

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM JILLIAN NICOL

Creating new offences relating to 'stirring up hatred' that will apply to additional characteristics other than race will unnecessarily threaten freedom of expression and conscience. Existing legislation already protects everyone in Scotland from threatening and abusive behaviour where such behaviour would be likely to cause "fear or alarm". And well-established anti-discrimination laws protect individuals with protected characteristics from discrimination and send the clear signal that such discrimination is unacceptable.

Criminalising "abusive" in addition to "threatening" behaviour poses a serious risk to freedom of expression by promoting the idea that there should be a right not to be offended.

Removing the necessity of proving intent in 'stirring up' offences may result in people being prosecuted for a hate crime they did not intend to commit simply for expressing an opinion someone found 'hateful'. The potential sentence for these crimes – up to seven years' imprisonment – makes this particularly important.

The protection of freedom of expression sections in the Bill are substantially weaker than the much more robust equivalent in England and Wales. Free speech provisions in the proposed Bill only protect people from being convicted "solely on the basis" that behaviour or material "involves or includes discussion or criticism of religion or religious practices". Complainants will be likely to argue that speech they dislike is "abusive" and "likely" to stir up hatred, and that it does not "solely" involve criticism or discussion of religion.

Abolishing the blasphemy law is to be greatly welcomed, but these additional offences, particularly where they relate to religion, may result in the return of a 'blasphemy law by the back door'.

Jillian Nicol
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