's view that such an aggravation would be useful in protecting people who experience socioeconomic disadvantage. We would therefore encourage MSPs to consider this proposal further.

Seòrsaichean eucoir eile nach eil air an gabhail a-steach sa Bhile / *Other forms of crime not included in the Bill*

5. A bheil thu a' smaoinichadh gum bu chòir dèiligeadh gu sònraichte ri buidheannachas anns a' Bhile seo agus am bu chòir a mhìneachadh ann an reachdas eucoir gràin? Mar eisimpleir, am bu chòir tromachadh reachdail co-cheangailte ri buidheannachas no eucoir air leth a bhith air a chruthachadh agus air a chur ris?

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?

Tha sinn a' creidsinn gu bu chòir coimhead air a' chùis thoinnte seo fa leth. *We believe this complex issue should be looked at separately.*

Faicibh na beachdan againn gu h-ìseal air feart dìonte airson 'mion-chànan'. *See below for our proposal for an additional protected characteristic of 'minority language'.*

Eucoirean brosnachaidh *Stirring up offences*

6. A bheil beachdan agad mu luach Pàirt 2 den Bhile agus na planaichean gus eucoir ùr a thoirt a-steach airson fuath a bhrosnachadh?

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?

Tha sinn a' cumail taic ris na molaidhean seo. *We support these provisions.*

7. A bheil beachdan agad air planaichean Riaghaltas na h-Alba gus an stairsneach a thaobh giùlan 'bagarrach, ana-cainteach no tàireil' a chumail a thaobh a bhith a' brosnachadh fuath cinnidh, an aghaidh beachdan a' Mhorair Bracadale gum bu chòir 'tàir' a thoirt air falbh?

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?

Tha sinn a' creidsinn gum bu chòir am facal 'tàireil' a ghleidheadh. Tha e cudromach nach tèid stàirsichean stèidhte a lagachadh.

We support the retention of 'insulting'. It is important that established existing thresholds are not weakened.

Cùisean eile / Other issues

8. A bheil beachdan agad air dè a bu chòir a bhith air a chòmhdach leis an ullachadh 'dion saorsa bheachdan' anns a' Bhile?

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

Chan eil.

No.

9. A bheil thu ag aontachadh le Riaghaltas na h-Alba nach bu chòir Earrann 50A den Achd Lagh Eucorach (Cruinneachadh) (Alba) 1995 mu shàrachadh air a thromachadh le gràin-cinnidh ais-ghairm?

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?

Tha.

Yes.

10. Dè do bheachd air na planaichean airson cuir às don eucoir toibheim?

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

'S e leasachadh adhartach a tha seo agus bha còir a chur an sàs o chionn fhada.

This is a progressive and overdue reform.

Moladh a bharrachd. *Additional proposal.*

Am moladh againn a thaobh feart dìante airson 'mion-chànan'.

Our proposal for a protected characteristic of 'minority language'.

Mar bhuidheann a tha a' seasamh chòraichean nan Gàidheal is luchd na Gàidhlig, bu toil leinn dìon a bharrachd a bhith anns a' bhile seo agus/no ann an reachdas eile airson luchd-labhairt na Gàidhlig agus mhion-chànanan eile. Seo na beachdan againn gu ruige seo air a' chuspair seo bhon phàipear-poileasaidh againn *Plana Radaigeach airson na Gàidhlig (2018)*:

As a group that defends the rights of Gaels and Gaelic speakers, we would like to see additional protection in this bill and/or other legislation for speakers of Gaelic and other minority languages. The following is our existing position on this topic from our policy document A Radical Plan for Gaelic (2018):

Tha sinn a’ creidsinn gum bu chòir do Riaghaltas na h-Alba agus Riaghaltas Bhreatainn co-chomhairleachadh a dhèanamh air mion-shluaghan cànanain a dhèanamh nam feart dìonte ri taobh cinneadh, creideamh, ciorram, aidmheil cleamhnais agus fèin-aithne thar-ghnèitheach. Bhiodh na mion-shluaghan cànanain seo a’ gabhail a-steach Gàidhlig, Albais, Cànan-soidhnidh Bhreatainn agus cànanan coimhearsnachd in-imrich, a bharrachd air mion-chànanan tùsanach a bhuineas do phàirtean eile den Rìoghachd Aonaichte leithid Cuimris, Gàidhlig na h-Èireann agus Còrnais. (*Plana Radaigeach airson na Gàidhlig* tdd. 94–5)

We believe that the Scottish and UK Governments should consult on making linguistic minorities (Gaelic, Scots, British Sign Language, and immigrant community languages, as well as indigenous minority languages of other parts of the UK such as Welsh, Irish and Cornish) a protected characteristic alongside race, religion, disability, sexual orientation and transgender identity. (Radical Plan for Gaelic pp. 94–5)

Tha e brosnachail gu robh am Morair Bracadal den bheachd “gu bheil argamaid meadhanach làidir ann gum buin Gàidheil a bhruidhneas Gàidhlig do ‘bhuidheann eitneach’ taobh a-staigh ciallachadh an tromachaidh a tha ann an-dràsta a thaobh cinnidh” (*Independent review of hate crime legislation* §4.81), agus gu bheil am forail seo buntainneach fiù ’s mura h-eil an neach-labhairt Gàidhlig a dh’fhuilingeas eucoir-gràin a’ buntainn, no mura h-eil iad a’ creidsinn gu bheil iad a’ buntainn, dhan bhuidhinn eitnich Ghàidhealaich, “leis gu bheil an dùil gu bheil am feart aig an neach-fulaing no gu bheil dàimh aca riuthasan aig a bheil e” (§4.83).

It is encouraging that Lord Bracadale was of the opinion that “there is a fairly strong argument that Gaelic speaking Gaels belong to an ‘ethnic group’ within the meaning of the current race aggravation” (Independent review of hate crime legislation §4.81), and that this applies even if the Gaelic speaker who experiences hate crime does not in fact belong, or regard themselves as belonging, to a Gaelic ethnic group, “because the victim is presumed to have the characteristic or has an association with those who do” (§4.83).

A dh’aindeoin seo tha sinn den bheachd gum biodh e fhathast feumail feart dìonte a bharrachd a thoirt a-steach a thaobh cànanain. Bhiodh seo a’ toirt dìon nas soilleire is nas daingne air luchd-labhairt na Gàidhlig agus mhion-chànanan eile na an argamaid “meadhanach làidir” gu bheil iad air an dìon fon tromachadh a tha ann an-dràsta a thaobh cinnidh, nach deach a dhearbhadh fhathast ann an cùirt lagha. Bhiodh am forail ùr seo cuideachd a’ freagairt air an aineolas chumanta a thaobh chuspairean agus chòraichean a bhuineas do chànan am measg mòr-shluagh aon-chànanach Beurla na dùthcha, fiù ’s am measg dhaoine nach biodh buailteach nàimhdeas is gràin a chur an cèill air buinn-stèidh eile.

Bhiodh an dìon a bharrachd cuideachd a' freagairt air suidheachaidhean far a bheil gràin ga cur an cèill a bhuineas gu sònraichte do chleachdadh cànan, mar eisimpleir nuair a thathar a' cur an aghaidh cleachdadh mion-chànain ann an dòigh nàimhdeil ach gun a bhith a' toirt luaidh nas fharsainge air buntainneas eitneach no cinneadh an luchd-labhairt.

Nevertheless, we are of the opinion that it would be beneficial to introduce an additional protected characteristic related to language. This would give clearer and more robust protection to Gaelic and other minority language speakers than the 'fairly strong' argument that they are protected under the existing race aggravation, which has not yet been tested in court. It would also reflect the widespread ignorance of language-specific issues and rights among the majority monolingual anglophone population of Scotland, even among those who might not engage in hostility on other bases. The additional protection would also reflect instances of hostility relating specifically to language use, for example when the use of a minority language is objected to aggressively but without wider references to the speakers' ethnicity or race.

Mar bhuidheann Ghàidhlig tha sinn a' seasamh an guailibh mhion-shluaghan cànan eile, a' gabhail a-steach mion-chànanan tùsanach eile na h-Alba (Albais, Cànan-soidhnidh Bhreatainn), cànanan coimhearsnachd in-imrich, agus mion-chànanan tùsanach eile anns an Rìoghachd Aonaichte (Cuimris, Gàidhlig na h-Èireann, Còrnais). 'S e cothrom a tha seo dìon agus aithneachadh a shineadh do gach mhion-shluagh cànan anns a' chomann-shòisealta. Cf. gairm bho chionn goirid le Coimiseanair Cànan na Cuimris gum bu chòir dol an sàs ri gràin an aghaidh luchd na Cuimris.

As a Gaelic group we stand in solidarity with other minority language groups, including other indigenous languages of Scotland (Scots, BSL), migrant community languages, and other indigenous minority languages of the UK (Welsh, Irish, Cornish). This is an opportunity to extend protection and recognition to all linguistic minorities in societies. Compare a recent call by the Welsh Language Commissioner to tackle anti-Welsh hate.

Tha sinn a' creidsinn gu bheil e cudromach gum biodh am forail a tha sinn a' moladh a' buntainn gu sònraichte do mhion-chànanan (i.e. gun a bhith a' gabhail a-steach na Beurla), airson 'àitean sàbhailte' aon-chànanaich a dhion far a bheil Gàidhlig agus mion-chànanan eile gan cleachdadh, rud a tha a dhìth airson beòthalachd mhion-chànanan a ghleidheadh.

We believe it is important that the proposed provision would pertain specifically to minority and minoritised languages (i.e. languages other than English), in order to protect monolingual 'safe spaces' in which Gaelic and other minority languages are used and which are necessary for their continued social vitality.

Le meas,

Sgioba Misneachd

Misneachd

23 July 2020

