This document contains written submissions of evidence received from other organisations not attending the Committee meeting on 22 February 2021 (Annex A) and individuals (Annex B).

Submissions which did not comment significantly on, or relate specifically to views on, the proposed amendments have not been published as was made clear in the Committee’s call for views, which stated that:

“The Committee will not publish any submissions that do not relate to the amendments on freedom of expression. This is because the Committee has finished its consideration at Stage 1 and of the Stage 2 amendments.”

Submissions which were identical or very similar in nature have also not been published due to the time available for these to be processed. This is in line with the Privacy Notice referred to in the call for views which states:

“There may be a few situations where we may choose not to publish your evidence or have to edit it before publication for practical or legal reasons. For example, when we have received an extremely large quantity of submissions or where we receive a group of submissions which say similar or the same things.”

Clerks to the Committee
February 2021
About the EHRC

The Equality and Human Rights Commission is the national equality body for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission.

Background

We support the general approach taken by the Scottish Government and the Justice Committee in choosing to create a catch-all freedom of expression provision in the Bill. We have previously shared our concern that an approach which makes different provision for different individual characteristics will lead to a fragmented conception of freedom of expression in the Bill. Such fragmentation would in our view be contrary to the stated policy intentions of the Bill, to consolidate and bring clarity and consistency to hate crime legislation.

We had previously proposed a provision modelled on section 16 of the Marriage and Civil Partnership (Scotland) Act 2014. We acknowledge concerns that this lacked the specificity necessary for criminal law and welcome the efforts of the Government and the Committee to agree a provision with broad support.

The Government’s options

There are two formulations that are common across the Government’s options:

1. “behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes [X]”, where [X] represents further provision; and
2. “discussion or criticism of matters relating to [Y]”, where [Y] represents further provision.

We support both of these formulations. In relation to the first formulation, we believe that the word ‘solely’ is essential if the new provision is not to risk undermining the overall intent of the Bill. In relation to the second, we agree that it is important to make clear that discussion and criticism are protected forms of expression, in line with Convention case law, our own legal framework, and the Rabat plan of action.

Convention rights

While we accept that on its own, a provision modelled on section 16 of the Marriage and Civil Partnership (Scotland) Act 2014 may lack the specificity needed for criminal law, we do not think that a meaningful conception of the breadth of and limits to
freedom of expression can be included in the Bill without reference to the Convention rights. This is because the necessary balancing is clearly framed in Article 10(2) and Article 17 of the Convention. None of the Government’s options make such a reference and in omitting to do so, there is a risk that the right to freedom of expression is not adequately articulated.

**Option 1**

Option 1 encompasses all the characteristics identified in the Bill and applies to sections 3(1) and 3(2) of the Bill. We believe that, for reasons of consistency and clarity, this is desirable.

It also contains additional provision specific to religion at subsections 2(b)-(d), which mirrors subsection (2) of the existing section 11, itself taken from the now-repealed Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. When taken with section 14(5), which makes further provision about the meaning of the religion characteristic, we do not believe this is necessary and that the characteristic of religion can be listed alongside the other characteristics.

**Option 2**

Option 2 applies only to section 3(2) and excludes the characteristic of race. We believe that, for reasons of consistency and clarity, the freedom of expression provision should apply to both 3(1) and 3(2) and include all characteristics.

It also contains additional provision specific to religion at paragraphs (b)-(d). We do not believe this is necessary for the reasons outlined in relation to option 1.

**Option 3**

Option 3 encompasses all the characteristics identified in the Bill and applies to sections 3(1) and 3(2) of the Bill. Its treatment of characteristics is consistent and clear, which we believe is desirable.

**Option 4**

Option 2 applies only to section 3(2) and excludes the characteristic of race. As described in relation to option 2, we believe that, for reasons of consistency and clarity, the freedom of expression provision should apply to both 3(1) and 3(2) and include all characteristics.

**Sections 11 and 12**

Following stage 2, there remains standalone freedom of expression provision in sections 11 (relating to religion) and 12 (relating to sexual orientation). We believe that adoption of any of the options put forward by the Scottish Government would remove the need for sections 11 and 12.

It is not clear to us whether it is the Government’s intention to move amendments to delete sections 11 and 12 should an amendment based on one of these options be agreed. We believe it should.

**Conclusion**
In our view, option 3 – insofar as it goes – represents the most desirable approach for reasons of consistency and clarity. However, we do not believe that it is sufficient and that it should therefore be supplemented by reference to the Conventions rights (whether modelled on the Marriage and Civil Partnership (Scotland) Act 2014 or not). We further believe that should option 3 – or any of the other three options – be adopted, sections 11 and 12 should be removed from the Bill.
Thank you for the opportunity to provide our views on the freedom of expression amendments proposed by the Cabinet Secretary for inclusion in the Hate Crime and Public Order (Scotland) Bill. While we are unable to attend the meeting on 22nd February 2021 to discuss this, we would like to raise the following suggestion around freedom of expression.

CRER met with the Cabinet Secretary on 13th February 2021 to discuss the provision for freedom of expression. We wondered if “discussion or criticism” should be preceded with the word “reasonable”, as we outlined to the Cabinet Secretary after our meeting via email. This would be to ensure that there is an objective test around what is determined to be “discussion or criticism” and to prevent subjective judgements. In our understanding, this would be different to a reasonable person test that is already present in the Bill.

However, we strongly urge the Committee to consult with the Equality and Human Rights Commission (EHRC) before a decision is reached on these issues. We would also want to be reassured that any amendments relating to provisions for freedom of expression would not have unintended consequences.

We hope that you consider these views, and we would be happy to discuss these issues further as the Bill progresses into Stage 3.

Yours sincerely,

The Coalition for Racial Equality and Rights
Christian Institute

The Christian Institute’s concerns relate to free speech around three protected characteristics: religion, sexual orientation and transgender identity. Each of these involves debate and disagreement in society in a way that other protected characteristics do not, and they therefore warrant individual free speech safeguards. Providing clauses specifically for these protected characteristics is not to target people for hatred but to reflect the reality that ideas, policies and practices connected to these characteristics are hotly debated issues in our society – and issues on which disagreeing is often labelled hatred.

A free speech clause is unnecessary for the other protected characteristics, and a general clause covering all or most of them risks undermining the credibility and effectiveness of the free speech safeguards. Stirring up racial hatred has been an offence for decades and the absence of a free speech clause has not been problematic.

**Religion** should have the additional provision included in options 1 and 2. We welcome the amendments made at Stage 2 to strengthen the original section 11. As an organisation, we have for many years campaigned for robust free speech around religion and belief. We defend the right of others to strongly disagree with, insult and even abuse our beliefs. We do not ask for free speech rights that we are unwilling to give to others.

For the purposes of freedom of speech, matters relating to sexual orientation and transgender status are closer to religion than to race. No one can doubt that there are hotly debated issues of morality and politics that centre on these two areas. The freedom of speech protections should therefore be closer to those governing religion than those governing race.

The four options offered by the Government all say the exact same thing about transgender identity and sexual orientation. So, on the most contested issues of all, we are only being presented with one option. More options should be considered.

On **sexual orientation**, we are deeply disappointed that the Government is abandoning the free speech clause they proposed in section 12 of the Bill. This closely parallels language that has worked well in England and Wales for over a decade. There is no evidence that it has prevented prosecution of behaviour that was deserving of criminalisation. The dropping of the original section 12 appears to be based on a misrepresentation of the effect of the section. It is a mistake to water down the protections for discussions around sexual orientation. The Government’s proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. This is far vaguer than section 12, which specifically protects discussion or criticism of “sexual conduct or practices”. The ability to urge people to change their sexual behaviour is essential to protect the free speech of Christians, for whom changing behaviour is a core belief. Equating this with ‘conversion therapy’, as some activists are doing, is wrong and dangerous.
On transgender identity, the Government could and should go further. Explicit protection for free speech about transgender identity is essential because it is such a disputed issue. It must not be a criminal matter to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman. Since the Cabinet Secretary states in his correspondence that expressing the belief that sex is immutable would be covered by the free speech clause, why not include this level of specificity in the section? This assurance is necessary in an area where the mildest comment quickly draws accusations of transphobia. The reaction to the tabling of the Government’s amendment demonstrates the importance of clear free speech safeguards on this issue.
Free to Disagree

Thank you for the time you have spent scrutinising the Hate Crime and Public Order Bill over the last ten months. It has, evidently, been a challenging task. In order not to overburden you, I will endeavour to keep my submission on the proposed Freedom of Expression (FoE) provisions short.

I represent the Free to Disagree campaign, a coalition of various groups formed out of concern that the draft legislation could undermine freedom of expression. The danger of this was particularly acute when the bill was first introduced. We commend the Scottish Government’s move to restrict the stirring up offences to ‘intent’ only and remove provisions on theatre performances and ‘inflammatory material’. While we still think free speech would be safer if Part 2 was dropped, we recognise these concessions were made in good faith in response to the many concerns that have been expressed.

We also welcome the move to insert a ‘reasonable person test’ in relation to the term ‘abusive’. This clarifies what abusive is taken to mean and brings the proposed offences in line with the characterisation of that term in the Criminal Justice and Licensing Act. The police and prosecutors asked for further clarity and this change gives them the clarity they need. In turn, this will aid the public’s understanding of the thresholds involved in the stirring up offences and decrease the likelihood of improper or vexatious reporting.

Free to Disagree has expressed concerns, most-recently in a letter to parliamentarians, that the shape of a new, ‘catch-all’ FoE provision could fall below what is necessary to safeguard democratic freedoms. We urged caution and suggested that more parliamentary time be afforded to this aspect of the proposals. Unfortunately, the shape of the proposals leaves these concerns undiminished. Options 1 and 2, which allow ‘expressions of antipathy, dislike, ridicule and insult’ towards religion and belief, but only ‘discussion and criticism’ of the other characteristics listed. Robust free speech should be allowed when it comes to religion and belief but why not also other topics that are the focus of robust, debate?

Over the last few months, I have met several women who have faced shameful abuse and vitriol for venturing opinions on transgender issues and policy proposals such as reform of the Gender Recognition Act. It seems unlikely to me that protecting mere ‘discussion and criticism’ of transgender identity would afford the degree of free expression necessary to allow people to oppose such policy proposals and question the safety and efficacy of certain beliefs and practices pertaining to transgender identity.

Trans people are, of course, entitled to the same rights and protections as anyone else in society. However, beliefs and practices associated with transgender identity must be open to scrutiny and debate - even if this is uncomfortable. That is the price of living in a free society – accepting the right of others to rail against one’s own most-cherished beliefs.
Options 3 and 4 suggest allowing ‘discussion and criticism’ of all the characteristics listed under the stirring up offences. Whilst this wording would work for characteristics such as race, age and disability, it would not be robust enough to protect debate around other characteristics.

On religion, people have very strong views which must be protected. The right to proselytise and urge others to cease holding certain beliefs is also an historic right. ‘Discussion and criticism’ is not a suitable articulation of these freedoms.

On the characteristic of sexual orientation, faith communities have strong views about marriage and sexual conduct outside the confines of traditional marriage. These views are undoubtedly offensive to some groups. ‘Discussion and criticism’ is, again, an inadequate threshold if the expression of such views is to be properly protected.

Finally, on transgender identity, many women have strong views about the practical and political implications of the demands of activists. There is a risk that these views will not be protected by the mere terms ‘discussion and criticism’.

To be clear, I agree, of course, that individuals must be protected from harassment and abuse. However, beliefs and ideas should be open to the strong debate and even derision. As Lord Justice Sedley famously said:

"Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

I have heard MSPs on every side of the chamber articulate a similar understanding of free speech and I would ask you to consider carefully – ‘are the free speech provisions before us today truly in keeping with this?’

In order to solve the problems with these provisions, and ensure that no one characteristic is ‘singled out’, I suggest the wording below would make clear that robust expression about beliefs and practices (and therefore not attacks on individuals) is acceptable under Part 2.
Police Scotland

Police Scotland has repeatedly emphasised the importance of 'no hierarchy of discrimination'.

We have expressed this view in Police Scotland's successive submissions to public consultations on the review of Scottish Hate Crime Legislation (i.e. to Lord Bracadale's review consultation, then again to the Scottish Government review consultation on Bracadale's recommendations, and then again to Scottish Government consultation on its draft Hate Crime Bill proposals).

Police Scotland suggests the option that gives all the equality characteristics the same, equal level of protection regarding freedom of speech.

The option that appears to offer no hierarchy at all is Option 3.

Option 3 is as follows:

**Option 3**

**Protection of freedom of expression**

(1) For the purposes of—
(a) section 3(1), behaviour or material is not to be taken to be threatening, abusive or insulting,
(b) section 3(2), behaviour or material is not to be taken to be threatening or abusive, solely on the basis that it involves or includes discussion or criticism of matters relating to a characteristic mentioned in subsection (2).
(2) The characteristics referred to in subsection (1) are—
(a) age,
(b) disability,
(c) race, colour, nationality (including citizenship), or ethnic or national origins,
(d) religion, lack of religion or, in the case of a social or cultural group, perceived religious affiliation,
(e) sexual orientation,
(f) transgender identity,
(g) variations in sex characteristics.
National Secular Society

Summary
1. The amendment must at least protect “expressions of antipathy, dislike, ridicule or insult” towards religious beliefs or practices. Whist we share the aspiration of building a more equal and inclusive Scotland, we have warned from the outset that aspects of this bill are excessive, unnecessary and represent an unacceptable erosion of freedom of expression. The abolition of the common law offence of blasphemy is a long overdue advancement for human rights. It will however be fundamentally undermined by the introduction of vague ‘stirring up’ of hatred offences without appropriate robust freedom of expression protections.

Additional protections for religion
2. Our primary concern regarding the Hate Crime Bill is that freedom of expression around religion or belief is not unduly restricted.

3. We are therefore alarmed that two of the four amendment options fail to include the additional protections for religion already agreed to at stage 2.

4. Any option chosen must include the additional protection to broaden the religion free speech clause to protect “expressions of antipathy, dislike, ridicule or insult” towards religious beliefs or practices.

5. Given this amendment was already agreed to by the Justice Committee to at Stage 2, we are at a loss to understand why two of four proposed options omit it – reopening, what was, an apparently settled matter.

6. As acknowledged by the Committee, the additional protection is a reasonable response to the overwhelming written and oral evidence received by the Committee from a broad range of religious, non-religious and secularist groups. The consensus of opinion amongst MSPs and virtually all civil society groups is that the additional protection is necessary to protect the fundamental right to free speech. It would also bring the provisions more in line with comparable public order laws concerning stirring up of hatred on grounds of religion in England and Wales.

7. It is vital that the wide consensus and strong support for this approach is reflected in the legislation. A free speech clause covering religion that only protects “discussion or criticism” does not go any near far enough to protect robust debate, comedy and commentary about religion.

8. If stirring up offences are to be introduced, they must be accompanied by a robust protection of freedom of expression clause that make clear that citizens are free to discuss, criticise, mock, lampoon, insult, ridicule and refute all ideas, beliefs and practices in the strongest terms.

Wider freedom of expression concerns
9. More broadly, we remain deeply concerned at the prospect of hate crime laws which do not allow for the most robust protection of free speech – particularly on issues which are highly contentious. People must have a right to speak their mind without fear of prosecution.

10. A free speech protection that protects only “discussion or criticism” offers limited protection and risks have a chilling effect on people’s right to freely discuss and debate controversial ideas.
11. Our vision for an open secular democracy is underpinned by the fundamental human right to free speech. Human flourishing and democracy itself are dependent on the possibility of receiving and imparting information and ideas. This freedom is not only applicable to expressions that are favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of the population, in accordance with Article 10 of the European Convention on Human Rights. Any provision to protect freedom of expression should reflect this. We fear the protections offered here fall short.

Procedure
12. We are alarmed that stakeholders have been given just 96 hours – or two working days – to respond to a consultation on important freedom of expression amendments to a highly contentious piece of legislation.

13. Many stakeholders and members of the public will not have been aware of the call for views or have had any opportunity to respond – and so will have been side-lined and disenfranchised from the democratic process.

14. Given the acknowledged sensitivities and complexities of this area, we are concerned that this piece of legislation is being rushed through to meet a deadline before the Holyrood elections in May. Law made in haste risks having unintended consequences. We therefore suggest it would be prudent to defer scrutiny of the stirring up hatred offences until after the May election.

About the National Secular Society
The National Secular Society is a not-for-profit nongovernmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture. We promote free speech as a positive value.
Scottish Coalition on Learning Disabilities

To whom it may concern,

At SCLD we have been contacted asking for submissions regarding the draft amendments regarding freedom of expression in the hate crime bill. While we would have wished to submit a full written response to this given the time scales, we will be unable to do this.

Despite this we highlight some concerns and ask for these to be fed into this process if possible:

- SCLD has concerns that this amendment could potentially contravene article 8 of the UNCRPD, we believe it is important we seek to future proof legislation now for any future incorporation.
- If this amendment is to be included in the Bill, SCLD would be keen to seek assurances that public awareness raising campaigns on protected characteristics, the barriers these groups face, and their rights be carried out in Scotland. This should include public awareness raising on learning/intellectual disability. Furthermore, we would be keen to seek assurances regarding commitments to produce media guidance on responsible reporting on protected characteristics.
- SCLD would also highlight our concern regarding the use of the word criticism of groups with protected characteristics, while we recognise this won't be the intention, we believe this could be read to endorse criticism. We would therefore ask that some further consideration is given to the appropriateness of using that word in the proposed amendment regarding freedom of expression.
- SCLD asks that time is taken to review the recent research from Philippa Wiseman and Nick Watson on the experience of people with learning disabilities of hate crime and violence. We would ask that any potential negative consequences of the freedom of expression amendments be considered. For example, could an amendment such as what is being proposed further serve to undermine and devalue people with learning disabilities in our society?

"Because I’ve Got a Learning Disability, They Don’t Take Me Seriously:" Violence, Wellbeing, and Devaluing People With Learning Disabilities - Philippa Wiseman, Nick Watson, 2021 (sagepub.com)

I hope these comments are helpful and can be included in the feedback where possible.
I refer to the above and thank you for inviting the Scottish Police Federation (SPF) to submit evidence on the potential freedom of expression (FoE) clauses notified on the 18th February. Given the time constraints placed upon this limited consultation, it has not proved possible for the SPF to garner views beyond our cadre of permanent officials. We note the consultation is exceptionally narrow in its focus and our comments are constructed accordingly.

As a general observation the SPF notes that the debate on what tests are to be applied to determine criminality have focussed on our courts. That is understandable, but does little to address the inevitable policing challenges we consider present themselves a long time before formal court proceedings.

We reiterate comments given in our initial response, as well as in oral evidence that there is substantial potential for many more people coming to adverse police attention as a consequence of elements of this legislation, regardless of potential FoE provisions under consideration. The potential impact of this should not be understated.

If ever a piece of legislation has demonstrated that opposing views are met with intolerance and all too readily branded as hate, then the Hate Crime and Public Order (Scotland) Bill has done precisely that.

We note Lord Bracadale supported common FoE clauses across all protected characteristics, to avoid any kind of hierarchy of protected characteristics. We support that approach. We consider that any suggestion the options presented do that (with a specific carve out for additional protections covering religion) to be a particularly narrow reading of Lord Bracadale’s comments when considered against the totality of his evidence.

We consider that limiting FoE clauses encompassing beliefs, to religion only, to be extremely problematic. In our initial written submission, we commented on the reluctance of individuals to enter the trans debate over fears of being labelled as hateful.

In our oral evidence we expanded on the challenges of applying objective tests to issues that were far from immutable, like religion.

We cannot ignore the elephant in the room and that is that in the trans debate, opposing views are based essentially on irreconcilably different opinions. Even in composing this sentence, the SPF recognises that there are those who will consider their own position on this subject to be immutable.

We therefore consider that limiting FoE clauses to only encapsulate “discussion or criticism” (and not to allow the freedom to extend to “expressions of antipathy, dislike, ridicule or insult towards ... beliefs, not holding of beliefs ...” to be inherently problematic. We consider that entirely contrary to the assurances provided that merely being offensive was not to be criminalised, the likely consequence of the clauses as drafted is that by default, it will be.

Whilst we can all agree that offence is undesirable, even when intended, we consider that parliament either needs to follow the approach of commonality as recommended by Lord Bracadale, or be explicit that merely being offensive will not be considered a criminal act.
As we stated in our initial submission, there are too many people who feel that to be offended is a police matter. Whilst the potential for the offensive to be rebranded as threatening or abusive will not be overcome, a clear legislative position following either of the approaches set out above, will at least give the police service some clear interpretative breathing space in which to be able to practically manage the asks of the Bill.
Edinburgh Secular Society

We are shocked and exasperated to learn of this government U-turn on a settled position, given what we understood to have been unanimous agreement by the committee.

It had been the case that criminal prosecution was to be possible only if behaviour proved to be "threatening or abusive" and “intended” to stir up hatred. Expressions of "antipathy, ridicule, dislike or insult" of religion or belief had rightly been protected. These provisions for free speech were already less robust than equivalent legislation in England and Wales, so we do not understand why two out of four of the new options seem now to threaten criminal sanction for any treatment of religion not limited to polite “discussion or criticism.”

Nobody should be subject to hatred or violence for any reason, but when it comes to “abuse,” the sensibilities of religious belief can sometimes be a little esoteric. Unlike other protected characteristics, it is surely a choice. Someone can declare themselves to hold a specific religious belief one day, choose another faith the next or even abandon religious belief altogether. Each belief position may come with an unique collection of unknowable sensitivities. We have seen horrifying examples throughout the world of violence directed at those who were perceived to have “insulted” religious beliefs. We cannot facilitate this situation in Scotland. People need protection…not their ideas.

There have already been amendments to the hate crime bill around notions of “intent” and “reasonable proof.” These safeguards still might be of little comfort to the writer or artist who, fearing a lengthy, costly and stressful court case, regardless of how bravely they hope the court will find in their favour, will simply not risk it. This will have the result of chilling free expression right from the start.

Any option implemented MUST allow for "expressions of antipathy, dislike, ridicule or insult towards religious beliefs or practices".

We welcome the Government’s concern to protect all citizens from threats of violence but it would be a Brave New Scotland indeed which criminalised Life of Brian.
Association of Scottish Police Superintendents

I write in response to the general call by the Justice Committee for views in relation to the proposed amendments to the Hate Crime and Public Order (Scotland) Bill 2020 covering protection for freedom of expression. It is disappointing that this request offers only 3 days (mostly over a weekend) for response on what is such an important matter.

The Association of Scottish Police Superintendents has already submitted a full response to the initial consultation process for this Bill which included concerns that the Association had with the provisions for freedom of expression as they stood at that time. We note the far from smooth passage of the Bill through Committee to date, which serves to illustrate the strong feelings held on this matter.

The Committee makes a very specific and narrow request relating to 4 options presented by the Justice Minister. Of these 4 options, it is clear to ASPS that option 1 offers the most protection in terms of freedom of expression and so this is the one to which we would offer qualified support. However, the Association still has concerns whether a general provision based around “discussion or criticism” would offer the clear and comprehensive protection for freedom of expression in the areas covered by the Bill that is essential for open debate in a truly democratic and tolerant society.

Whilst we welcome the amendments already made to the Bill which introduce a “reasonable person” test and criminalises only that “stirring up” which is intentional, a general provision for freedom of expression may not capture some of the more nuanced aspects of certain areas of social and civic discourse and would also appear to be a departure, made quite late in the day with time fast running out, from the original notion of more tailored approaches. A more generic approach might be attractive in terms of concerns over the creation of a hierarchy of protection however, as was pointed out in our original submission to the Committee, the distinction made between race and other characteristics elsewhere in the proposed legislation means that such a hierarchy quite clearly already exists anyway.

Whatever protection eventually emerges, it is crucial that all options are fully explored and debated in a thorough and constructive manner to arrive at legislation which does not impinge on freedom of expression (including through self-censorship) and also give the public a clear and unambiguous understanding of what behaviours would be in breach of it.

Some of the debate engendered by the consultation process and the progression of the Bill through Committee has already borne witness to the strength of feeling and concerns held by many and confirms the need for clear and considered legislation. It is obvious that some topics are driving discussions more than others and, whilst it may be discomfiting for some politicians, such fundamental ideological differences go to the heart of the issues at stake and therefore need to be faced head on and be clearly, unambiguously and firmly addressed by legislators. Failure to do so is likely to produce poor legislation which is not fit for purpose.

Stewart Carle, Chief Superintendent, President of ASPS
Paul F Dutton, Klinefelter’s Syndrome Association UK

Thank you for inviting further comment from us; we very much appreciate the opportunity. May I provide a little more clarity on why we believe that VSC (Variations in Sex Characteristics) is still the most appropriate term to use within the new Hate Crime bill and why this newly proposed ‘Variations in Sex Development’ is not suitable such for use.

I can understand that some MSP, having little experience of meeting adults with VSC, may believe that adjusting terminology has little consequence. However please understand that it has taken many years within VSC groups to reach our own shared understanding of suitable umbrella terms and so we have no desire at this point and specifically for one item of legislation to seek to reach agreement over another term, especially one proposed from outside the community.

We have already commented that the majority of support groups find the term DSD (Disorders of Sex Development) both pathologising and stigmatising; it is felt to represent an over-medicalised approach to a set of conditions that affect people in both medical and societal settings.

The effects on our people vary, but they result in bodies that do not reflect typical male or female outcomes. It is the fact that we look different to others in adulthood that sometimes drives the types of incidents that our people might wish to report.

It is clear that the word ‘development’ harks back to that DSD terminology, but I would argue that for adults, who are most likely to be the people reporting hate crimes, their ‘development’ is completed and what remains are a set of ‘non-typical’ bodily characteristics that are ‘normal for them’ in respect of their particular condition.

Indeed it can be argued that the term ‘Development’ could be mostly focused on children, who are less likely than adults to be appellants in hate crime law.

It is worth noting that The United Nations [https://www.unfe.org/intersex-awareness/ ] uses the term ‘Intersex’ and although in our submissions we have used i/VSC (intersex / Variations in Sex Characteristics) we believe that VSC represents a shared understanding acceptable to the majority of UK Support groups.

In Australia the Kids Helpline website has listed information under ‘Intersex Variations’ [https://kidshelpline.com.au/teens/issues/understanding-people-intersex-variations ] and makes the point that intersex variations are a normal and natural variation in people’s bodies. That word ‘variation’ represents what remains to the individual citizen once their development is completed.

VSC is an accepted compromise that diverges from the use of the word intersex in International Human Rights frameworks, rhetoric, legislation and documents.

It has taken considerable time, consultation and coming to understanding within the I/VSC support and advocacy community in the UK to come to a near-consensus on the value and appropriateness of VSC terminology as opposed to the more
pathologising DSD and it seems to us that the proposed ‘Variations in Sex Development’ is an unnecessary distraction when a better term already exists.

For all of the above reasons we strongly believe that for the effectiveness of the new Hate Crime bill this section should retain the VSC (Variations in Sex Characteristics) terminology.
Church of Scotland

1. The General Assembly and the relevant committees in the Church of Scotland have not had an opportunity to consider the detail of the Freedom of Expression amendments. The subsequent comments are, therefore, simply a Church of Scotland view and not the formal position of the Church. They are offered to the Committee to provide a general sense of where the Church is at and hope they are helpful to deliberations.

2. There should be no objection from the Church of Scotland if the law were to explicitly state that discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards religion is protected under a freedom of expression clause. The repeal of the archaic blasphemy law should not be replaced with a crime of causing offence because people happen to believe different things.

3. The provisions in Options 1 and 2 in respect of religion ((c) proselytising and (d) urging of persons to cease practising their religions) are hugely important. Although this is not always comfortable territory, as a faith group we need to understand and accept that criticism, questions and counter-arguments will come our way – but also that there is freedom for individuals and religions organisations to speak and act in a way that conforms to their consciences and beliefs. For this reason, Options 1 and 2 are to be preferred over Options 3 and 4.

4. On the inclusion or exclusion of race, colour, nationality (including citizenship), or ethnic or national origins: there will be particular sensitivities around this, especially as often in the context of hate crime race and religion are viewed interchangeably or are proxies for one other. In 2019 General Assembly of the Church of Scotland expressed its concern about the rise in far-right populism, xenophobia and hate speech, and reaffirmed its view in 2020 that racism is a sin. It is therefore reasonable to conclude race hate crime is a greater concern for the Church of Scotland than for the other protected characteristics. And so, there should be careful consideration of the benefits of amendment Option 2.

5. In his Independent Review of Hate Crime, Lord Bonomy recommended that, in terms of freedom of expression, not only should a provision cover religion, similar to section 7 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, but to also include a protection in relation to sexual orientation similar to sections 29J and 29JA of the Public Order Act 1986. Current clause 12 mirrors 29JA (1) on special conduct or practices, but there is no inclusion of the points raised in 29JA (2) relating to discussion or criticism of marriage which concerns the sex of the parties to the marriage. Could there be additional consideration of further amendments mirroring section 29JA (2) of the Public Order Act 1986.

6. Noting the specific additional point raised by both the Free Church of Scotland and the Catholic Parliamentary Office of the Bishops’ Conference of Scotland in relation to transgender identity; we concur; if religion has a freedom of expression protection then it should be clear that other contested areas of public policy are protected. However unpopular such views may be in the rest of society, legislation should not be used to prosecute people for expression of their opinions or beliefs; the threat of prosecution may well create a chilling effect on free speech.

7. Recognising the desire of the Scottish Government and no doubt the Committee to complete their work on the Bill in the next few weeks prior to the election, there is merit in the argument put forward by the Free Church of Scotland to withdraw the stirring up hatred
offence in Part 2 of the Bill and for further public debate, consultation and scrutiny to take place without the immediate time pressure. Given the need for this extraordinary ‘Before Stage 3’ proceedings, it is clear that the issues remain contested; it is probable that there will never be a unanimous opinion but if delay means more chance for better legislation then it should be seriously considered.

David Bradwell
Women’s Place UK

We welcome the opportunity to provide further evidence to the Justice Committee on the proposed amendments on freedom of expression for the Hate Crime and Public Order (Scotland) Bill.

Firstly, we wish to put on the public record our concern that discussion about such a critical issue – the potential impact of the legislation on Article 10 rights – are being conducted in such a short time frame, and so close to the end of the legislative process.

We share the concerns articulated in the submission by Murray Blackburn Mackenzie. In restricting freedom of expression protections to “discussion and criticism” in all the options it has tabled, we are concerned that the Scottish Government fails to anticipate flashpoints which we know already exist in relation to the debate about sex and transgender identity.

In our Stage 1 written evidence, we provided numerous examples of how, in campaigning to raise awareness of women’s sex-based rights in the UK, WPUK have been regularly accused of being a ‘hate group’ and our events targeted with violent threats and protests. We are concerned that MSPs have not yet fully grasped the deep-seated hostility experienced by feminists campaigning for their rights in the UK over the past few years.

We invite MSPs to reconsider our original submission, the annex to which we reattach here as it provides evidence relevant to consideration of the amendments of the pressure being exerted on feminist campaigners who wish to centre sex as the basis on which women suffer discrimination and disadvantage.

However, we would also like to take this opportunity to draw attention to recent events in Spain, which we think have direct relevance to the Committee’s considerations of the four draft amendments to the bill.

In December 2020, 85 year old Lidia Falcon, current president of the Partido Feminista de Espana (Feminist Party of Spain), was investigated by the Prosecutor’s Office for Hate Crime and Discrimination, together with the General Directorate of Equality of Catalonia, in response to a complaint from Federacion Plataforma Trans (Trans Platform Federation) of Spain.

A practising lawyer, Falcon spent six decades representing female victims of sexual violence, and is the author of 43 books including ‘The Spanish Man in Search of His Identity’, ‘In Hell: Being A Woman in Spanish Prisons’ and ‘The New Machismos’. She was imprisoned and tortured by the Franco regime.

She had voiced her concern about the potential impact of policies based on transgender identities on the rights of women and children. As feminist writer Raquel Rosario Sanchez wrote in December 2020: “In particular, Falcon has been resolute in her opposition to bills addressing this issue and the instrumentalization of children for political purposes by the trans community, from which experimental medical treatments with boys and girls are promoted in ‘gender clinics’.”
Whilst it emerged last week that the investigation into Ms Falcon had been dropped, it nonetheless reveals how easily an individual can find themselves caught up in the criminal justice system for making entirely legitimate and lawful statements.

On Friday last week (19 February), an effigy of the Spanish Deputy Prime Minister Carmen Calvo was found suspended from a tree in the Plaza 8 de Marzo in Santiago de Compostela. It was reported in a newspaper article that she had been targeted due to her criticism of a law prepared by the Minister for Equality, known as ‘Trans Law’. Yesterday (20 February) Calvo tweeted: ‘Ni la violencia ni las amenazas tienen cabida en una democracia. Asi no.’ (Translates as: ‘Neither violence nor threats have a place in democracy. Not that way.’)

We urge members of the Justice Committee to take very seriously the need not to facilitate using “hate” as a way to target women who centre sex as the axis of women’s oppression.
Sikhs in Scotland

Sikhs in Scotland is the national advocacy body for Scottish Sikhs, relaying our views, needs and concerns to parliamentarians and policy makers. We are also members of Sikh Council UK, the representative, collective voice for Sikhs across the UK. Our charitable activities are wide-ranging including:

• The establishment of The Sikh Food Bank, which has distributed over 100,000 meals across Scotland since March 2020,
• Civic events including the Scottish Sikh Heritage Month to promote awareness & understanding,
• Working in partnership with schools, colleges, and universities, to tackle bullying and discrimination by providing Sikh educational resources for educators.

Sikhs in Scotland are supportive of the general, underlying principles of the Hate Crime Bill. We have sadly had to deal with instances of Sikhs being the targets of hate crime because of our race, ethnicity, and religion. These attacks are sometimes perpetrated not against an individual but our institutions too. In 2015, Glasgow's Central Gurdwara was vandalised with anti-Sikh racist graffiti and in 2018, Edinburgh's Gurdwara was hit with a petrol bomb attack. The history of the Sikhs is replete with our endeavours to challenge authoritarianism and stand up for the voiceless - we stand with all communities against hate crime, wherever it exists, and whoever is the target.

It is clear to see the due diligence with which the Scottish Parliament is synthesising this Bill and welcoming input from across civic Scotland. We note the amendments already made in relation to Section 5 of the Bill “Possession of Inflammatory Material” and we welcome the revisions made to the “Stirring Up” offences. We understand the delicate balance required to preserve the good intentions of the proposed Bill without abrogating the fundamental rights of citizens. In a modern democratic society, freedom of speech is sacrosanct.

We believe that the Bill would benefit from a freedom of expression clause. When crafting this freedom of expression clause, detailed discussion on the boundaries of free expression must be clearly elucidated. This law is the basis upon which the people of Scotland are going to be policed – the Parliament must probe closely how this Bill could be deployed and consider what the consequences of the Bill will be on freedom of expression in Scotland. In a democratic society, free speech, discussion, and genuine debate/criticism should be guaranteed to be aired robustly. A Freedom of Expression clause that covers these characteristics is to be welcomed.

Of the options proposed by the Scottish Government, we would prefer Option 2 or Option 4, which do not include a Freedom of Expression clause that covers race. It is our view that the Stirring Up Offence for race has existed in Scotland, and across the UK, for 35 years, without controversy and has contributed positively to reducing racism in society. We are not persuaded that there is a requirement for any freedom of expression clause to be inclusive of race and we believe that to do so in this Bill would be a retrograde step and threaten years of success from anti-racism measures. We agree with the Committee's assessment in its Stage 1 report, that
there remains a clear justification for treating race distinctly due to the historic and systemic nature of racism.

I would like to conclude by stating the importance we attach to this Bill in sending a very clear message that hate crime, in any form, is unwelcome in Scotland. I hope our submission will be informative to your deliberations. If you should require any further information or for us to make Oral representations, we will seek to make a representative available if possible.

On behalf of Sikhs in Scotland,
Network of Sikh Organisations

This submission is supplementary to our original REF: J/S5/20/HC/1756 dated 17th September 2020 and our 2nd submission dated 16th November 2020 REF: J/S5/20/HC/1771, which followed the oral hearing on 10th November 2020 in which our Deputy-Director Hardeep Singh gave evidence to the Justice Committee alongside several other organisations.

This 3rd submission is in response to consideration of options tabled for a new overarching free speech clause, which has been proposed by the Secretary for Justice.

1.1 Previously agreed clause for protecting free speech when it comes to matters of religion and belief

We are surprised that only two of the options offered for review as a ‘catch all’ free speech provision by the Secretary for Justice, include an already agreed amendment when it comes to protecting free speech when discussing matters of religion and belief. This was approved unanimously by the committee last week and something we raised along with others in oral evidence to the Justice Committee, and in our previous written submissions. The new and controversial ‘stirring up hatred’ offences must include free speech clauses to protect speech beyond merely ‘criticism’ and ‘discussion’ of religion. The previously agreed amendment would have provided greater protection to expressions of ‘antipathy’, ‘ridicule’, ‘dislike’ or ‘insult’ of religion or belief and brought this free speech protection (in the Hate Crime and Public Order Bill) in line with an equivalent clause in section 29J of the Religious Hatred Act 2006i (England & Wales).

During the oral evidence session on 10th November 2020 Anthony Horan Director, Catholic Parliamentary Office of the Bishops’ Conference of Scotland, Neil Barber, spokesperson for Scotland, National Secular Society (NSS) , Kieran Turner, Public Policy Officer, Scotland, Evangelical Alliance, and our Deputy-Director Hardeep Singh all supported the echoing of freedom of speech provisions in English law, when it comes to religion and belief.ii This was later agreed as an amendment by the committee. It is frankly remarkable how this now appears to have been rescinded in two of, ‘four options for freedom of expression provision.’iii We are not alone in our astonishment and disappointment at this development – our allies in the Free to Disagree Campaign, the NSS have rightly described this development as ‘perplexing and farcical.’iv

1.2 More time is required to consider the ‘catch all’ free speech clauses

We are alarmed by the speed in which this critical part of the public consultation is now being conducted. Our Deputy-Director was a signatory to a letter calling for deferring scrutiny of the draft stirring up hatred offences proposals until after the May election.v This stage of the public consultation was announced on 18th February 2021, and evidence in response to the ‘catch all’ free speech provision has been given the deadline of 10:00 Monday 22nd February 2021. This is only two working days and simply not sufficient notice to provide these ‘catch all’ free speech clauses
the attention they deserve. There are also questions as to why the free speech defence for religion and belief (in two of the proposed provisions) which mirrors English law, has not been expanded to other protected characteristics in which only ‘discussion or criticism’ is protected. This not only creates a clear hierarchy of free speech defences but puts those who for example, want to air strong opinions on transgender issues/women’s rights in serious difficulty if this legislation is enacted.

1.3 Parliamentary scrutiny and procedure on previously agreed free speech clause for religion and belief

We would also like to understand the mechanism and process by which the previously agreed free speech clause for religion and belief, has essentially been shelved in all but two of the proposed ‘catch all’ clauses. It would indeed be helpful if an explanation is provided by the Secretary for Justice during the oral evidence session scheduled at 14:30 on 22nd February 2021.
Stonewall Scotland

1. Stonewall Scotland welcomes the opportunity to provide written views to the Justice Committee on the options for freedom of expression protections for the Hate Crime and Public Order (Scotland) Bill that have been proposed by the Cabinet Secretary for Justice.

General comments on freedom of expression

2. Throughout the Justice Committee’s consideration of this Bill, we have strongly opposed the freedom of expression protection in relation to sexual orientation (section 12) and the amendments that were proposed at Stage 2 (but later withdrawn) to introduce a specific free speech protection on transgender identity.

3. We recognise that there is strong appetite from some stakeholders for clauses in the Bill which re-affirm the right to freedom of expression. However, it is worth noting that regardless of such clauses, the Bill will have to be compatible with Article 10 of the European Convention on Human Rights, and despite these clauses, behaviour or material which meets the high thresholds of the stirring up offences outlined in section 3 would still be regarded as an offence.

4. Our recommended approach, considering the will of stakeholders and Members for there to be some form of free speech protection in the Bill, has been for a general freedom of expression protection which applies consistently across the characteristics, does not reference specific behaviours, and re-affirms Convention rights to freedom of expression. We submitted supplementary evidence at Stage 1 with other equalities organisations, proposing to replace the specific freedom of expression protections (sections 11 and 12) with a general freedom of expression protection.

5. We therefore warmly welcome that the Scottish Government and Justice Committee members have been working together to develop a general freedom of expression protection to apply across the characteristics, and welcome the options proposed by the Cabinet Secretary.

Four options for freedom of expression provision

6. We are content with the options proposed by the Cabinet Secretary, and welcome that they do not contain the features we have been primarily concerned about with other protections and proposals, namely (1) singling out specific characteristics over others, and (2) explicitly referencing non-exhaustive lists of ‘permissible’ behaviours and forms of speech relating to characteristics. In this regard, these options are a significant improvement on the existing free speech protection on sexual orientation, and the previously proposed free speech clauses for transgender identity.
Application across the characteristics

7. Stonewall Scotland does not support the approach of singling specific characteristics for free speech clauses, as was the case with sexual orientation in section 12, and the protections proposed at Stage 2 in relation to transgender identity. Such an approach suggests that discussion or criticism of certain groups, such as LGBT people, is more justifiable or permissible than that of other characteristics.

8. If the purpose of freedom of expression protections is to provide a message of reassurance to those concerned about the impact of the new stirring up offences on their freedom of speech, rather than to change the legal thresholds, it is important that such protections apply across the characteristics that the stirring up offences cover. It is further important to consider what ‘message’ is being sent by such provisions to the marginalised groups that the Bill is intending to protect, in addition to that being sent to those concerned about the impact of the Bill on their freedom of speech.

9. It is therefore positive that in the options proposed by the Cabinet Secretary, sexual orientation and transgender identity would be treated in the same manner as age, disability, variations in sex characteristics, and in some of the options proposed, race and religion.

Scope of the protections

10. We are content that the proposed options would outline that behaviour or material is not to be taken as threatening or abusive solely on the basis that it involves or includes “discussion or criticism of matters relating to” sexual orientation, transgender identity, and other characteristics. We are reassured by the comments provided in the overview of the annex to the meeting papers, which make clear that where discussion or criticism is nevertheless threatening or abusive and intended to stir up hatred (for example, towards trans or LGB people), and can be proven beyond reasonable doubt by a Court to have met the high thresholds of the offence, such a clause would not preclude a prosecution being made with respect to the stirring up of hatred.

11. In some options proposed, the free speech protection in relation to religion extends beyond “discussion or criticism” to include “expressions of antipathy, dislike, ridicule or insult”. We do not have a view on the particular approach taken on religion, however we would strongly oppose any moves to extend such an approach to the other characteristics. This would be deeply inappropriate, as it could be seen to justify or encourage ridiculing people based on their sexual orientation, transgender identity, or disability, for example.

Referencing specific behaviours and speech
12. We are further satisfied that the proposed options in relation to sexual orientation and transgender identity do not include non-exhaustive lists of specific behaviours for each characteristic, unlike the approach currently taken in section 12. This section includes specific reference to the “discussion or criticism of sexual conduct or practices”, and the “urging of persons to refrain from or modify sexual conduct or practices”.

13. We do not believe that referencing specific behaviours or forms of speech that would not necessarily fall under the thresholds of the offence (unless it was threatening or abusive, intended to stir up hatred, and could be proven beyond reasonable doubt) is at all a useful approach. There are many behaviours and forms of speech that could be included in such a non-exhaustive list, and we have been deeply concerned that cherry-picking specific behaviours for explicit inclusion in the legislation would suggest that they are more permissible or protected than others. Such an approach could be seen to give the 'green-light' to behaviours and speech that would cause harm and upset to LGBT people.

14. Replacing section 12 with a general protection that applies across the characteristics and does not reference specific behaviours and speech would importantly remove reference to the “urging of persons to refrain from or modify sexual conduct or practices” in section 12(2)(b). We have been concerned that this appears to condone the harmful practice of ‘conversion therapy’ and could impede future work to ban this practice in Scotland. In introducing one of these four options as an amendment at Stage 3, it is important that this, of course, removes section 12 from the Bill.

15. More broadly, we believe that protecting discussion or criticism on matters related to the characteristics, rather than specific examples of behaviour, would be a more comprehensive and equitable approach, and would ensure the legislation does not date over time as ideas evolve.
Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups. (The Scottish Council of Jewish Communities is SCIO SC029438)

In preparing this response we have consulted as widely as possible given the very short timescale, among members of the Scottish Jewish community.

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Our very strong preference is for option (3), which treats all of the protected characteristics equally.

As recognised by the European Convention of Human Rights, freedom of expression is not an absolute right but must be qualified “as necessary in a democratic society” for, amongst other things, “the protection of the reputation or rights of others”. Proportionality is the key, and legislation should give guidance on how to achieve a proportionate balance. There is a clear distinction between rational and robust argument and criticism on the one hand, and rabble-rousing and provocative abuse on the other. Context, demeanour, vocabulary, and previous conduct all contribute to making that judgement – as is already the case in assessing whether otherwise criminal behaviour is aggravated by hatred. As the Minister has stated, “criticism, including very robust criticism, is in itself not a matter for prosecution”. We are strongly of the opinion that wide-ranging rational discussion, robust criticism, and humour should not be put at risk by measures to ensure the wellbeing of people with protected characteristics.

We are, however, concerned by some of these proposed amendments. Everyone in Scotland should have the right to be, and to feel safe as they go about their daily lives. There must not be any hierarchy of equality. As we stated in our original evidence\(^1\) to the Committee, we were disappointed that the opportunity had not been taken to provide equal protection in the Bill for all protected characteristics, and we are further disappointed that three of the four amendment options proposed by the Scottish Government in relation to freedom of expression would worsen that inequality of protection.

\(^1\) [https://www.scojec.org/consultations/2020/20vii_hate_crime_bill.pdf](https://www.scojec.org/consultations/2020/20vii_hate_crime_bill.pdf)
It is known that hate crime of all kinds is under-reported, in some cases because people fear they will not be believed, in others because they do not think that the police will follow up reports (unfortunately often because of previous negative experience), because victims fear further victimisation if it becomes known that they have reported the attacker to the police, because incidents have become so frequent that they feel reporting would take up too much of their time, or even because incidents are so ‘routine’ that some people have come to regard them as part of ‘normal’ life. The introduction of an amendment providing for different levels of protection for some protected characteristics would only exacerbate this issue. Enshrining discrimination between protected characteristics in the primary legislation would lead people targeted on account of their religion or affiliation or perceived affiliation with a religious group to believe that they are less worthy of protection than others, and that it is not worth reporting incidents because they think that fewer resources will be devoted to investigating reports than would be the case with other protected characteristics.

In particular, options (1) and (2) raise the bar for the protection of “religion, lack of religion or, in the case of a social or cultural group, perceived religious affiliation”. In relation to other protected characteristics, only “discussion or criticism” cannot be the sole basis for demonstrating “threatening, abusive or insulting” behaviour or material. In the case of religion, this is widened so that “expressions of antipathy, dislike, ridicule or insult” are also excluded from being the sole basis to evidence such behaviours.

There are no valid grounds for this distinction; expressing “antipathy, dislike, ridicule or insult” towards transgender identity, particular racial groups, or disability, for example, is no more heinous, and no more hurtful to the people concerned, than expressing the same views towards religion, religious beliefs and practices (including not holding religious beliefs and practices). And there is no intrinsic difference between “urging of persons to cease practising their religions” and urging of persons to cease expressing or “practising” their sexual orientation. Protection against the former is no less important than protection against the latter.

Similarly, but in reverse, “race, colour, nationality (including citizenship), or ethnic or national origins” is no more worthy than any other protected characteristic of the additional protections that would be provided by lowering the bar in options (2) and (4). Permitting “discussion or criticism” as the sole basis for demonstrating “threatening, abusive or insulting” behaviour or material” for just one protected characteristic is inequitable.

Taken together (option 2), the effect of these two exceptions would be to create a hierarchy of protection with “race, colour, nationality (including citizenship), or ethnic or national origins” at the top, and “religion, lack of religion or, in the case of a social or cultural group, perceived religious affiliation” at the bottom.

Any of options (1), (2), and (4) would also perpetuate the anomaly that Jews and Sikhs are protected as racial groups under the Mandla ruling\(^2\), while other religions are not.

\(^2\) Mandla v Dowell Lee [1983] 2 AC 548 HL

http://www.hrcr.org/sfrica/equality/Mandla_DowellLee.htm
Our very strong preference is, therefore, for option (3), which treats all of the protected characteristics equally. The test, which the Minister has confirmed\(^3\) will be an objective test, is equal for all groups. “Discussion or criticism”, it reasonably proposes, should not be the sole basis for regarding behaviour or material as “threatening, abusive or insulting”, and it makes no exception in either direction for any group.

Hatred and discrimination are, sadly, everyday issues for many people in Scotland. Their impact on individuals and communities is long-lasting, and extends well beyond any individual incident affecting others who share the same protected characteristic – whatever that characteristic may be. That is why this legislation matters.

Enabling people to feel safe, and reducing their fear of becoming the next victim of a hate incident, is at least as important as Police Scotland’s objective of “Keeping People Safe”, and effective hate crime legislation is, therefore, important not only in terms of prosecution and punishment, but also serves the demonstrative purpose of enabling society to signal its abhorrence of prejudice and hatred against identifiable groups. The introduction into this Bill of new measures that differentiate between groups, creating a new hierarchy of (lack of) protection would only signal that prejudice and hatred against some groups is less abhorrent than against others.

All groups in society must be able to feel safe as they go about their daily business. To facilitate that, legislation must not legitimise a view that some groups are more worthy of protection, and others less. “Protected characteristics” are not abstract notions. They translate into real people – real individuals, real families, and real communities, all of whom share the same right live their lives in the knowledge and security that each of them is worthy of – and has – equal protection before the law.

\(^3\) Minister’s response to the Justice Committee Stage 1 report, para 14

[https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20201214_Hate_Crime_Bill_SGResponse.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20201214_Hate_Crime_Bill_SGResponse.pdf)
Apostolic Church, UK

Having reviewed the letter from the Justice Minister 17 Jan 2021 concerning the Hate Crime and Public Order (Scotland) Bill, we submit the following response.

Of the four options proposed, we prefer option one as it provides the greatest protection for freedom of expression.

We welcome the amendments in relation to religion and support the full freedom of expression on the topic of religion and belief, in accordance with Article 10 of the European Convention on Human Rights. We ask the Scottish Parliament to ratify these amendments to assure everyone continues to have the freedom to say what they wish about religious beliefs or non-beliefs.

We also welcome the extension of freedom of expression to the other protected characteristics besides those originally identified in the bill.

However, we are concerned that none of the options in the Justice Minister’s letter go far enough to protect freedom of expression.

In particular, we are concerned that the protection specified for speech concerning religion is not equally specified for speech concerning other protected characteristics such as sexuality and transgender identity. It is not clear what is meant by “discussion and criticism”. We recognize the deeply held feelings and the personal nature of issues around sexuality and gender identity. However, our religious beliefs are very personal and central to our identity, yet we welcome robust debate around our religious beliefs including antipathy, dislike, ridicule and insult.

The proposal singles out religious belief for greater free speech protection but does not afford that same protection for speech about other protected characteristics. This does not accord with the principle of freedom of expression. Some of the characteristics protected in the bill are not subject to significant debate in society; others, such as sexuality and transgender identity, are subject to rigorous debate. We urge you to recognize that withholding full protection of freedom of expression on these issues will stifle speech and risk harm to society, including, we believe, upon some of those whom the bill is intended to protect.

With respect to sexual orientation, we feel the proposed amendments weaken the protections outlined in section 12 of the original bill. We favor the original wording. We are also concerned the proposed amendments do not specify protection of discussion and criticism concerning marriage between two parties of the same sex. When same sex marriage was introduced in Scotland, the government assured that no religious body would be forced to conduct such a marriage. With this was the implicit protection of expressing disagreement with this practice on religious grounds.

With respect to transgender identity, we believe robust protection is necessary. The current proposal to allow discussion or criticism of transgender identity is ambiguous and lacks clarity. There are a number of important issues of political debate around transgender identity and it is essential that this debate is allowed to take place. We favour specificity in an amendment protecting freedom of expression in relation to transgender identity and support the previous amendment 82B put forward in the name of Liam Kerr MSP:

Behaviour or material is not to be taken to be threatening or abusive or as stirring up hatred solely on the basis that it involves or includes—
(a) discussion, criticism or rejection of any concepts or beliefs relating to transgender identity,

(b) questioning whether any person should undergo, or should have undergone, a process of gender reassignment,

(c) stating that sex is an immutable biological characteristic,

(d) stating that there are only two sexes,

(e) the use of—

(i) “woman” or “man” and equivalent terms,

(ii) third person pronouns in a way other than that which a person prefers, or

(f) reference to any past name used by a person.

While we recognize the wish to cover freedom of expression under one general clause, we urge you to consider that the proposal does not adequately account for the range of issues relating to each of the protected characteristics. We are concerned that the lack of protection will result in a stifling of speech and open debate, as, some would argue, is already the case throughout our nation and indeed, in our own Parliament, even without this law.

John Warwick Montgomery said, ‘The answer to obnoxious viewpoints must not be that of…endeavouring to wall off its citizenry from falsehood through criminal penalties. To do so smacks of the very totalitarianism one desperately wants to eliminate…. society needs to protect the right to be wrong and insensitive; otherwise, truth can be imprisoned as easily as falsehood.’ We do not believe protecting only discussion or criticism goes far enough in preserving our precious rights of freedom of expression.

With such little time remaining to complete the passage of this bill, we are concerned of the dangers of it being rushed through without due thought and adequate safeguards. Few freedoms are as valuable as freedom of expression, and every effort must be made to safeguard it. Therefore, if Parliament does not find a robust and satisfactory solution to issues of freedom of expression, we ask that it now consider withdrawing the stirring up hatred offences in Part 2 of the bill to allow more detailed consideration and discussion and to ensure freedom of expression provisions, which enshrine free and open debate, are afforded the scrutiny they require.
Free Speech Union

1. The Free Speech Union would like to make a brief submission on the options for protection of free speech proposed for inclusion in the Hate Crime and Public Order Bill.

2. If we are limited to a choice between the four proposed formulations contained in the Call for Evidence, our preference is for Option 1. This is because it gives the greatest scope for free criticism, especially in that it specifically protects not only criticism or discussion of religion, but expressions of antipathy, dislike, ridicule or insult towards religion, etc.

3. However, we observe that all four proposals are surprisingly tightly drawn, in that they do not protect particular kinds of speech as such, but merely state that they are not to be taken to be threatening, etc, merely because they involve discussion or criticism of age, disability, religion, etc. In our view this may turn out to be an illusory protection. It will always be open to a court to find some further feature or word which is insulting, etc., in which case the protection will be entirely lost.

4. It is worth remembering in this respect that in this respect the process of decision is likely to take place, not in the calm and intellectual atmosphere of the High Court in Edinburgh, but in the rather more rushed circumstances of court presided over by a possibly overworked sheriff or sheriff depute. In such a case there will be less scope for argument over the vital issue of freedom of speech, and over precisely what it is that allegedly makes what has been said or written threatening, abusive, etc.

5. We would observe that current the English protection for speech about religion (s.29J of the Public Order Act 1986) is wider. It reads:

   “Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

6. No problems seem to have arisen in the application of this approach, and we would urge the Committee to adopt it. Hence we take the view that Option 1 would be much improved if it read something like this:

   “(1) Nothing in this Part shall be read or given effect in a way which prohibits or restricts expression of a type described in subsection (2).

   (2) The types of expression referred to in subsection (1) are—

   (a) discussion or criticism of matters relating to—

   (i) age,

   (ii) disability,

   (iii) race, colour, nationality (including citizenship), or ethnic or national origins,

   (iv) sexual orientation,

   (v) transgender identity,”
(vi) variations in sex characteristics,

(b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards—

(I) religion, whether religions generally or a particular religion,

(ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,

(iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,

(c) proselytising, or

(d) urging of persons to cease practising their religions.”
Society of Editors

The Society of Editors welcomes the chance to respond the proposals being put forward by the Scottish Justice Secretary to provide protections for freedom of expression in the proposed Scottish Hate Crimes Bill.

The Society of Editors has spoken previously of our concerns that the Bill, while on the surface designed to protect vulnerable people, has the potential to devastate legitimate debate and could see pressure groups given a platform to stifle or close down discussion of important issues by a host of individuals and platforms.

The SoE’s stance regarding the protection of freedom of expression is interwoven with its work to maintain a free press and media throughout the United Kingdom.

As part of its work, it seeks to highlight actions which it feels may pose a risk to those aims – and so also to the public’s right to know – either immediately or in the foreseeable future.

The SoE is concerned that any attempts to create laws and regulations that, often with the best of intentions, seek to curtail freedom of expression in an attempt to limit or remove the threat of hate speech can be interpreted in a too draconian manner and lead to limits on press freedom. In the case of the proposed Hate Crimes Bill now being considered by the Scottish Parliament, the SoE’s concerns centre around not just the effect this will have on media based in Scotland but throughout the United Kingdom.

It must be stressed that the SoE understands the need to protect the public from threats of harm through violence and does not condone the use of threatening language. However, as the Justice Secretary has pointed out, just because someone feels language used by another is abusive should not mean their right to speak their mind freely should be curtailed unless, the SoE believes, it passes the threshold to become threatening behaviour.

The SoE’s concerns regarding the freedom of expression proposals being outlined by the Justice Secretary are with regard to the Committee’s suggestions as to how the threshold of what is to be considered unacceptable threatening or abusive behaviour.

The use of the term ‘reasonable person’ to determine whether a threshold has been passed, in particular with concern to whether a comment is considered abusive, is obviously open to interpretation. Who will determine who is a ‘reasonable person’ for the purposes of this proposed law? Who will police its use?

Even today we can see how small but vocal pressure groups can apply pressure to win backing for their cause. What safeguards will be put in place to ensure the litmus test of what or who is considered ‘reasonable’ and when and if that definition changes as society inevitably evolves.
The SoE fears that unless there are safeguards put in place the ‘reasonable person’ test stands every chance of being highjacked and used to silence free speech and penalise a free media.

At the very least, the definition stands the chance of creating a chilling effect of the UK’s media.

With regard to the four options being considered, the SoE cannot support any of these proposals while the matters raised here are not settled. Agreement on what constitutes a ‘reasonable person’ and how this will be protected going forward are paramount, the SoE believes, to safeguard essential freedoms for the public.

Any threat to freedom of expression – a cherished liberty of the UK public – cannot be accepted without the most stringent safeguards that must be fully debated and tested with both the public and the media.

The SoE remains concerned that too little time is available for these matters to be fully considered before the May 2021 elections to the Scottish Parliament.
Professor Sarah Pedersen, Robert Gordon University

I am Professor of Communication and Media at Robert Gordon University, Aberdeen. My research focuses on women’s engagement with politics via the media, and in recent years has focused on women’s online discussion of their sex-based rights and matters relating to proposed reforms of the Gender Recognition Act in both England and Scotland and related legislation, including the Forensic Medical Services (Scotland) Bill and the Hate Crime and Public Order (Scotland) Bill.

My book, *The Politicization of Mumsnet*, was published by Emerald in November 2020, and examines the debate around these questions on the UK’s largest parenting website, which has 10 million unique monthly users, the vast majority of whom are women. In December 2020 I received funding from the Royal Society of Edinburgh to investigate the establishment of what I term a ‘Women’s Cooperative Constellation’ in Scotland. Building on previous work investigating cooperation between women to achieve policy goals in the EU and Scandinavia (Halsaa 1991, Mazur 2002, Woodward 2003, Holli 2008), I theorize that a new type of co-operative constellation – incorporating social media, particularly Twitter and forums such as Mumsnet – has been created around feminist campaigns relating to proposed reforms of the Gender Recognition Act and other legislation in Scotland. The use of social media by this constellation has been further enhanced by the pandemic and related lockdown. I am approaching the end of my initial data-collection stage on the project, having undertaken a number of in-depth interviews with female politicians, academics, journalists, policy experts, leaders of women’s rights organisations and individual grassroots campaigners. This data collection and my earlier work on the discussion of gender-critical views on social media informs my response to the Committee.

My response is also informed by my own experience as an author and researcher on these matters. I was a speaker at the meeting on women’s sex-based rights organised at Edinburgh University in June 2019, during which one of the other members of the panel, Julie Bindel, was physically attacked. Following this, MSPs from all parties in the Scottish Parliament backed a motion condemning violence against women and supporting the right of universities to host complex and
sometimes controversial discussions. The motion also stated that there is no place for violence or threats of violence towards women engaging in public life in Scotland.

On the publication of my book investigating the discussion of politics and feminism on Mumsnet, I was publicly attacked online for researching what I identified as a resurgent women’s rights movement in the UK that has been stimulated in part by plans to reform the Gender Recognition Act. In an international list-serv related to my subject, posters accused me of personally attacking and dehumanising trans people, of working with groups that sought to attack trans people, including For Women Scotland, of promoting a position that was intentional, violent and harmful, and of committing an act of violence by giving oxygen to the gender-critical position on the question. It should be noted that none of my accusers had read my book (which discusses both sides of the debate on Mumsnet). Several of my accusers stated explicitly that they had no intention of reading it. I have little doubt that – had the Hate Crimes Bill now proposed been law – I would have found myself at least being reported to the police. There were calls to remove me from the academic association related to the list-serv. I have lost writing and speaking engagements as a result of these attacks. Whilst this was going on I received messages and emails from other female academics concerned about my mental health, who nonetheless felt that they could not publicly speak out in my defence and who also informed me that they would not consider researching this subject at the present time. Scottish journalists who interviewed me about my book frequently used the word ‘brave’ to describe my decision to work in this area and admitted that they were very careful in their own writing on these subjects. We can thus clearly see the impact on academic researchers and professional writers of witnessing accusations of transphobia and hate crime in relation to an academic study which investigated the discussion of feminism and politics on one of the largest female-dominated websites in the UK.

I offer my own personal story to supplement those already shared with the Committee by MBM Policy in their written and oral evidence. My academic analysis of women’s discussion of their sex-based rights and the proposed reforms of the Gender Recognition Act – discussions which were encouraged by both the Westminster and Holyrood governments as part of public consultations – were characterised as violent and harmful. Further stories can be found at the website http://gcacademianetwork.org which contains anonymised individual testimonies of
the suppression of academic freedom to discuss gender identity and sex-based rights at universities, some of which are in Scotland. This website was mass reported as ‘hate’ in recent days, meaning that it is now restricted by some servers, again demonstrating the low threshold for definitions of ‘hate’ on this subject.

My investigation of the Women’s Cooperative Constellation in Scotland around these questions has identified a number of issues relevant to the Committee’s call for evidence, particularly in relation to fears that discussion or criticism of issues relating to women’s sex-based rights could lead to negative consequences and accusations of transphobia and also involve misogynistic attacks. It also highlights the problem of defining transphobia and hate. The majority of my interviewees stated that they had been accused, either on social media or directly by someone they knew offline, of transphobia. Again there was a very low threshold for a definition of transphobia. Interviewees had been accused of transphobia because they had stated concerns about the impact of reforms of the GRA on women’s sex-based rights or the impact of the use of the word ‘gender’ rather than ‘sex in the Forensic Services Bill; or because they had made statements such as defining ‘woman’ as ‘adult, human female’ or stating that sex is immutable.

The majority of interviewees revealed that they had been the subject of misogynistic attacks, either on social media or in real life, because of their involvement in this debate. Many of them made reference to the effect that they feared their experiences would have on other women who wished to join the debate, particularly younger women or women who fear for the impact on their careers. Some of the older interviewees stated that they had made the conscious decision to wait until they were retired before they stepped into the public sphere on this question because they feared that their employers would be contacted with denunciations and demands that they were disciplined or sacked if they spoke on this subject while still employed. Some interviewees reported that their employers had been contacted and they had been forced to close down their social media. One reported an attempt to stop her publisher publishing her latest book. Most reported a wide range of misogynistic abuse: being called a bitch, a Nazi, a TERF, a cunt, a fascist, a white supremacist; being told they were too ugly to be raped; and the receipt of rape and death threats.
There was frequent reference to the treatment of feminist scholars and writers who have spoken publicly on the subject of women’s sex-based rights, such as Professor Kathleen Stock, Professor Selina Todd, and, in Scotland, J.K. Rowling and Jenny Lindsay. Interviewees frequently used the term ‘chilling effect’ to refer to the way in which the experiences of women who have spoken out on these questions has led other women to fear discussing their opinions, even with their own family and friends. There was a clear feeling amongst interviewees that their discussion of these subjects could have serious repercussions, including legal issues. One interviewee referred to ‘people trolling women’s accounts to find anything that they could have them sued about’.

It should also be noted, however, that every interviewee spoke of the positive experiences of being part of this women’s cooperative constellation and of using social media to connect with other feminists. The use of social media for providing a sense of community was particularly noted in the context of the current lockdown and pandemic. It was also noted that social media enables women from throughout Scotland, and those with caring responsibilities or disabilities which tie them to their homes, to engage in this debate.

While I am still at the analysis stage of my data, my initial conclusions suggest that – notwithstanding the Committee’s statement that the new Stirring Up offences can only be committed if an individual intends to stir up hatred – women in Scotland who wish to discuss how legislation and policy impact on women’s sex-based rights are already concerned about entering the public sphere of debate on these subjects. There is already a clear chilling effect, which impacts on both academic freedom in Scottish universities and the wider Scottish civil society, and this can only be heightened by the introduction of this bill. Women are already accused of transphobia, violence and hatred when they engage in this debate – despite the fact that their contributions have been encouraged by a series of public consultations at Westminster and Holyrood. The Committee is assured that an accusation of transphobia ‘on the grounds of discussing on social media and offering criticism towards, say, policies associated with transgender identity or stating the fact that one believes sex to be immutable, could not be regarded, of itself, as behaviour which is threatening or abusive towards trans people’. However, it is my opinion that the Hate Crime Bill will afford opportunities for those who wish to silence gender-critical
feminist voices to use threats of police reports, the possibility of reputational damage and the need to raise the financial and emotional resources to deal with such reporting.

Having researched and published on the subject of the discussion of women’s sex-based rights on social media for some years, I must therefore be in agreement with MBM Policy’s serious reservations about the decision to abandon tailored freedom of expression protections for each characteristic, as included in the equivalent legislation for England and Wales (the Public Order Act 1986) and as recommended in the Bracadale Review. In my view, the approach recommended to the Scottish Government and the Committee by Lord Bracadale, of detailed tailored amendments for each characteristic on the model of the Public Order Act 1986 is necessary and, in introducing the concept of stirring up offences, careful provision needs to be made in relation to freedom of expression. The amount of misogynistic abuse the women in my study had received also makes me question the decision of the Committee not to include sex as a protected characteristic in the Bill at this time. It is also clear that we need robust protection of free speech. The fact that my research has demonstrated that leading female politicians, senior journalists and academics have all suffered abuse simply for discussing the issue of women sex-based rights – and also that MSPs from three political parties on the Committee have expressed their concerns about the tone of the debate around these matters – mean that there must be a chilling effect on ordinary members of the public who wish to discuss these matters.

In my opinion, none of the options suggested by the Justice Secretary offer sufficient coverage, but option 1 is the best of those on offer. It allows for discussion and criticism on all characteristics and provides some protection for people to express antipathy, dislike, ridicule or insult on matters relating to religion. However, the addition of extra free speech provision needs to be extended to all characteristics. There is also a need for a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological fact, academic freedom, campaigns to retain women’s rights in law or to challenge policy changes. These changes are necessary to ensure that all sides of a debate continue to engage in public life in Scotland.
Jim Mackay

Option. In the interests of the Public and of free expression, option 1 in the list of amendments should be applied. Anything else in a free society is unthinkable and very worrying and does this Govt no credit.
Anonymous

OPTION 1 should be the amendment version selected.

Given that we appear to be having this poor quality Law inflicted upon us no matter what, despite it being both unnecessary and unwanted, and possibly in contravention of Article 19 on the UN Declaration on Human Rights, the protections have to be extended as far as possible, to prevent frivolous and/or malicious prosecutions taking up court time and wasting public funds. Protection also needs to be far-reaching as the measure by which possible infringements are to evaluated, the view of a “reasonable” person, contrary to what the Government claims, is a very subjective measure.

[How do the courts define a “reasonable” person? By what measure? IQ? Education? Socio-economic group? Whose responsibility will it be to adjudicate on this? The police, the procurator fiscal, a judge, a jury? I am sure that the White supremacists who stormed the US Capitol on 6th January would consider themselves to be “reasonable” people, and many might seem to be so to their neighbours. On the other hand, atheists would contend that, by definition, ANYONE with a religious faith is NOT “reasonable”. During the current crisis, we have seen that even the views of scientists may not necessarily be “reasonable”. A look at the online comments section of any national newspaper shows that there are a range of quite articulately expressed extreme views amongst people who would otherwise appear to be “reasonable”.

Option 2 gives protection for racial groups which is not enjoyed by anyone else. This is a demonstration of “positive discrimination” which is likely to be counterproductive, and inhibit, rather than promote, the development of an integrated, equal, and peaceful multi-cultural society.

Options 3 and 4 restrict the missionary activities of religious organisations (and also the activities of secular organisations such as The Humanist Society). I am not a lawyer, but I am sure that a case could be made for this being in contravention of Article 18 of The UN Declaration on Human Rights. That the Government of a forward looking country like Scotland in the 21st century should be trailing behind the terms of a Declaration made in 1948 is unbelievable: conforming to this Declaration should by now be the norm, and the minimum acceptable standard, in all “free” countries.
Jeff Stobo

With reference to the Committee’s request for comments on the 4 options published regarding freedom of expression, I wish to record my support for Option 1.
Ian Hamilton

- The additional protection included in options 1 and 2 must be applied for Religious debate.
- There isn’t sufficient protection for beliefs around sexual orientation in any of the options. The freedom of speech protections should be of similar strength to that for religion.
- Watering down the Bill’s protections for discussions around sexual orientation is wrong.
- Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is required to protect free speech for Christians, for whom changing behaviour is a core belief. Therefore why does the Government want to delete it?
- The four options offered by the Government fail to provide anything different in relation to sexual orientation or transgender identity. As these are the most controversial aspects, why are we not being given more options?
- Politically-motivated complainants could easily label disagreement as hatred to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.
Mark Snedden

I’m writing to you to outline my concerns and highlight my preferences on how to move forward regarding free speech provisions.

Having researched its contents in detail, I am concerned about the effect this bill could have on free speech in this country. These are fleshed out in detail below:

- Lord Bracadale’s Independent Review on Hate Crime report discussed at length the need to distinguish between legitimate debate in a free society and mere rabble rousing. This bill in its current form conflates both of these, muddying the waters of what is acceptable and unacceptable. This confusion will breed a reticence to have robust debate which I believe is essential in forming and reforming opinions. An orthodoxy which people are scared to stray from is not a free liberal democracy. We can’t allow Scotland to sleepwalk into this situation.

- The law of unintended consequence is perhaps the best way to describe the ways in which this bill could be used politically as a tool to label disagreement as hatred and thus silence opponents. The mere suggestion of this even 20 years ago in this country would be unthinkable. Why are we toying with this possibility to safeguard those with protected characteristics who are already adequately protected in law?

- Debate currently surrounding transgender and sexuality issues is robust. Those that wish to change thousands of years of custom and precedence have the burden of proof to ensure that their position does not infringe the rights of others. The main issues being the protection of women only spaces and the lack of consent from children under 16 to be prescribed life changing puberty blockers. Those that do not conform to the most ‘progressive’ positions on these issues do not have adequate protections in this bill.

Protections for debate on sexual orientation and transgender identity must be closer to the protections on religion as outlined in option 1.
Murray MacAra

1. I do not understand why religious debate has been singled out. Surely it must have the additional protection included in options 1 and 2.

2. Morality and politics are subject that have always caused great debate. This bill seeks to stifle that debate in a most unhealthy manner. Stopping debate does not stop hate, and it is ridiculous and naïve to suggest it does.

3. The transgender issue is trendy just now. The lobbyists on behalf of that community are particularly strong, witness the justice minister’s inability to state categorically how many genders there are. To prosecute someone for ‘misgendering’ another is an evil that cannot be allowed. Plenty people detransition, would that conviction they put forward be quashed? Compensation paid? Or are we at the whim of prevailing sentiment?

4. The criticism of “matters relating to” sexual orientation is a more liberal wording from the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices”. This cannot be watered down

5. The free speech clauses are required to ensure that complainants who are politically motivated cannot continue trying to silence those with alternative viewpoints. This will lead to nothing but a complete waste of time, for the police, and weaken the position of those who may have a valid complaint. In addition, Lord Bracadale’s Independent Review on Hate Crime emphasised that there was a need to distinguish between legitimate debate and those who seek to cause ‘frustration’, in my view the bill fails to do this.

6. 7 years in prison, for using words someone else disagrees with, is a dreadfully serious sentence and as such there needs to be serious safeguards in place. The bill in its current from does not [provide that.
Alasdair Macleod

I write to you in relation to your consultation on the approach to free speech in the Hate Crime Bill.

As a Scottish Bible believing Christian and an elder in the church I attend this issue is VERY important to me and the Christian Community I am part of.

Justice Secretary Humza Yousaf has put forward four different options for free speech safeguards to be added to the Bill.

The first two options include robust protections for debate on religion, which is important and welcome.

But none of the options give strong enough protection for discussions around sexual orientation and transgender identity. They even propose watering down existing protection in the Bill for speech about sexual orientation. But everyone knows these are hotly-debated issues. It is crucial that freedom to disagree about them is clearly protected in the new ‘stirring up hatred’ offences created by the Bill. Christians have deeply-held beliefs about sexual ethics and behaviour as well as about other religions. Sharing these beliefs should not be at risk of criminalisation.

Free Speech protections for debate on sexual orientation and transgender identity must be closer to the protections on religion.

Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution.

Explicit protection for free speech about transgender identity is essential because it is such a toxic issue. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

The free speech clauses are essential to preventing people trying to use the new law against their political opponents. Parliament cannot afford to get this wrong.

The Government’s proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. This is a step down from the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices”.

Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is essential to protect free speech for Bible believing Christians, for whom changing behaviour is a core belief. Yet the Government wants to delete it.

The four options offered by the Government are not really options at all when it comes to sexual orientation or transgender identity. They all say the same thing. Yet these are the most controversial aspects. Why are we not being given more options?
There is a serious risk that politically-motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.

Under the Bill, a person could face up to seven years in prison for spoken words. This is an extremely serious penalty, so it needs strong safeguards.

Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. The Bill fails to do this.

I urge you to please do the right and sensible thing and make the necessary changes to the bill to safeguard and the uphold the human rights of freedom of speech and freedom of religion in Scotland.
I have read the four options presented by Humza Yousaf as potential amendments to the Bill.

I note that options 1 & 2 give fairly robust protections for debate on religion which is important but none of the options really address the fundamental problem of free debate in a free society.

Mr Yousaf seems to be trying hard to bend towards appeasing those who are sensitive to criticism and are intolerant of any adverse comment about modern issues of sexuality. There is a worrying trend not just by individuals but by big commercial social media giants to ‘no platform’ anyone who stands for traditional values. I remain concerned that the way this Bill is headed is too vague in it’s definitions and will encourage un-necessary approaches to the courts. Watering down the protections for discussion around sexual orientation is misplaced.

There is a serious risk that politically-motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.

Under the Bill, a person could face up to seven years in prison for just spoken or written words. This is an extremely serious penalty, so it needs strong safeguards.
D Moffat

Thank you for the opportunity to respond to the 4 options in the Hate Crime and Public Order (Scotland) Bill.

Option 1 obviously includes greater freedom of expressions and views and is welcome, as is option 2. It is important that protections must be included in the bill that allow for the freedom to speak on, debate about, and disagree with current topics such as the transgender identity debate, or any other future sensitive topics. This is because many people have differing moral views and therefore should be free to express them without fear. This is in no way about ridiculing or causing offence but about allowing the conversation and debate to flow without there being a fear that one is committing a criminal offence. In defending the right to freedom of speech we cannot have any clouds of fear hanging over debates.
Adrian Neville

I have read your consultation document and believe that religious debate must have the additional protection included in options 1 and 2. However it is my opinion that none of the options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion. I am also concerned that the bills protections for discussion around sexual orientation have been watered down. I don’t want to over exaggerate but this is a fascist direct of travel. Free speech is very important in a democracy and civilised society. Morals are something which a society should be able to debate, but aspects of this bill will close down that debate. I encourage you to keep debate in the open and not to send it underground.
James Hamilton

To Whom It May Concern:

The Freedom of Expression amendments are generally inadequate and give insufficient protection to those who wish to seriously engage with debates around religion, age, disability, race, sexual orientation, transgender identity, or variations in sex characteristics. Options 1 and 2 also appear to value religion as less worthy of protection than those other characteristics listed since they state that, in the eyes of the law, religious matters can be referred to in terms of antipathy, dislike, ridicule, and insult whereas other characteristics cannot. It seems strange that one could ridicule Christians, but not Americans, particularly since neither are immutable characteristics.

ALL of the characteristics should have the same level of protection as specified in Option 1, section 2(b), but at the very least permissions afforded for group 2(a) should include “expressions of dislike” since as it stands, the bill seems to suggest that one can only express one’s opinion of those matters listed in 2(a) if one that expression conveys a sense of neutrality or approval. This is too narrow and creates too low a threshold for those who would abuse this law for political or vexatious reasons. The tendency to conflate behaviour with identity means that it is very likely that criticism of a particular activity which is associated with one of these groups (e.g., expressing dislike towards Pride events) could be interpreted as expressing dislike towards the entire group. No doubt, the courts would be very careful about interpreting a statement this way, but it would have to reach court before that idea can be tested and given the low bar afforded to hate crimes it would not be at all surprising that at the very least some individuals expressing such statements would be investigated with all the uncertainty and stress that involves.

Scotland should be a country where people should feel comfortable and secure. That means that our national discourse should achieve a certain standard or congeniality and respect, but one cannot legislate to make Scotland more polite. If anything, this bill is likely to inflame suspicions that some of the groups mentioned in Option 1 2(a) are given undue political influence, and thereby increase antipathy towards them, not reduce it.
Liz McCutcheon

I wish to respond to the call for views on the free speech options submitted by Justice Secretary, Humza Yusef for free speech safeguards to be added to the Bill. The first two options include robust protections for debate on religion, which is important, and I welcome these. However, none of these options give strong enough protection for discussions around sexual orientation and transgender identity. These are hotly debated issues. It is crucial that freedom to disagree about them is clearly protected in the new ‘stirring up hatred’ offences created by the Bill. People of faith and many others across society have deeply held beliefs about sexual ethics and behaviour as well as about other religions. Sharing these beliefs should not cause the risk of criminalisation.

Tolerance is defined by how we treat those who disagree with our views. There is a world of difference between disagreeing with views and stirring up hatred and lines between these two distinctions should not be blurred. Because I disagree with someone does not mean I hate them and I should be free to explore my own belief systems and express these in a respectful way. Explicit protection for free speech about transgender identity is essential because it is such a serious issue. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman in the truest sense of the meaning. The free speech clauses are essential to preventing people trying to use the new law against their political opponents. So many people now are afraid to voice their deeply held views for fear of venomous attack and cries of hate crime. Parliament cannot afford to get this wrong.

Religious debate must have the additional protection included in options 1 and 2. Please protect the rights of people to respectfully disagree without criminalising them.
Mark Jasper

To whom it may concern:

Currently four amendments are being offered to protect freedom to disagree. Two of them protect freedom to disagree on religion. I am pleased this is the case. Please ensure these remain.

Unfortunately none of the proposals offer freedom to disagree on matters of sexual ethics or on issues of transgender ideology. These are contentious issues. Without specific inclusion of protection in this area free speech is unprotected.

If this law is to protect the rights to freedom of expression these issues must be clearly stated. Liberal democracy stands only on freedom to disagree on any matter.

Please therefore insist these additional amendments are reintroduced.
Peter Simpson

Option 1 or 2 must be included to protect free speech concerning Religion. Morality, politics and religion are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution. I disagree with many things and would not like to be prosecuted for my views which are not hate filled.

Explicit protection for free speech about transgender identity is essential because it is such a toxic issue. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and people causing hatred for the sake of it. The Bill fails to do this and many other things. It should be withdrawn and re-written.
Martin Hodson

I am grateful for your continuing scrutiny of the above legislation on behalf of the citizens of Scotland and I write to express my views in response to the call to evidence regarding the four options for freedom of expression provision proposed by Humza Yousaf.

My response is as follows:

1. I strongly support the protection for freedom of expression in religious debate included in options 1 and 2. No country in the world has become richer in mutual understanding by criminalising expressions of religious belief or non-belief. I am a religious person myself and recognise that vigorous debate with people of different views is sometimes profoundly uncomfortable because it touches matters that I hold deeply and are central to who I am. Sometimes I find the superficiality of other people's remarks on religion insulting. However, I do not wish that we as a nation should sacrifice our historic commitment to seeking truth through freedom of expression and open debate simply for the comfort of any group who hold certain convictions - religious or otherwise.

2. The options ignore the complexity of the current debate around transgender identity. It is obviously a debate which is incomplete and all sides need to be heard. Protecting freedom of expression only for 'matters relating to' transgender identity is woefully inadequate. It is such a profoundly personal issue for people who are transgender, or who wish to be or who have been transgender, that separating matters relating to it as an abstract topic from expressions that may be heard as antipathy, dislike or insult towards a person is unrealistic. The protections in this area need to reflect more closely the ones for religion. Without this, one of the most important moral conversations of our time will be limited by the threat of criminalisation. Furthermore, as Police Scotland has warned, police officers will be inundated with vexatious allegations from people who feel insulted because something they hold dear has been challenged or who have political motives for making a complaint.

3. So whilst option 1 is the better one amongst the choice Mr Yousaf has so far offered, I suggest that an improved version of this with a fuller protection for expressions regarding transgender identity should be developed. Under this bill a person could be sentenced to seven years in prison. In a world where we rightly protest about the detention of a million Uighur people in China, forced into a programme of re-education, we must ensure there are the very strongest safeguards on any legislation we propose which could put people in prison simply for words they say or beliefs they express.
Of primary note is the dilution of the Bill’s protections for discussions around sexual orientation, and I would propose this is a mistake for the following reasons.

Under the Bill a person could face up to seven years in prison for spoken words. This is an extremely serious and disproportionate penalty for spoken words in a supposedly free society. There is a clear case for incorporating strong safeguards against prospective abuse of the Bill, and to prevent those who’s un-spoken intent is to use the new law against their political opponents. Parliament cannot afford to get this wrong.

Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. The Bill in its current form fails to do this, and that is a concern. Morality and politics are matters on which people can have vigorous debate and the opportunity to change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues and individuals must be allowed to formulate their own opinions about these things without fear of prosecution.

Section 12 of the Bill in its current form protects those with religious belief to encourage others to change their sexual behaviour. For Christians changing behaviour is a core belief. Yet the Government wants to delete this protection.

The four options for free speech safeguards put forward for consideration for the revised version of the Bill are not really options at all when it comes to sexual orientation or transgender identity because they all say the same thing. What are the reasons for not offering alternative options? I would ask for the options to be re-written to give real options which genuinely include of all sections of Scottish Society, and not just four options offering one view from within Scottish Society.
Elaine Burch

I would like to make a few points regarding the options outlined. On options for Free Speech contained in the Hate Crime Bill. I feel these options do not allow for any dissension or discussion regarding sexual orientation, a view which people do not all agree with but are not being allowed to discuss or even express an opinion about (JK Rowling?Rowan Atkinson comments ). The current wording of the Bill does protect discussion of “sexual conduct or practices” and I feel should be retained.

Options 1 & 2 regarding religious debate offer a level of protection which I feel is important to retain. Indeed, this level of protection, I believe, is the level that we should also be putting in place for issues are sexual orientation. People should not fear prosecution when expressing an opinion regarding these issues - we must differentiate from respectfully expressing an opinion and speaking in hate against something you disagree with. Also, the penalty for this crime, seven years in prison, is significant and therefore requires appropriate safeguards. Perhaps further options would help to address this?

I feel it is very important for us to have a wide spectrum of opinion and not a case of you’re with us or against us. I do however feel these opinions should be make kindly and this is a very different issue from labelling differing opinions ‘hate crime’. Please protect free speech alongside ensuring people are treated kindly.
John Brown

Please allow me to make some points

# Religious debate must have the additional protection include in options 1 and 2

# None of the options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those in religion

# Watering down the Bill's protections for discussions around sexual orientation is a mistake

# The four options offered by the Government are not options at all when it comes to sexual orientation or transgender identity. They all say the same thing. Yet these are the most controversial aspects. Why are we not being given more options?

# Under the Bill, a person could face up to seven years in prison for spoken words. This is an extremely serious penalty, so it needs strong safeguards.
David Randall

Of the 4 options, option 1 is the best, as religious views should be protected as a free speech matter. However, matters of morality should also be conscience issues, and people may have varying views on the rightness and wrongness of certain things. It should be possible to have disagreements about such matters (transgenderism, for example) without any fear of prosecution. It would be absurd to label someone a criminal for asserting that someone born male cannot actually become female or v.v. Section 12 of the Bill, which the government wants to delete, protects the freedom to urge people to change their sexual behaviour and this is important for Christians, for whom changing behaviour is a central belief. Christians have deeply-held beliefs about sexual ethics and behaviour as well as about other religions and it ought not to be a criminal act to seek to share such beliefs with respect and tolerance.
G A Porteus

I am writing to give my view and express my concerns on the four different options for free speech to be addition to the Hate Crime Bill.

Options 1 and 2 which include safeguards on religious debate are welcome, however, neither gives strong enough safeguards for debate on sexual orientation or transgender identity. The freedom of expression for these should be similar to those for religion.

The proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. The current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices” should be maintained.

Regarding transgender identity, because this is such an emotive issue, protection of free speech is very important. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution.

I trust the Committee will include these safeguards in the final wording of the Bill.
Charles McEwen

It is my view that in a free society, religious debate must be protected. We hear strong criticism about the Inquisition in previous centuries but at present we are undergoing an inquisition with the media, corporations and even the institutions of our society such as universities, firing or denying tenure to people, simply for speaking in support of a particular point of view and many politicians have been complicit in the bullying and intimidation directed at people for the views they hold. In addition their views are often misrepresented precisely because the media have chosen to take a partisan view on many issues and have become a force for re-structuring society rather than reporting in an objective manner. This is very dangerous for a free society.

For example, the Muslim parents in Birmingham were portrayed as hating the homosexual teacher who prepared the "No Insider" programme, when in actual fact he had been teaching there for some years. The criticisms were made only after the parents found out the content of the school programme which had been promoting homosexuality and this was against their particular faith and is in fact contrary to the traditional teaching of pretty much every other religion for hundreds of years. We are talking here about millions of people who are faced with an inquisition initiated by a tiny fraction of people.

In addition, there are organizations who campaign to have people fired for expressing views which are hated by these organizations. These new organizations are now deemed to represent orthodoxy with everyone else labelled as heretics and haters merely for voicing criticism. There is a realistic expectation that “Hate Crime” legislation will facilitate that even more so we will have a small clique imposing their doctrines on the rest of us. A law to abolish hate is a very dangerous route to follow because we cannot and should not control thought. We should criminalise violent actions and their incitement and “incitement to violence” should NOT be assumed from criticism of a particular point of view. The very term “politically correct” has passed into common usage and the mere fact of this indicates that we are already under a very subtle but powerful inquisition. People are very aware of this and have learnt to keep their mouths shut. It is the haters who are now controlling the agenda.

The first two options in the Hate Crime Bill include protections for religious debate but I feel that we should not be making distinctions between different groups of people. This has caused divisions in society to arise and to be manipulated by people with a particular agenda.

I note that the bill waters down the protections around discussions on sexual matters and this is particularly unfortunate because the campaigns to have people fired are almost always orchestrated by groups with a sexually permissive agenda and they represent a very small minority of the population. Shutting down free speech in this area has already happened as I have mentioned above with people fearful of losing their jobs simply for saying that ideally kids need a mum and a dad. This agenda encourages promiscuity which seriously damages relationships in addition to being medically dangerous and responsible for a huge increase in sexually transmitted diseases. Nobody has been convicted of killing someone by giving them AIDS but
people lose their jobs for advocating traditional views on sex and marriage. If free speech is not protected we can expect the sexually permissive mafia to have free reign targeting people who disagree with their agenda. We have already seen what they are capable of and Hate Crime legislation will make it easier for them to intimidate our whole society.

I strongly suggest that Hate Crime legislation does not anywhere mention religious belief, sexual predilections, football affiliation, ethnicity, colour of skin, body shape, colour of lipstick, tattoos, hairdos etc., etc., etc. Yes, some of the examples mentioned are trivial and I have chosen them deliberately to make my point that we are on a very slippery slope. We are all part of the same society and the same law should protect all without dividing us into groups. If the divisions advocated in this bill are removed the law would be seen to be equal to all. What should be outlawed are dangerous, violent actions directed at any person in our society and also the incitement to encourage other people to indulge in such activities.

This hate crime bill was initiated by a politician from a society which does have Hate Crime legislation and has in the past killed numerous people for what they think. I think it disgraceful that he has tried to impose Sharia law provisions on a free society. Unfortunately for him it has been manipulated by the sexually permissive mafia to provide protection for sexual permissiveness with he himself does not agree. We can already see the harm done to society with family and societal breakdown at an all time high.

This hate crime bill in itself facilitates hate by encouraging us to see other people as being different. The bottom line is we should not protect a person from feeling offended.
Morgan Wheeler

I would like to make comment on the 4 options recently put forward by the Justice Secretary to the Hate Crime Bill.

In my view all of the options fail to give adequate protection for religious beliefs around transgenderism and sexual orientation. It would make sense to adopt the same protections as area proposed for freedom of speech in the area of religion. Having said that, the protections for religious debate should be expanded to add the protections specified in options 1 and 2.

No doubt the Committee are fully aware that transgender issues are particularly sensitive and care must be taken so that those wishing to stifle the views of others simply because they do not share them do not prevent there being open and honest debate - and respectful disagreement. Clear and unambiguous wording is needed to protect free speech about transgender issues given the possible draconian criminal punishment for breach. It should never be a criminal offence to state one’s opinion robustly provided they do not incite to hatred and the Bill falls far short of providing adequate safeguards.
Stephen Babatunde

1. Religious debate must have the additional protection included in options 1 and 2.

2. None of the options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion.

3. Watering down the Bill's protections for discussions around sexual orientation is a mistake.

4. Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution. We are in a democratically arena and must therefore be allowed to have and share your opinion on issues.

5. There is a serious risk that politically motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.

6. Protections for debate on sexual orientation and transgender identity must be closer to the protections on religion and we must all be free to have a healthy debate on this matter.

Grateful for the opportunity, grateful to have my say, grateful for the Free speech for ALL in Scotland. It is my civil right.
Clive Bailey

Options 1 and 2 give welcome protection to religious debate, but differing views on sexual orientation and gender identity do not have sufficient protection.

The toxic issue of gender identity must be allowed the freedom of free speech and divergent opinions. It cannot be right to criminalise a person for holding views which have their basis in deeply held moral and religious convictions.

Disagreement on such issues is in danger of being defined as hatred, and the dilution of the Bill's provisions for protecting the freedom to discuss and disagree on the subject of sexual orientation is a retrograde step.

None of the options set out as draft amendments are sufficient protection for divergent beliefs about sexual ethics as they all say the same thing. Where are the options to protect freedom of belief and expression on these matters? Why have they not been included as options? Please give the strong safeguards needed to allow people to disagree freely without the fear of prosecution.
Donnie Macleod

I thank the Committee for the opportunity to comment.

I write because certain provisions of the Hate Crime and Public Order (Scotland) Bill concern me greatly. I fear that unless adequate clauses offering protection are included in this Bill that it will greatly and detrimentally restrict freedom of speech in this nation.

I would strongly urge that in order to preserve religious debate and the free proclamation of the Gospel of Jesus Christ that this Bill must have protections built into it that aren’t there at the moment.

None of the options contained in the document sent to me give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion. Watering down the Bill’s protections for discussions around sexual orientation is a mistake.

Individuals hold differing views on morality and indeed on politics and they can, and do, generate lively debate and argument in the pursuit of a particular viewpoint but that does not mean that such interactions are expressions of hatred and they must not be construed to be such.

This Bill is, I fear, trying to go into areas of Scottish life to try and solve by legislation, what cannot be solved by legislation. Not without edging the governance of this nation closer in restrictions and freedom of expression to resemble that seen in a ‘police state’. I am not suggesting that is the case here but ‘small steps’ lay the foundation for ‘bigger steps’.

When I wrote previously to MSP’s I mentioned that Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. I fear that this Bill, even though amended, still fails to do this.

I would urge that every step be taken to ensure existing freedoms of speech are preserved.
Donald Mackay

While I am very appreciative of the efforts of the Justice Committee to scrutinise this bill, I am dismayed at the intransigence from the Minister in relation to a reasonable freedom of expression provision.

Having reviewed the Annex, I do not believe that any of the four options as presented provide suitable protection for freedom of expression, do not meet the objective set out by the Minister in the second paragraph of his letter to the Convener, and must be rejected by the Committee.

The four options as presented are in reality not four options, as there is insufficient protection for contrary beliefs around transgender identity and sexual orientation. These are highly emotive issues on both sides, raising many moral issues and issues of conscience, so we must have explicit protection for both sides of the debate and not descend into a situation where people feel compelled by the law to accept or remain silent on an issue that they are unwilling to accept on grounds of science, religion, or liberty. We must retain free speech in this area.

It is also concerning, and indefensible, that what is being proposed is a dilution of the protection already found within Section 12 of the Bill, for discussion around sexual orientation.

I certainly appreciate the work that has been done by the committee to scrutinise this deeply flawed bill. It is so contentious that I believe the bill should be deferred into the next parliament and this made a key point during the campaign for the upcoming parliament, so that the nation can more clearly give its view on this matter as we are in danger of loosing a significant part of our liberty with almost no public debate.

Views on gender that had a common scientific understanding and a common religious view less than 10 years ago, are now in danger of being criminalised, and people being compelled to accept views that they can not by way of reason or conscience accept, for fear of being criminalised. Our laws must remain grounded in fact, not perceived or felt views, and prohibiting certain views will only serve to further fracture our society.

I urge you for the sake of our children’s future to reject these clauses and ensure we have room for robust discussion in our land and equal protection for all areas of our society, rather than provide greater restrictions on views around sensitive LGBT issues that there are around any other characteristics.
Louise Devlin

As one of your constituents based in East Renfrewshire, Glasgow city, I feel it is fitting to mention that “an MSP must take on a constituents’s case when approached.” https://www.parliament.scot/msps/105599.aspx

With the exception of Ross Greer, in which this email will no doubt not only go against his political beliefs and political party stance, but will no doubt trigger him because apparently biological women’s rights are not something to fight for, I believe all of you will hold integrity in dealing with what is a frightening time in Scotland’s political landscape.

Please, on my behalf, and on the behalf of all girls and women, stand up for Option 1 in the Hate Crime bill, with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, and campaigns to retain women’s rights in law or to challenge policy changes.

I must note, there has been no clarity on the definition of ‘transgender identity’ from the Scottish government. This 1984 Orwellian doublethink can only cause problems. It is not clear what is meant by ‘criticism’ or ‘abusive’, and more needs to be done to remove the uncertainty and subjectivity.

I remain highly concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and it seems women may need to rely on a more appropriate amendment at the final stage.

Please also consider these points in this ambiguous time, in which I feel highly concerned about being a woman in Scotland:

- I look to you for robust protection of free speech. For example, Adam Tomkins, Convener of the Committee, admitted he was “alarmed and distressed, and perhaps even, if I’m honest, a little afraid”, Johann Lamont was "anxious" and Justice Minister Humza Yousaf was unwilling to confirm if there are only two sexes - see the Herald article.)

- Prominent campaigners - including Tim Hopkins of Equality Network, and councillor and potential MSP Graham Campbell - are talking about hate crimes as including "using the wrong pronouns or the wrong first name”. There have already been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. I would be horrified if, for example, women giving evidence in court were compelled to refer to a rapist as "she" or face prosecution. This would be disgusting, and I would no longer want to live in my
native Scotland, if this was the case. I would rather pay taxes to Westminster and live in England, than live in a country which finds this gas lighting of rape victims acceptable.

The introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to make abundantly clear that compelled speech forms no part of the Bill.

- There is mounting evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like ForWomen, MBM, WPUK, etc "hate groups" and nothing is being done check this. I really require clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election. Currently, I have little faith that they will do so. I am a member of these groups, and rest assured there is no hate from them. This is a myth perpetrated by male GRA campaigners who seek to undermine women's voices in Scotland.

- There is a hierarchy of characteristics which fails to ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

Sylvia Rebus

Regarding the proposed Have Crime legislation I ask you to reconsider this Bill.

I am very concerned that options 1 and 2 do not have sufficient protection around religious debate. The protections for sexual orientation discussions have been drastically watered down, are biased instead of balanced and safe and therefore will criminalise people for their beliefs.

It is vital there is freedom to disagree with the views of others without fear of being prosecuted. Your proposals have echoes of China and other totalitarian regimes and will lead to people being imprisoned for merely stating an opinion. The Scottish public deserve to be protected from those who will use this Bill to pursue their own agendas of hatred.

Police Scotland input should be given urgent consideration. They are the “boots on the ground” and therefore have a good understanding of what is workable and safe.
There has been a huge public outcry against this Bill from all sections of society and the people have spoken.

I sincerely hope that you will leave behind a good legacy for this nation and do not believe that this Bill will enable you to do so.
Frances Florance

Of all the options, Option 1 seems most reasonable. However I do not think that it goes far enough in protecting free speech. I am concerned about individuals, (particularly WOMEN), being accused of “hate crimes” if they question trans friendly policies. Naturally everyone should be treated equally but persons who self declare as a particular sex should not have unfair leverage over people of that biological sex.

I have concerns that the Gender Representation Act will discriminate against women who previously could have applied for specific “women only” roles in society/employment. These women could have their opportunities usurped by someone using “preferred pronouns”. Will they be able to raise concerns about this? Or will they be too afraid as it could be labelled a “hate crime”. I am thinking about situations such as a self declared female working in a rape crisis centre.

It seems that already women are terrified to speak up or to question the powerful trans lobby. Must they keep quiet for fear of being accused of being a bigot or worse. Women have fought hard for their position in society and this should be able to continue. Within the Hate Crime Bill there requires to be a clear government commitment that it will not criminalise statements pertaining to scientific and biological facts, pronoun choice, and particularly campaigns to retain women’s rights in law or to challenge changes in policy.
Gordon Drummond

I write to provide my views on the request for comments on the options proposed by the Cabinet Secretary for Justice for the inclusion of amendments into the Hate Crime and Public Order (Scotland) Bill. In passing, I regret the limited time provided for comment.

I strongly support Option 2. The reasoning is thus:

Religions (in general) are belief systems that people can choose to embrace or reject, and in many cases these people may choose to attempt to influence or change the thoughts, values, and judgements of others. The freedom to express antipathy, dislike, ridicule or insult towards religious beliefs or practices is thus one which addresses the general freedoms of society. Indeed some of the more general values of society diverge, often substantially and materially, from the beliefs and practices of some religions.

In contrast, race is a pre-determined characteristic of an individual, and expression of antipathy, and dislike, ridicule or insult of a person of a given race is a personal attack on an individual or a group based on an immutable feature of that person or persons.

Even more briefly: you don't choose your colour (although people are prejudiced) but you can choose your religion (and use it to be prejudiced). We should be free to express our views about religion far more forcefully than about race.

I hope that the Cabinet Secretary does not find these comments too obvious, and can agree that most people are likely to understand the difference in approach that is needed.
Sandy Gunn

I could not find how to reply to the short dated consultation as it did not appear in the usual list of consultations.

However I have read the 4 options, and support option 1
Martin Ross

With respect to the above Bill I welcome the opportunity to respond to the four amendment options offered by the Justice Secretary as follows:

1. The four options offered do not change anything when it comes to guaranteeing freedom of speech around the still emerging and ever-increasingly politicised issues of sexual orientation and transgender identity. That being the case, the freedom of speech protections offered for these matters should mirror the protections offered for religion.

2. Failing that, if the Bill is to complement the oft lauded principle of equality across society it follows that all parts of society are afforded the same level of protection by the Bill. This is not the case however, as the Bill amendment clauses relegate religion or belief out of the 2010 Equality Act protected characteristics groupings to a position where expressions of antipathy, dislike, ridicule or insult expressed towards persons of religion or belief in Scotland will be considered acceptable. In this instance religion or belief should be granted the same freedom of speech protections as the Bill affords to age, disability, sexual orientation and transgender identity.

3. As a result of the imbalance of protections produced by the currently drafted Bill, including any one of its four options, it remains the case that ill-motivated complainants will use the Bill to raise vexatious complaints against their perceived opponents in an attempt to silence and criminalise them.

4. The issues at stake here are so important that further time needs to be given to this Bill to ensure that the Government gets this right and avoids criminalisation of people for their religion or faith.

Possibly the following quote by Lord Justice Sedley has been quoted ad nauseam to the Committee but it conveys such an important principle for a fair society where freedom of expression is not chilled by political ideology that it bears repeating:

“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”
Murdo Macleod

I write in response to the consultation on the above bill.

I do sincerely believe that it is essential that religious debate has additional protection included in options 1 and 2.

I do not consider that any of the options give sufficient protection for beliefs in respect of sexual orientation and transgender identity.

I am surprised and very disappointed at the proposal to ‘water down’ the protections for discussions around sexual orientation. This is surely wrong.

It is absolutely vital to have explicit protection for free speech about transgender identity because it is such a controversial issue. It surely cannot be a criminal offence in a civilised society to use someone’s birth name or pronoun, or to say that a person born a woman cannot become a man.

The proposed free speech clause, as amended, covers only discussion or criticism of ‘matters relating to’ sexual orientation. The current wording of the bill which specifically protects discussion or criticism of ‘sexual conduct or practices’ should be retained.

Politically-motivated complainants are very liable to label disagreement as hatred to try to silence those who disagree with them. The police have indicated that free speech clauses are essential to prevent them from being overwhelmed with unnecessary complaints.

I do hope that you will give serious consideration to these points.
Gavino Fioretti

I am writing in regard of the four options that will be discussed within the Hate Crime and Public Order (Scotland) Bill.

I am very concerned that these options do not guarantee freedom of expression. I fear that this would limit and hinder religious people to speak according to their convictions. This is particularly the case with transgenderism.

I am particularly worried for the language used in the four options. In the papers it says: ‘if, for example the speeches included comments that a reasonable person would find abusive about people due to their sexual orientation…it could still amount to behaviour that is threatening or abusive’.

What makes a person reasonable? Is what a person find abusive enough? Is there not a difference between taking offence and giving offence? Is refusing a different pronoun to be considered abusive? Is affirming that there are only two genders offensive?

I do not question the good intentions of the government, but I fear that this will not solve hate speech and limit a basic human right like freedom of speech and freedom of religion. It will burden the police and the justice system with thought-crime at the expense of real crime.
Stephen Babatunde

Although this consultation is extremely short, here are my responses.

1. Religious debate must have the additional protection included in options 1 and 2.

2. None of the options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion.

3. Watering down the Bill’s protections for discussions around sexual orientation is a mistake.

4. Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution. We are in a democratically arena and must therefore be allowed to have and share your opinion on issues.

5. There is a serious risk that politically motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.

6. Protections for debate on sexual orientation and transgender identity must be closer to the protections on religion and we must all be free to have a healthy debate on this matter.

Grateful for the opportunity, grateful to have my say, grateful for the Free speech for ALL in Scotland. It is my civil right.
Penelope Ciancanelli

There is no doubt we need robust protection of free speech and the extent to which this is already threatened by the tone of the debate around women’s rights and reform of the GRA, one can readily anticipate its chilling effect on ordinary citizens, particularly via social media.

Specifically, protection of the freedom of expression requires at a minimum freedom to discuss and criticize -to express antipathy, dislike or even insult into matters of age, race, sexual orientation, religion so long as it is not threatening or abusive.

Of particular concern are widely publicized efforts to shut down discussion through character assassination and most particularly even evidence of organized lobbying by self-appointed groups to produce a parliamentary act imposing by force of law punishment for opinions in regard to reknowned British anthropologists’ long standing distinction between (biological) sex and (social constructed social interpretations of its meaning) gender.

None of the four options recommended by Lord Bracadale will protect us against the worst excesses of those lobbying efforts...the least worst is option one which protects freedom of expression to discuss and criticise without prejudice so long as there is no material threat or abuse in the criticism.
Martin Sims

I would prefer option 1. The provision to exclude “expressions of antipathy, dislike, ridicule or Insult” must be kept to prevent the bill being used to quash legitimate open discussion of the merits of religious beliefs and practices. The greater the protection for freedom of expression the less chance that this bill could be abused.

I imagine I am too late to comment but I also fear that the addition of the ‘reasonable person’ protection may be insufficient. I suggest ‘rational person’ as a better protection against oppression by majorities. There have been times when it was thought reasonable to test guilt in witchcraft by drowning innocents but those practices were not rational. If an irrational, by definition, religious majority thought it reasonable to accuse those who don't agree with their belief system of hating it, this bill could be abused.
Sheila Henderson

I understand that all previous suggested amendments to the Bill have been withdrawn and that four replacement amendments are being considered. I also understand that the Justice Minister has said none of the four options are the Scottish Government's preferred options, none of them were recommended by Lord Bracadale, who was tasked by the Government to review the hate crime laws - and none of them, in my opinion, will protect anyone from police investigations into ‘transphobia’ for speaking out about women’s rights.

Please find below points I wish to raise about these proposed replacement amendments:

1. We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women’s rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious.

2. Prominent campaigners - including Tim Hopkins of Equality Network, and councillor and potential MSP Graham Campbell - are talking about hate crimes as including "using the wrong pronouns or the wrong first name". There have already been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. I would be horrified if, for example, women giving evidence in court were compelled to refer to a rapist as "she" or face prosecution.

Laws, such as the Gender Representation on Public Boards Act, have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

3. There is mounting evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like For Women Scotland, MBM, Women’s Place UK, etc, "hate groups" and nothing is being done check this. What is needed is clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election. Currently, I have little faith that they will do so.

4. There is a hierarchy of characteristics which fails to ensure equality. Under Option 1, trans people will be able to express feelings of “antipathy, dislike, ridicule or insult” towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and
criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

On Balance Option 1 appears to be the best of a bad bunch of amendments, but with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

Despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.

I remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and we may yet have to rely on a more appropriate amendment at the final stage.
Michelle Yardley

I don’t think option 1 goes far enough however it is the preferred out of the 4 options. Women must be free to talk individually or as a group about their experiences and identity. Their protected sex class must remain a protected characteristic. Gender is a concept that some women including myself do not identify with. People should be free to express their own identity, especially an oppressed group. I am not transphobic however I should not be forced to identify by gender. Services, spaces and institutions should not demand this. Legislation must allow for provision for all women but if trans women can bypass sex to identify by gender then women such as myself should be free to reject gender and identify by sex without negative repercussions. Trans ideology hurts my feelings and threatens my identity as a women who thinks gender is a regressive concept however in a free society it’s important that trans people can express their identity and I fully accept this. I should be afforded the same respect and freedoms. There is ample evidence women are being discriminated against for speaking up for their right to identify by sex and it is wrong. This bill could be used to silence us further and sex must be included as a protected characteristic.
Sophie Catriona Logan

As a Scottish citizen who cares passionately about people’s rights and protection of the most vulnerable, I have to say that I welcome the Hate Crime Bill. No one should be subject to vilification / bullying / violence because of their essential characteristics, but this however must also include all areas of the community. I have grave concerns that the current format will not provide this.

In order to achieve this, I would like to make the following suggestions:

• Religious debate: It is essential to protect this, many people have very deeply held religious beliefs and sexual ethics are a core part of this. The extra protection included in options 1 and 2 would be required but the bill needs to explicitly protect discussions around ‘sexual conduct or practices’.

• Sexual orientation and transgender identity: Explicit protection for freedom of speech regarding gender identity is crucial. This is an issue that people quite rightly feel very strongly. For any debate or indeed counselling session to be effective it is absolutely essential that people should feel free to express, respectfully, their opinions. We need an option that would include this protection. I would like to highlight that the following points under this heading and suggest that they need to be protected:

  o Religious debate: most religions hold very definite views as regards to sexual ethics people need to know that they are not going to be criminalised for sharing them.

  o Counselling: Removing the freedom to express one’s honestly held views ties the hands of counsellors to help people honestly explore their gender identity. People with autism, those who have been subject to abuse or who have learning difficulties and indeed others are liable to confuse the pain that they are experiencing with that caused by transgender identity issues. If the government genuinely wishes to protect people from making a serious mistake, then they have to ensure the freedom of counsellors to help their clients explore their identity.

  o Disability: I am dyslexic, the bill in its current form opens up the abyss for me. Indeed, this is true not only for myself but for others struggling with dyslexia. Dyslexia can affect one’s speech as well as one’s ability to read and write. I frequently come out with the wrong words by mistake and this includes pronouns. This can also be true for people suffering from dementia, indeed all our older community and any age group who are stressed. Do we wish to run the risk of criminalising the vulnerable? Do I have to face a 7-year jail sentence because I am dyslexic?

• Legitimate Debate vs Rabble rousing: Lord Bracadale in his review highlighted the need to differentiate between legitimate debate and rabble rousing. It essential that this is clarified if we are to protect free speech. People who are politically motivated should not be able to silence any debate by labelling any disagreement as a hate crime.
We need to get this one right. It will have major repercussions for many people across the whole of the community. Please, please, please take on board my points.
Jess Gunter

I would like to state my concern over Mr Yousaf’s proposed options being put forward for the Bill.

The Bill needs to be defined clearly enough to safeguard and support robust debate concerning sexual orientation, transgender identity and any other matters concerning people’s personal moral choices. It is absolutely imperative that provision is made for encouragement to be given for behaviour - sexual or otherwise - to change as this is basic to Christian belief and practice.

It seems to me also that too much room is being given for the possibility of reasonable, upright and law abiding people being accused of hateful speech as a method of preventing open and honest debate over such issues.

Therefore I would appeal to all members to seriously and carefully ensure that this Bill in its final form will be truly reflecting justice for all the people of Scotland from whatever sexual, religious or political standpoint they hold.
Donald Fleming

I write to you in connection with the short consultation on the approach to free speech in the Hate Crime Bill.

In my view, although the first two options include protections for debate on religion, none of the options grant sufficiently strong protection for discussions concerning sexual orientation and transgender identity, and they even propose diluting existing protection in the Bill for speech relating to sexual orientation.

For instance, the proposed free speech clause only covers discussion or criticism of ‘matters relating to’ sexual orientation. This weakens the degree of protection given in the current wording of the Bill, which specifically protects discussion or criticism of ‘sexual conduct or practices’.

Section 12 of the Bill protects someone encouraging people to alter their sexual behaviour. This is essential for people of certain faiths in order to express and practice their spiritual beliefs. The Government, however, wishes to delete this section.

It must not become illegal to refer to a person’s birth name or their gender pronoun, or to express the view that someone born a man cannot become a woman. For this reason, strong and explicit protection must be given. Transgender politics is a highly contentious issue; therefore, freedom of speech should not be suppressed.

Free speech protections should also be strengthened to reduce potential abuse of the legislation by the use of politically-motivated complainants portraying disagreement as hatred in order to silence their opponents. Police Scotland has stated that free speech clauses are important to stop officers being inundated with vexatious reports.

For the reasons stated above, free speech protections relating to sexual orientation and transgender identity must be closer to the protections on religion.

Thank you for your time taken in dealing with my submission,
Mary M Sutton

Options 1 and 2 are important to protect religious debate.

There is inadequate protection of freedom of speech in all of the options particularly in relation to sexual orientation and transgender issues.

Sexual orientation and transgender identity raise moral and political issues. Over time people may change their views. Debate should be allowed without fear of prosecution. It must not be a criminal offence to say that someone born a man cannot really be a woman. Freedom of speech is essential.

It is worrying that under this Bill someone could be in prison for up to seven years for spoken words, potentially for views expressed within their own home.
Chris Jewell

I understand that Justice Secretary Humza Yousaf has put forward four different options for free speech safeguards to be added to the Bill.

The first two options include robust protections for debate on religion, which is important and welcome.

But I believe that none of the options give strong enough protection for discussions around sexual orientation and transgender identity. They even propose watering down existing protection in the Bill for speech about sexual orientation. I believe that it is crucial that freedom to disagree about them is clearly protected in the new 'stirring up hatred' offences created by the Bill. Christians have deeply-held beliefs about sexual ethics and behaviour as well as about other religions. Sharing these beliefs should not be at risk of criminalisation.

In particular
Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution.

Explicit protection for free speech about transgender identity is essential because it is such a toxic issue. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

The free speech clauses are essential to preventing people trying to use the new law against their political opponents. Parliament cannot afford to get this wrong.

The Government’s proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. This is a step down from the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices”.

Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is essential to protect free speech for Christians, for whom changing behaviour is a core belief. Yet the Government wants to delete it.

The four options offered by the Government are not really options at all when it comes to sexual orientation or transgender identity. They all say the same thing. Yet these are the most controversial aspects. Why are we not being given more options?

There is a serious risk that politically-motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports.

Under the Bill, a person could face up to seven years in prison for spoken words. This is an extremely serious penalty, so it needs strong safeguards.

- Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. The Bill fails to do this.
- Please take all these issues and views seriously. This is a bill which if badly thought through will be divisive perhaps for generations. Freedom of speech and the right to vehemently disagree must be protected.

I notice that in England there are now legal moves to ensure that real freedom of speech is clearly there in our universities.
John Robertson

I write concerning the above Bill working it's way through the Scottish Parliament. I have to say as I have previously said that the existing Laws provide sufficient protection for the general population in Scotland. I see no reason why you have to adjust matters and reduce the levels of general protection to enhance others in a narrow way. This is not progress, but degeneration of our fine legal position in Scotland.

However, in response to the matter of the recent points brought forward by Mr Yousaf.

If this Bill does progress and it looks like it will, regardless of the actual Will of the Scottish People you are servants of (if you had a referendum on it, you would find it soundly put down by that same public.)

Regarding the points brought forward.

Debate, discussion and conversation around the subject of religion must surely have the protection mentioned in options 1 and 2. How can we have free speech when it is not free? Rational reasonable and intelligent people have to be able to examine the outer envelope of discussion without fear of punishment for no actual reason.

The options tabled give nowhere near the level of protection required by the Scottish People in relation to sexual orientation and identity. At least the protection should equal that of religion. I reiterate, these four options skirt round the matter and do not address it head on. Why is that? Is this for political expediency to ensure the power remains with the government.

To weaken the Bill's protection regarding the discussion of sexual orientation is a major mistake, as it will heavily stifle free speech and place ordinary members of major Judeo Christian and Islamic Religions at risk of spurious prosecutions just because they articulate the basic articles of the Faith and Religion that believe.

You must retain Section 12 of the Bill for the sake of the ability to urge the change of sexual behaviour. Imagine, a mother or Father going to Jail because she or he wants to guide his or her son or daughter as they see fit? That would be insane, but entirely possible in this Bill without proper protection.

And my last point (because I am no lawyer to grasp the nuances of the proposals) if the Bill goes forward as proposed, the Courts will be inundated by spurious accusations driven by personal interest or political interests. Do we really want major crime taking a back seat to a high volume of such complaints.

I urge you to at least introduce the much stronger protections or at best throw this Bill entirely out.

I am greatly concerned at the damage this may do to our society if passed as tabled - which will be entirely the responsibility of Mr Yousaf.
Dorothy Smith

Any option chosen must include a proper level of protection for free speech on religion.

Only the first provision appears to give adequate protection for free speech in relation to religion.

To me it seems ridiculous that one can stand one side of the border and say something freely which is deemed illegal only a few feet away. For this reason I fail to see why the legislation does not just mirror the equivalent clause in the England and Wales racial and religious hatred act.

Some of these new options are seriously muddled and confusing. If I say that keeping churches open is leading to deaths from Covid, is that promoting hatred? If I say that religions that promote FGM are fundamentally evil for women and girls, is that promoting hatred? If I say that a tribunal that values a woman’s testimony at half a man’s testimony is seriously misogynist, is that promoting hatred? The answers to these questions will certainly not be clear if you import some of these amendments that significantly weaken free speech.

If we are to get a sensible discussion on the values of a civilised society, we must be free to ask open, honest and challenging questions without having debate stifled by the fear of litigation. I support any option which gives the absolutely maximum freedom to express one’s views openly.

Inciting violence is already a crime so I fail to see why further laws are needed.
Alison Carter

With regard to the proposed hate speech bill I suggest that the bill should give robust protection for different views on sexual orientation and transgender identity. It is vital to ensure freedom of speech and the exchange of a diversity of opinions. The Scottish Parliament should make it clear that disagreement is not hatred. Religious debate should also be given the protection that is included in options 1 and 2.
Gordon Hendry

It is ‘unfortunate’ that so little time is given to respond to the proposed options for free speech.

1) Options one and two are essential to protect religious debate.
2) Belief around sexual orientation and transgender identity need similar protection to that for religion in Options 1 and 2.
3) It is intolerable to include speech in the house in this legislation.
Rev. Alastair Cook

There should be within the Freedom of Expression clause (under the protected characteristic of ‘sexual orientation’) explicit protection for discussion or criticism of ‘sexual conduct and practices’ and of marriage which ‘concerns the sex of the parties to the marriage.’ This is of course a hugely important matter for myself as a Minister but it is also necessary for the sake of freedom of discussion and expression without fear within society as a whole.

Transgender identity is as we know a highly contentious and deeply sensitive area of debate. It is important that we have open and honest debate on those matters, which relate to the very essence of the human person, without the threat of criminalisation. It must not become criminal to say that someone born a man cannot really become a woman and vice versa. Many people may disagree with this view, but people must not be criminalised for expressing it.

It would be helpful if the Bill specifically referred to the belief that sex is immutable, that there are only two sexes or genders, and to the use of birth names and pronouns. The right to express the view that binary sex does not exist or is fluid, or that there are more than two genders, must be matched with a right to disagree and protection from prosecution for those holding an opposite view.

In terms of the options, religious debate must have the additional protection included in options 1 and 2.
Robert Traquair

My preference for amendments to the Hate crime and public order bill is the inclusion of OPTION 1, this is a preference made under duress as the Scottish Parliament previously voted in favour of an amendment promoted by Johann Lamont, yet the justice secretary has seen fit to overcome and overturn the wishes of a democratic vote taken by the members of the Scottish Parliament, a decision I find repugnant and at odds with the wishes of the electorate who have repeatedly shown their outrage at the decision to take this bill forward.
I am writing in response to the call for views on the amendments proposed by the Cabinet Secretary for Justice.

It is my view that all the options are flawed, but option 1 is the most preferable as it allows discussion and criticism of all the various characteristics. It does provide some protection for people expressing antipathy, dislike, ridicule or insult on matters relating to religion. However, it does not go nearly far enough. I would ask that the following points be taken into consideration:

1. Robust protection of free speech needs to be included. I note that MSPs (not least committee members Adam Tomkins and Johann Lamont) from three political parties have expressed trepidation about the tone of the debate around women’s rights and reform of the GRA. The chilling effect on ordinary citizens, likely leading to them feeling unable to speak on the issues, should be avoided.

2. As has been noted elsewhere by prominent campaigners (Tim Hopkins of Equality Network, and Glasgow councillor Graham Campbell, for example), female victims of male violence are likely to be adversely affected and further harmed by the proposed bill. If, as has been suggested, hate crimes including “using the wrong pronouns or the wrong first name”, then a situation could easily arise where women are forced to refer to their assailants as women. It would be horrific, for instance, if a woman giving evidence in court were compelled to refer to a rapist as “she” or face the threat of prosecution.

The very fact that the anti-scientific conflation of sex and gender, leading to sex denialism, is being used to eradicate sex-based rights, further leads to the situation where it becomes statistically impossible to disaggregate data based on sex classes. Without the right to name men as men, for example, male violence against women cannot be called out. It needs to be made abundantly clear that compelled speech forms no part of the Bill.

3. In a similar way, the legislation could, and seems likely will given statements by certain lobby groups, be used to report and criminalise women campaigning on feminist grounds against changes to the Gender Recognition Act. Feminist groups like Women’s Place UK, For Women Scotland, and the policy analysts Murray Blackburn MacKenzie are being openly called “hate groups”. Nothing is being done to address this. Clear and unequivocal statements need to be made that legitimate critics and criticisms of policy will be protected and not subject to hate crime prosecution. Neither the proposed bill nor the amendments suggest that this will be the case.

4. The proposed bill constructs a hierarchy of characteristics and fails to ensure equality. None of the proposed amendments as they stand address this. Even under the best option, Option 1, it remains conceivable that, say, trans-identifying people will be able to express feelings of “antipathy, dislike, ridicule or insult” towards women – something that is already taking place in many public fora,
leading to highly vitriolic and abusive hate speech aimed at women - yet under this amendment women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

In conclusion, Option 1 should be expanded firstly to include the extension of free speech provision to all characteristics, and secondly a statement added that the Hate Crime Bill does not seek to criminalise statements of scientific or biological fact, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

The committee should also take note that, despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.
Carol Stephens

Regarding religious debate, it is important to have the additional protections of Options 1 and 2.

But none of the options give enough protection around beliefs about sexual orientation and transgender identity. People can have vigorous debate about these matters and may change their minds and so it is important that people are allowed to disagree on these without the danger of prosecution.

Explicit free speech protection must be made regarding transgender identity and sexual orientation, as it is such a toxic issue. A person should not be made a criminal for using a person’s birth name or giving an opinion that a man cannot really become a woman.

The Bill’s Section 12 protects the ability to urge people to change their sexual behaviour. Why does the Government want to delete this when it is so important? This is necessary to protect free speech for Christians for whom changing behaviour is a core belief.

There is not enough protection in any of the options regarding sexual orientation and transgender identity. The freedom of speech clauses for these should be closer to those on religion.

It is extremely important for the Government to make strong free speech safeguards in the Bill as a person could face up to seven years in prison for spoken words.

The Government must add much stronger free speech clauses to this Bill to allow people to disagree and have debate about these matters without fear of prosecution.
Michelle Thomson

I am dyslexic so I’m using someone else’s words to convey my thoughts on the hate crime bill.

I firmly agree with women for Scotland and I’ve included below their words on the matter. Which I hope will be listened to.

Thanks for taking the time to read my email.

• We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women's rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious.

(Adam Tomkins, Convener of the Committee, admitted he was “alarmed and distressed, and perhaps even, if I’m honest, a little afraid”, Johann Lamont was "anxious" and Justice Minister Humza Yousaf was unwilling to confirm if there are only two sexes - see the Herald article.)

• Prominent campaigners - including Tim Hopkins of Equality Network, and councillor and potential MSP Graham Campbell - are talking about hate crimes as including "using the wrong pronouns or the wrong first name". There have already been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. We would be horrified if, for example, women giving evidence in court were compelled to refer to a rapist as "she" or face prosecution.

We have also seen the introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

• There is mounting evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like ours, MBM, WPUK, etc "hate groups" and nothing is being to done check this. We really require clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election. Currently, we have little faith that they will do so.

• There is a hierarchy of characteristics which fails to ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and
criticism”. This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

Overall, we would ask for Option 1, with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

We also note that, despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.

We remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and we may yet have to rely on a more appropriate amendment at the final stage.
Kay Macpherson

I am very concerned regarding the Hate Crime Bill and feel it is essential to add free speech safeguards within the bill. It is necessary to ensure there are protections within the bill for religious beliefs. The inclusion of options one and two are in vital within the new bill to offer protection yet the options do not go far enough and do not provide powerful enough safeguarding in regard to issues surrounding sexual orientation and transgender identity. Christian along side many other world religions have deeply held convictions regarding sexual ethics and sharing these religious convictions should not lead to a criminal conviction or prosecution. It is important that everyone has the freedom to debate these issues the bill should protect this.

Diluting the protections offered within the bill for discussions around sexual orientations would be a grave mistake. Debate around moral and politics are areas where through discussions and exchanges people may change their view. This is a healthy and welcomed part of life. Sexual orientation and transgender identity are political and moral issues which requires debate without the fear of prosecution.

Section 12 is an essential part of the bill to safeguard Christians who should have the protection to urge people to follow the Christian life and his ways. Christian should be able to challenge people regarding their sexual behavior, which is a core belief, in love without fear of reprisal.

The 4 options offered by the government have not provided enough variance to provide an real options for people to choose to help create a bill which will not criminalize the Christians within our country.

Why does the bill not distinguish between legitimate debate and rabble rousing as suggested by Lord Bracadale’s independent review? As a nation we should not restrict people right to discuss, disagree and debate around the issues of sexual orientation and transgender.

There have already been statements made by Atheist Scotland last year stated their intent to target Christians once this bill has been passed and where they promised to eradicate organized religion in Scotland. More protection is required to ensure this will not happen to religious groups.

If this bill is passed as it is our police force will be overwhelmed with vexation reports. The people of Scotland should not be afraid to express their views for fear of criminalization.

I fear for the future of Scotland if this bill is passed. As a Christian who is a law abiding and has a care for our society it horrifies me that I could be reported or indicted for sharing my Christian beliefs.

Please do not dismiss my concerns but change the bill so that you will not be criminalizing a vast number of religious believers.
Thank you for this opportunity to give my views on the Scottish Government’s proposed Hate Crime legislation. Having read the call for evidence Annex dated 17 January 2021, and the proposed Bill, I wish to respond.

Firstly, can I say that I greatly value our current freedoms of expression which allow the public to properly, openly and appropriately discuss (including criticise) and debate different viewpoints on matters relating to the protected characteristics under the Equality Act 2010, namely: age, religion and belief, race, disability, sex, sexual orientation, pregnancy and maternity, marriage and civil partnership, and gender reassignment. This is what marks us as a free and open liberal democracy and attracts so many to live in Scotland. Although it is a worthy aim to have a society free of hate, discussions on sensitive topics can lead to heated debate in which opinions are expressed which are viewed as hostile, often in the areas of morality and politics. The mark of a mature democracy is that people are trusted to handle their emotions in a debate without resorting to insults or threatening behaviour. This means vigorous debate should be not only allowed but encouraged for people to test their own views and beliefs, during which process they may freely change their minds. I work as a tutor at The University of Glasgow, where I set and mark essays for my students discussing a wide range of social issues including sexuality, sexual orientation and gender. Critical thought is an essential skill sought by my students and their future employers, and which they expect me to teach them. If their freedom to criticise views in discussions on these topics is curtailed, they cannot develop the important ability of critical thought and expression and I cannot carry out my duties effectively.

Freedom of religion or belief (FoRB) is a recognised human right which the Scottish Government recognises. This fact is not given sufficient consideration in the proposals.

If protections apply to any of the protected characteristics above, they apply equally to all, for example, a discussion of sexual orientation and gender reassignment will inevitably raise moral and political issues. How can people have a meaningful discussion on these issues if they are not free to disagree, giving their own views on these issues without fear of prosecution? Therefore any diminution on protections for citizens during discussions around sexual orientation is mistaken and harmful to a free and appropriately thoughtful society; for example whilst antipathy, dislike, ridicule or insult of a religion, religious beliefs or practices or the position of not holding religious beliefs is expressly protected in Option 1 whereas the same is not applied to discussions of sexual orientation.

Under Option 1, subsection (2), it is conspicuous by its absence that religion (including religious debate, wherein people are free to debate and discuss a wide range of social and moral matters with reference to sacred texts and protected under FoRB), does not have the additional wide protections afforded to it as the other specified characteristics: age, disability, race, colour, nationality (including citizenship), or ethnic or national origins, sexual orientation, transgender identity, and variations in sex characteristics.

Precisely because a view taken on sexual orientation and transgender identity can have such profound, far-reaching and permanent effects, beliefs around these two
characteristics are not given sufficient protection in these proposals for full and free
discussion on these topics to enable fully balanced and considered decisions to be
taken by those involved.

Finally, under Section 12 of the Bill the ability to urge people to change their sexual
behaviour is, rightly, protected. This is essential to protect free speech for Christians
and Muslims, to name two groups, who hold changing behaviour as a core belief, in
the area of sexuality if a person’s previous behaviour is contrary to the teaching of
those faiths. Conversely, this further protects those who wish to leave those faiths
(FoRB) and practice a lifestyle not in line with them. How can the Government claim
to be upholding freedom of expression if it wants to delete this current protection?
Angus Smith

When it comes to sexual orientation or transgender identity all these options say the same thing. Why are we not given more options? As they are they are not really options at all.

I note that neither option 1 nor option 2 have the additional protection that is needed to permit religious debate.

I also note that none of the options give adequate protection for beliefs re sexual orientation and transgender identity. The freedom of speech protections needs to be more like those of religion.

The dilution of the Bill's protections re discussions around sexual orientation is something that is completely out of order and should be reversed.

It is with alarm that I see that the Government wants to delete Section 12 of the Bill which protects the ability to urge people to change their sexual behaviour. It is essential that Section 12 is retained to protect free speech for Christians.

The present wording of the Bill which clearly protects discussion or criticism of "sexual conduct and practices" must be retained and the Government's proposed free speech clause, which only covers discussion or criticisms of "matters relating to" sexual orientation should be abandoned.

Please seriously consider the above and arrive at a situation where free speech and religious liberty will be upheld in Scotland.
Donald McLean

Thank you for the invitation to comment on the freedom of expression clauses.

I believe none of the options proposed give enough protection for expression of beliefs.

Legitimate debate and criticism, even if it is hurtful for those who disagree to hear, is a completely different thing from a stirring up of hatred - and must be protected and these options do not do this safely or satisfactorily.

The first and second options do give additional protections in the case of religion - however, none of the options here give additional protections in other areas such as sexual orientation and transgender identity. There is a risk that, without clear additional protections in these areas that go beyond the options listed, politically-motivated complaints will be made to try to silence opponents and waste police time.

The options also include the words “matter relating to” - this also is not strong enough being a level down from discussion or criticism of specific conduct or practices.
Irene Forrest

I am contacting you in response to the proposed Hate Crime Bill and amendments thereof.

I feel that the entire bill was and is unnecessary as we already have sufficient legislation in place;

however, I nevertheless welcome the fact that you have at least agreed to review proposals.

In line with these I would make the following observations: -

* Reducing the Bill’s protections for allowing discussion around sexual orientation is a serious mistake and will have on-going consequences.

* None of the proposed options provide adequate protection for beliefs around gender fluidity or sexual orientation/identity. Explicit protection for free speech about transgender identity must be included as it is such a divisive and toxic issue. It must not become a criminal offence to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

* There is a serious risk that anyone who is politically-motivated will use any opportunity to accuse those who disagree with them of being guilty of hatred in order to silence them. Police Scotland have also stated that free speech clauses are important in order to prevent officers from being inundated with vexatious reports. Furthermore, under the Bill, a person could face up to seven years in prison for simply stating an opinion. This is an extremely serious penalty, requiring strong safeguards.

* None of the options offer sufficient protection for beliefs around sexual orientation and transgender identity.

Also in this life there can be unity amid diversity we are all so different its wonderful the wider the better!!  The freedom of speech protections should be closer to those proposed on religion.

Religious debate must have the additional protection included in options 1 and 2

The public reaction to this Bill has already drawn fierce criticism, and given that there will no doubt still be a great number of the general population who are unaware of its demands

and consequences, I maintain and believe as i think most of my family do too  that the entire Bill should in fact be abandoned...
Janet Pontin

The options listed are described in the published government PDF as follows:

- **Option 1** includes provision applying to all characteristics in the Bill. This option includes additional provision in respect of religion. This additional provision relates to types of expression that are not necessarily merely discussion or criticism.
- **Option 2** has the same effect as option 1 except no provision for race is included.
- **Option 3** has the same effect as option 1 except no additional provision for religion is included.
- **Option 4** has the same effect as option 1 except no provision for race is included and no additional provision for religion is included.

My concern is whether the law will provide a clear point of reference on what it does not criminalise, for individuals and organisations who may be threatened with legal action, or fear such threats, and for those working in the criminal justice system under pressure to investigate complaints, most specifically in the context of the expression of views about the nature of sex and gender identity.

I do not believe any of the options set out in the Scottish Government paper will achieve this. In my view, Option 1 is the best of the limited and unsatisfactory options on offer, as it allows for discussion and criticism on all the characteristics and provides some further protection for people to express antipathy, dislike, ridicule or insult on matters relating to religion.

I believe, though, that this option does not go far enough in protecting freedom of expression, as shown in the following areas.

1. Our society requires robust protection of free speech. If MSPs from three political parties have expressed their trepidation about the tone of the debate around women's rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious. (Adam Tomkins, Convener of the Committee, admitted he was "alarmed and distressed, and perhaps even, if I'm honest, a little afraid", Johann Lamont was "anxious" and Justice Minister Humza Yousaf was unwilling to confirm if there are only two sexes - see the relevant Herald article.) (https://archive.vn/M12u2#selection-1539.51-1539.163)

2. Prominent campaigners - including Tim Hopkins of Equality Network (https://archive.vn/BcSE ), and councillor and potential MSP Graham Campbell (https://archive.vn/k0Bwi) - are talking about hate crimes as including "using the wrong pronouns or the wrong first name". There have already been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. (https://archive.vn/aWkDn). I would be horrified if, for example, women giving evidence in court were compelled to refer to a rapist as "she" or face prosecution for not doing so.
There are already the introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". (https://archive.vn/2Qfaw). Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

3. There is mounting evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Simply campaigning to uphold the current law is being used to label a person (usually a woman) hateful and bigoted. Campaigners closely aligned to many Scottish political parties are openly calling groups like ForWomenScot, MBM (MurrayBlackburnMackenzie policy analysis), WPUK (Woman’s Place UK), etc. "hate groups" with nothing being done to check this. Indeed my own MP, to whom I am copying this submission, continues to do so. Clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy are required, especially in the run up to the election. Currently, I have little faith that it will do so.

4. The hierarchy of characteristics fails to ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms, as I see for myself daily - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

5. Issues related to “beliefs” and “practices” are not uniquely relevant to religion. It is differences of belief (about the nature of gender identity, its significance relative to sex, how many sexes there are, whether a human being can literally change sex, what defines being a woman or a man etc, whether a person can literally be “born in the wrong body”, and so on) that are generating much of the deep disagreement in relation to transgender identity. The explicit ability to reject beliefs needs to be as included, as in this particular context rejection of certain beliefs is regarded by some as intrinsically hateful. As an atheist, I do not understand why my rejection of another person’s religious belief is treated differently from my rejection of any other person’s belief in the concept of ‘gender identity’.

I therefore would support Option 1, with the extra free speech provision extended to all characteristics and with the explicit ability to reject beliefs (not just religious beliefs) included. Also required is a clear statement by the government that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.
I would like to ask why, despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government? Given the central point that this belief plays in this Bill, it seems unbelievable that there is no definition of it.

Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity. The line between the criminal and the offensive must be asserted more clearly.

I remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and with only three working days for anyone outside the Government to consider these completely new proposed amendments, which do not tally with the earlier stages of the Bill.
Roy Bridge

I am unsure why (2) (a) is referring to ‘discussion or criticism of matters relating to’ the characteristics below stated (i) – (vi), yet (2) (b) refers to ‘discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards’ aspects relating to religion. It seems reasonable that the same standards should be related to (a) and (b) alike and not, as appears above, that one is being held to a higher standard.

Protections for freedom of expression should apply equally to religion and other elements in the legislation, and the responsibility for people to respect the rights of those who assert to hold a religious (or other philosophical) perspective should be equal to those who receive that respect.

I wish to urge that legislation relating to freedom of expression should not make it wrong for someone to hold and express these views and the practices which result from them:

- Marriage is, by definition, between male and female persons, and those who conduct marriages (religious) should be able to do so between male and female only if they choose.

- Whilst some people may identify with a different expression of gender than the one they were born with, or may feel themselves to be gender fluid / neutral etc, it will not be wrong under law to hold and express the view that sex is biologically determined and that there are two biological sexes. I am of course not suggesting that it is acceptable to act in a hateful or threatening way towards anyone, but freedom to express this view should be upheld in any current or amended legislation.

Thank you for considering my points.
Irene Brown

The rapid changes in the use of language and the power behind these changes is seriously alarming for me as an older woman who has always done her best to treat all people fairly, but also for young generations who are being expected to accept new terms that frankly go beyond logic. The Orwellian, and ironically binary, use of this new language, and the intolerance against its perceived misuse, however unwittingly, is both hostile and inconsiderate.

As a divorced woman, who perhaps unusually reverted to my maiden name, have quite naturally experienced being addressed by either my married name or salutation many times. A polite reply to confirm the change is not the same as regarding the person using a previous name as being full of hatred. In contrast, unintentional use of perceived 'wrong' pronouns can be (and has been) met with very blunt and demanding rejection in circumstances when politeness would have meant a more conciliatory outcome. In any situation, respect has to be a two way process otherwise the door is open to over dominance on one side.

Of the men who are now able to identify as women, there may only be a small percentage who will take advantage of this new facility for ill, but they do exist and legislation really must be in place to protect biological women against them without infringing on the trans people who want to live a new life without harming or infringing on biological women's rights.

Open and free discussion without fear is essential and it strikes me as a lay person that a section of society that is in the minority has a disproportionately powerful voice so is worth in this regard recalling the old socialist tenet “For the many, not the few.”

The views of biological women matter and should be heard and listened to without their being threatened and insulted. This is a serious issue and has to be addressed in a mature and unemotive way. US writer James Baldwin once said “…nothing can be changed till it’s faced” and this uncomfortable truth has to be faced.

Please consider Option 1, of the Freedom of Expression Amendment with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.
Kirsti Paterson

1. Debate e.g. Religious should have the additional protection included in options 1 & 2.

2. We have enjoyed freedom of expression at different levels in society, at work for many years in Britain, why jeopardise such implications which this Hate Crime Bill sets out.

3. There should be safeguards which protect people’s spoken words i.e. legitimate debate not rabble rousing, regarding the likelihood of penalties & imprisonment.

5. Diluting down the Bill’s protection for discussions re sexual orientation is concerning.
Stephen Carter

I am concerned that as the bill stands it will have a major curbing on freedom of speech in this nation.

It must have more protection around discussion of religious issues discussed in options 1 and 2. In particular none of the options give sufficient protection to discussion of issues surrounding same sex orientation and transgender issues. The latter in particular can have serious, non reversible consequences for our young people and to suggest there is no freedom to disagree with the prevailing view would be an extremely serious situation.

This legislation could and almost certainly would be used to weaponise those who wish to make vexatious claims against those who disagree with them.

Freedom of speech must be a priority of your government if Scotland is going to be a country worth living in.
Margo Logie

I wish to respond to your consultation and firstly express my disappointment at that very short time giving to express views on this important Bill.

Of the four options presented is it very important that religious debate is given protection and therefore I think only options 1 and 2 should be considered. However, I feel the protections need to go further as none of the options give protection for beliefs relating to sexual orientation and transgender identity. These are issues that need to be debated and therefore the freedom of speech protections that are proposed for religion should be extended to these topics also.

Sexual orientation and transgender identity raise moral and political issues and are matters on which people can and do change their minds. People must be allowed to vigorously debate such issues and disagree about these things without fear of prosecution.

Your proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. This provides less protection than the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices”. Watering down the Bill’s protections for discussions around this important topic is a mistake.

Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is essential to protect free speech for Christians, for whom changing behaviour is a core belief. Yet you want to delete it. I think this presents the risk that politically motivated complainants will label disagreement as hatred to try to silence opponents. Police Scotland has said free speech clauses are important to prevent officers being inundated with vexatious reports. Please reconsider the content of the bill to ensure that much needed protections are fully included.
Bruce and Carol Luffman

The first two options do address the issue of protection for one's religious views and are welcomed but none of the options give sufficient protection to the subject of sexual orientation and transgender identity in terms of one's religious beliefs. Therefore it is imperative that the safeguards for protecting free speech on these subjects should be aligned to those on religion. It would be wrong to dilute the Bill's protection for discussion around sexual orientation.

It is very important that the free speech on both sexual orientation and transgender identity maintained so that robust discussion is protected but importantly with the latter subject of transgender identity, the freedom must be explicitly protected to use a a person's birth name and pronoun and say that man born a man cannot be a woman and vice versa. There is clearly a huge risk that complainants will be politically motivated and vexatious and will call discussion and disagreement as stirring up hatred to silence persons who do not agree with them. Police Scotland has already said that clauses on free speech are important so that they are not overwhelmed with unnecessary and problematic reports.

The threat to freedom of speech could also be obtuse in that persons could be constrained from discussing subjects such as Christian morality as they would feel that they might be prosecuted for holding perfectly reasonable opinions and that would be a huge blow to a free society. With this in mind, it is evident from Lord Bracadale’s Independent Review on Hate Crime that led to the Bill, that he stressed a need for a clear distinction between legitimate debate and the rousing of a rabble. It is clear that this Bill does not reflect the outcome of Lord Bracadale’s Review.
Elaine and Keith Fraser

We are deeply alarmed at the lack of time given to ordinary public to consider the complexities and amendments to this bill. We have caring duties this weekend and we are very angry that we have to take precious time to write to you having been given at short notice.

For us Option 1 seems the best with the extra FREE SPEECH provision extended to ALL protected characteristics.

The Scottish Government cannot even provide a definition of "transgender identity" or explain what will be considered "abuse". This lack of clarity is a disgraceful state of affairs.

We demand the Scottish government makes very clear that statements of biological fact are not criminalised. Extraordinary to be having to write such a statement in a democracy.
Professor Ted Milburn

It is my view that none of the options are satisfactory as they currently stand:

a. None of the options will provide vital protection from prosecution for those who are accused of ‘transphobia’:

(1) for speaking out about women’s rights, in spite of these rights being protected in law.

(2) for ‘misgendering’ another person, even when the other person’s preferred gender is unknown and there is no intention to insult or be derogatory.

(3) for holding that the scientific consensus that while gender is a social construct and highly variable, sex (with the very exception of those who are born with ambiguous genitalia) is male and female - and immutable. These are not matters of faith, but of science, yet free speech regarding faith is protected by the proposed options, while speaking of the category of sex is not protected.

b. The term ‘transgender identity’ has no clear definition and currently no legal status, yet it is valorised at the expense of a well understood and legally accepted term - ‘woman’.

c. The term ‘variations in sexual characteristics’ has no clear definition and currently no legal status.

If one of these options must be chosen, I would suggest Option 1, with the changes noted in red below:

Option 1

Protection of freedom of expression

1. (1) For the purposes of—
   1. (a) section 3(1), behaviour or material is not to be taken to be threatening, abusive or insulting,
   2. (b) section 3(2), behaviour or material is not to be taken to be threatening or abusive,

solely on the basis that it involves or includes an expression of a type described in subsection (2).
2. (2) The types of expression referred to in subsection (1) are—
1. (a) discussion or criticism of matters relating to—
   1. (i) **sex**
      (ii) age,
   2. (iii) disability,
   3. (iv) race, colour, nationality (including citizenship), or ethnic or national origins,
   4. (v) sexual orientation,
   5. (vi) gender reassignment
   6. variations in sex characteristics,
2. (b) discussion or criticism relating to or expressions of antipathy, dislike, ridicule or insult towards—
   1. (i) religion, whether religions generally or a particular religion,
   2. (ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,
   3. (iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,
3. (c) proselytising, or
4. (d) urging of persons to cease practising their religions.

3. Nothing in this legislation will criminalise statements of scientific or biological facts, or campaigns to retain women's rights in law.
Jean Cook

I am writing with regard to the consultation on free speech taking place in a few days.

I see that there are different options to be discussed. The protection for debate offered in the first two options are important and necessary. However, none of the options give strong enough protection regarding sexual orientation and transgender identity.

These are very controversial issues with strong and different views held by many. Because of this, it is of the utmost importance that freedom to disagree is protected in the ‘stirring up hatred’ part of the Bill.

People of faith hold personal and strong beliefs on these matters. Holding, sharing and speaking publicly about their views should not be criminalised. At least, not in a free society!

Therefore, I urge you to protect freedom to disagree on sexual orientation and transgender issues.
Rev Arthur Hembling

I am writing to express my deep concerns about the issue of free speech in the proposed Hate Crime Bill.

While I understand the intention of the bill is to safeguard discussions around the sexual orientation and transgender identity issue, I am concerned that anyone who disagrees with and puts forward different opinions, could be prosecuted, and depending on the severity of disagreement, face a lengthy jail sentence.

We live in a free society with the freedom to express views and deeply held beliefs, be they religious or moral. Section 12 of the bill protects the ability to urge people to change their sexual behaviour. I share the same view as the majority of Christians of all denominational persuasion, that we must be protected from expressing differing views which are clearly expressed in both the Bible and the Koran. It would be considered a moral failure if I failed to warn someone of the dangers of putting my hand in the fire, yet under this bill I could be prosecuted for expressing a view which seeks to warn of the dangers of moral failure from a religious viewpoint.

Scotland has a wonderful heritage which includes our freedom of speech: freedom to debate and express opinions about religion, politics, sexual identity and orientation, ethical and moral issues. Police Scotland has already pointed out that free speech clauses are important in preventing their offices being inundated with annoying calls and reports. It is highly likely that many individuals and minority movements will label disagreements as hatred, thus taking up valuable police time, and stirring up more hatred and disagreement.

As a Christian Minister I have spoken with many people about different views and opinions concerning sexual orientation issues. Most have been grateful to me for sharing what I see as the truth found in the bible and doing it in a loving and supportive manner. We have agreed to disagree in many cases, but all have left feeling loved and supported, and many remain good friends today. Expressing opinion and sharing truth, whether it's our version, is good and healthy in a free society, and I appeal to you that more vigorous protection be included in options 1 and 2.
Peter Boughton

I have looked at the "Annex – four options for freedom of expression provision" and tried to understand what they would mean in conjunction with "Scottish Government Stage 2 Amendments Purpose and Effect Notes". This is far too big a job to do in the time allotted for the call for views.

Not only that but, "none of these options are Scottish Government preferred options". We are left with an act the details of which will be left to a parliamentary debate or a behind the scenes political compromise. Because of the sensitivity of the bill's contents this cannot be allowed to happen. In my opinion the bill needs to be re-drafted, to include what the Scottish Government realises needs changing, and re-submitted. If the SNP are confident of having a majority in the next parliament this should not be a problem.

The final act must include provision for robust and impassioned debate on all the areas listed in the options and thus, if the "four options" are to go ahead, then go for option 1. However, it is unclear whether it assumes the inclusion of other options (e.g. amendments altering or removing section 12). As it stands it is very unclear what will constitute a "hate crime". This needs to be declared clearly and simply to avoid future court arguments.
Heather Mackay

I want to add my concern with the following points regarding the Hate Crime Bill which is being discussed in the Scottish Parliament next Monday 22 February 2021.

Religious debate must have additional protection in Options 1 and 2.

NONE of the options give sufficient protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion.

Diluting the Bill's protections for discussions around sexual orientation is AN ENORMOUS mistake with I fear leading to long term damage.
John and Roberta Downs

We are still deeply concerned about the need for higher levels of protection for ‘free speech’ with regards to some of the protected characteristics categories. Specifically the need for the following:

1) Religion/s and non-religious belief. Disagreement and debate in this category must have the protections and additional provisions guaranteed in Options 1 and 2.

2) Sexual Orientation. None of the 4 options gives enough protection. The proposal to lower the protections for this category contained in section 12 of the Bill eg the freedom for Christians and others to encourage someone to change their lifestyle/behaviour must be maintained. A specific protection clause (similar to that for Religion) must be introduced. The expression of deeply held traditional/religious or alternative beliefs (by speech or writing, in public and private settings, on line etc) must be upheld and specified. This must include the freedom to express the traditional belief that marriage can only be between a man and a woman, or that homosexual behaviour is sinful (eg according to deeply held religious belief or eg the Bible).

3) Transgender Identity. None of the 4 options gives enough protection. A specific protection clause (similar to that for Religion) must be introduced. The expression of deeply held traditional/religious or alternative beliefs (by speech or writing, in public and private settings, on line etc) must be upheld and specified. This must include the freedom to express the traditional belief that birth gender is unchangeable, or the right for family/others to use a person’s birth name and pronoun without fear of prosecution.

Also the freedom to quote from the Bible must be maintained as a result of this Bill.

Finally, people must be free to openly give an account of their beliefs, however unpopular (apart from eg. an explicit call for physical violence against an individual/group which is clearly wrong). This Bill as it stands still has the potential not only to criminalise peaceful dissent, but to bring to Scotland a new chilling censorship, where people are scared to openly state what they profoundly believe, for fear of prosecution.
Jane Hesketh

Thank you for asking for views on protecting rights to free speech in the context of the Hate Crime Bill.

I believe that Lord Bracadale’s original intentions were well-founded and should be adhered to. Detailed tailored amendments should be set out for freedom of speech in relation to each characteristic.

If there is to be a generic protection, it should be as now proposed for religion, as amended at Stage 2 by cross-party consent. It covers “expressions of antipathy, ridicule, dislike or insult”, as well as “as discussion or criticism”. The concept of “beliefs and practices” is not uniquely relevant to religion. Whatever approach is taken to religious beliefs and practices should be taken to any beliefs or practices related to other characteristics.

It is differences of belief (such as about the nature of gender identity, its significance relative to sex, how many sexes there are, whether a human being can literally change sex, what defines being a woman or a man etc, whether a person can literally be “born in the wrong body”, and so on) that are generating much of the deep disagreement in relation to transgender identity. The explicit ability to reject beliefs is also needed, as in this particular context rejection of particular beliefs is regarded by some as intrinsically hateful.

There needs to be robust protection of free speech. MSPs from three political parties have expressed their concern about the tone of the debate around women’s rights and reform of the GRA. The existence of the Hate Crime Bill as it stands risks preventing debate over women’s rights by making discussion of trans matters liable to accusations of committing a hate crime.

It is not a hate crime to use the wrong pronoun or the wrong first name, but people are looking to use the Hate Crime Bill to make it a crime. For example women giving evidence in court were should not be be compelled to refer to a rapist as “she” or face prosecution for a hate crime.

The Gender Representation on Public Boards Act capitalised on the use of “preferred pronouns” as evidence that a male is entitled to apply for a role reserved
for women. IPSO guidelines already ask that reporters refer to male-bodied individuals who identify as women and commit sex crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to be made abundantly clear that compelled speech forms no part of the Bill.

It is becoming clear that individuals and lobby groups are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like Forwomen.scot, MBM, WPUK, etc "hate groups" and nothing is being done check this. There should be clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election.

Even under Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics including sex.

Despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.

Please support Option 1 with the extra free speech provision extended to all characteristics including sex. Please include a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women’s rights in law or to challenge policy changes.
Stuart Gray

I wish to submit my views regarding the above Bill amendments

I welcome the provisions made for religious debate in the first two options proposed. Unfortunately when it comes to beliefs regarding transgender identity and sexual orientation the above provisions are either removed or seriously weakened. Whilst some would welcome debate on these issues being closed down, the majority would not.

It is both wrong and dangerous to criminalize free speech regarding transgender identity. It is already a toxic issue and shutting down debate will cause a lot more problems than it solves.

It would be really good if the Justice Committee would make sure everyone is clear about the difference between hate and disagreement there are minority elements of the community that are trying to stir up confusion about these two words in order to further their political goals.

I do so hope that the justice committee can produce amendments that are fair to the vast majority of Scotland’s people rather than affording a minority special protection at the expense of everybody else
Alan Caldow

It is my understanding that there is further debate and discussion proposed regarding the Hate Crime Public Order (Scotland) Bill, and further opportunity to comment upon it, and the inherent risk from the proposed wording. I have previously made comment by Email, but believe that it has been recommended that any further submissions be made by Word Document and would ask that the following be considered during this review. How this legislation is worded is critical in how it will be interpreted and I believe it is rife with language that could be interpreted by people with an agenda they are determined to drive through. I have read through the Annex on proposed free speech clauses and have the following comments.

“reasonable person” – What do you believe this means? The very definition of a reasonable person is fraught with interpretation that relies on context. It is not “objective”. The context I refer to is the current political and social status of a society who ultimately influence and appoint the law makers and law interpreters. The recent events in the USA bear testament to how fragile democracy is and what a “reasonable person” is. 70+ million people cannot all be extremists? However, the politics that Donald Trump advocates and the passion he incites in large portions of the American population show how easily views can be swayed in different circumstances. Any legislation that is passed has to stand the test of time and changing political and social pressure, in the hands of the wrong people loose words such as these can be abused.

“threatening or abusive” – What do you believe this means? This again relies on context and interpretation. I’m not a human behaviourist, but suspect that what one man considers passionate could be considered as threatening or abusive by others. Was Nicola Sturgeon’s face and fist pump when she heard Jo Swinson had lost her seat in the last General Election passionate or could that little roar of joy be considered antagonistic, aggressive and threatening? I’m sure that lawyers could make a lot of money arguing that point without a conclusion as a reasonable person who does not support the SNP might have a different view from one who does. Which one would be reasonable?

“discussion or criticism” – At what point does discussion or criticism become threatening or abusive? When is heated debate “discussion” and when is it “threatening”? If a woman of 160 cm says something passionately is that as threatening as when a man who is 200 cm says something passionately? I do not see language here that is objective, but entirely open to interpretation.

Further debate is required before Part 2 is brought in to law and it should not be rushed through before the next election in May thereby avoiding the thorough and effective review necessary.

Free Speech is the cornerstone of democracy and essential in making effective positive change to society. Let’s not fool ourselves in to thinking that we will achieve a better and more inclusive society merely through writing laws. That’s achieved through effective and open debate in all corners of our lives; at work, at home, at
play; not by writing new laws. Effective change will only happen where people have no fear of speaking openly and we move together to the “new normal”.

The existing laws are in my mind sufficient if used effectively and appropriately and the proposed changes fraught with risk.
Ralph Martin

Thank you for the time you have been spending on the proposed Hate Crime Bill. A Bill which has aroused much antipathy in some and an almost triumphalist crusade in others. I do not envy you your task but I will pray for you in it for the sensitivity and wisdom we all need.

Thank you for the four amendment options provided. My reaction is to be thankful for the protection included in options 1 and 2. I would add that Religious debate must have these protections. Religion is basic to humankind and therefore must be recognised with respect.

I am puzzled that for such contentious issues of sexual orientation and transgender identity the protections seem to be barely adequate. Surely at the level of self-identity protection of freedom of speech is also a priority for these matters which do raise moral and political differences. It must be that debate on these areas of individual and corporate life is free from the threat of prosecution. I am talking about debate, either public or private, not rabble-rousing.

In my view protection that is too weak will result in a whole messy area of indecision at the point where clear guidelines are necessary. It may also result in disgruntled persons attempting to cause a lot of damage to decent people holding conscientiously to sincerely held views.
Caroline Rouault

Thank you for providing an opportunity to give views on the shape of free speech protections in the Hate Crime Bill. While I welcome this opportunity, there has not been much time given for this consultation, and I would urge the committee to recommend that scrutiny of this important part of the bill should be extended and, if necessary, delayed until the next parliament.

In my view, the proposed options do not go far enough to protect freedom of speech. Allowing mere ‘discussion and criticism’ of hotly debated topics such as the transgender issue do not protect free speech. Likewise, religion & belief is a controversial subject and people must be free to argue about it without being accused of a hate crime. I would urge to committee to oppose the stirring up of hatred clauses in their entirety as the law already punishes ‘threatening and abusive’ behaviour and offences aggravated by prejudice are treated more seriously.

That said, if the clauses are to remain, I would advocate that the most robust version of the free speech clause (discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards) should apply to all protected characteristics as well as religion & belief in order to protect freedom of speech and the right to have an opinion.
Elma Young

I am pleased to read that the first two options that you have suggested give robust protection for debate on religion but unfortunately none of the four suggestions give nearly enough protection for discussions around sexual orientation or transgender issues.

As you well know these two areas are widely debated these days with many different opinions so it is very important that freedom to discuss these issues is well protected. Many people of faith have very strong opinions and deeply held beliefs about sexual ethics and should be able to share these beliefs without being in danger of being accused of a hate crime.

My husband is a Christian minister and I am very concerned that he would not be able to preach from the Bible about what it says about marriage and sexual ethics without risking being charged with an offence. If he were to preach a sermon and say that same sex marriage or living as the opposite sex is sinful could he be prosecuted for stirring up hatred? The Bill must protect beliefs about transgender identity and marriage.

Some people have been punished for not using the ‘correct’ pronoun which is wrong. It is a biological fact that a person cannot change his/her sex and no one should be punished for saying otherwise or using a pronoun for someone which does not agree with that person’s actual sex.

Also Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is essential to protect free speech for Christians, for whom changing behaviour is a core belief. Yet the Government wants to delete it.

As well as my personal concern about this Hate Crime Bill I am also concerned about the danger of eroding our free speech rights as a people. We have always valued our free speech rights as a nation and this dangerous bill could drastically curtail these rights.

I would urge you as a Justice Committee not to make any rushed decision about this bill. It is too important a subject to get wrong.
Emma Maciver

Thank you for opening this consultation and considering views on the matter of freedom of expression in the Hate Crime Bill.

I am writing as I feel it is of vital importance to protect the people of Scotland from hatred or deliberate harm; it is an important part of our Scottish culture that we are a kind and supportive nation for all. However, I also feel that the Bill should be further amended and strengthened in order to further protect the Free Speech of the Scottish people.

In regard to the 4 proposed options for amendments to the Free Speech clauses, I am grateful that the first two options offer improved protection in the area of religious debate and I feel that this would be essential to any formulation of the Bill. However, my main concern is that the freedom of speech clauses do not provide a suitable level of protection as they are too generalised. On balance, I would ask the government to not go ahead with part 2 of the Bill or to further strengthen the clauses to ensure far more adequate protection.

Firstly, it seems very important that religious debate has the additional protections included in options 1 and 2. As a person of the Christian faith, I feel concerned that there could be a danger that the Bill may not do enough to safe-guard genuine religious belief or debate. In a free society, it is very important that we protect free debate and freedom of religious belief. It is a concern that under the proposed Bill as it stands that someone may feel unable to give an account of the basis of their faith to another person, or to share the faith with those who show an interest themselves. They may feel that they cannot faithfully give representation of their religious text/teachings, even in a church service, or indeed in their own home. Worryingly, as it stands, someone could be given a 7 year prison term for respectfully and faithfully representing the bible in a church service. Really strong safe-guards need to be in place if there are such serious repercussions. Indeed, religious freedom of speech clauses are stronger in other parts of the UK.

Moreover, the freedom of speech clause would need strengthened in order that those who respectfully consider traditional marriage and traditional gender roles as part of their faith are not unfairly viewed or prosecuted. Noticeably the new clause covers “matters relating to” sexual orientation. This is a softening from before which did protect discussion or criticism of “sexual conduct or practices”. Keeping the safe-guards in section 12 as they were seems vitally important as it would provide robust and adequate safe-guarding in this area. Effectively the clauses being proposed now offer less protection to respectful individuals, of earnest belief, who are faithfully upholding their religious texts. If the Bill continues without adequate freedom of speech clauses, sermons which faithfully represent the bible could worryingly become a criminal act. Currently, Scotland would be the only part of the UK with no specific protection for discussion/debate regarding marriage.

Justice Secretary Humza Yousaf indicated that a free speech clause regarding transgender identity would be included; I feel that this seems so important in order safe-guard those of genuine faith and biblical belief. I would urge the government to include this as there is currently no protection for fully respectful and earnest
discussion/debate regarding transgender identity. It seems vitally important, and an issue of parity, that the Freedom of Speech Clause regarding this should be included and strengthened in line with the protection given to issues of religion.

I wish to reiterate that I am in full support of initiatives which prevent hatred and harm in Scottish society as this is of absolute paramount importance for all, but I would welcome revisions of the Freedom of Expression clauses of the Bill to ensure that genuine freedom of expression and religious freedom is not inadvertently curtailed by the new proposals for the formation of the Bill.

I would be grateful if this could be raised in the committee on my behalf.
Melissa McCarthy

I am a voter in Scotland. You have asked for views from stakeholders into freedom of expression provision within the Hate Crime and Public Order (Scotland) Bill. I am concerned about the erosion of the right of women to speak freely about our status, our ability to organize freely, and to be free from vexatious and misogynistic interference in exercising these rights.

Following recommendations from For Women Scotland, whose activities I support (although it’s disappointing that their activities are still so sorely needed), I would support Option 1 of the four options listed in your Jan 17th annex, with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

I also consider it absurd that there is a proposal to use the term "transgender identity" without clear, wide-spread and legally justified agreement on what this term means.

I hope this helps in formulating policy that works for women, and other people in Scotland.
A Macdonald

I am writing to register my concerns about proposed amendments to this bill.

None of the options provide sufficient protection for freedom of expression. It is evident that there is a great deal of discussion to be had on, for example, the apparent move (without meaningful consultation with women and girls) from sex-based to gender-identity-based rights, data collection etc. For honest discussion of such issues surrounding protected characteristics, there need to be explicit protections in place, as well as clear definition of terms such as transgender identity.

The need for protection is exemplified by the opposition to proposed amendments as transphobic; by the smearing of women’s groups – for fighting for existing law under the Equality Act to be upheld – as hate groups; by the definition of transphobia just adopted by the SNP NEC; by the hounding of gender critical academics/poets/social media users and the chilling effect that stops people speaking truth; and by the Justice Minister’s unwillingness to confirm that there are two sexes. We cannot have people criminalised for stating biological facts, for pronoun choice or for campaigning for women’s rights.

‘Criticism or discussion’ fails to specify expression that is not criminalised. This is a failure that makes chilling effect likely, as well as de facto interference in Article 10 rights. At the very least, the specific definitions regarding the protected characteristic of religion ought to be used as a template for the other characteristics. Surely, we do not want a hierarchy of protected characteristics, whereby more protections are available for one/some protected characteristics than for all?

I favour Option One out of the proposed amendments but please strengthen it.

Lastly, I want to record my embarrassment that we are becoming renowned as a nation that makes shoddy legislation that is not fit for purpose. Please slow down and reflect!
Jennifer Griffiths

I do not have a gender identity and consider it the same as any other religious belief. In addition, Parliament has failed to define exactly what is meant by gender identity and transgender identity. With that in mind the general provision covering only "discussion or criticism" cannot provide the secure and clear point of reference that is needed for transgender identity. The line between the criminal and the offensive has to be asserted much more clearly.

If the Parliament is nevertheless determined to legislate in this area, I think that the belief in gender identity and transgender identity should be treated as the same as what is already proposed for other religions. This should apply to all characteristics to ensure a hierarchy of characteristics is not created by this Hate Crime Bill. Thus option 1 would be the least worst option.

Given that within the discussions of the Hate Crime Bill the Justice Minister was unable to confirm the scientific consensus that there are two sexes I have huge concerns that this hate crime bill will have a chilling effect on the discussion of women's rights, as defined in the Equality Act 2010, and biology. If there is not clarity around exactly what constitutes hate from Parliamentarians then how can ordinary members of the public be expected to negotiate this new law. Instead of punishing those for causing harm to others this law will be used to punish those who may be uneducated or unwilling to follow certain beliefs.
John Lockhart

Please note my disappointment in the short timescale of 96 hours allowed for the public to express their views on this proposed bill in its latest format. This does not support the view that we are engrossed in a public debate where all contributions are sought and welcomed.

The protections on religious debate are stifled in options 1 & 2. For instance, religious debate often takes place within the controversial issues that are present within society and this has to be done in an open and free manner. When these issues are in direct opposition to faith held beliefs there are no safeguards built into this proposed legislation. If my faith condemn homosexuality and transgender lifestyles then I must have the freedom to express these views. Religious debate is therefore stifled within the framework of the Bill.

If I decide to have a tail made of fur stitched to the base of my spine and instruct people to address me as “Rover” it will not make me a dog. Saying that I am a dog would be a lie and anyone addressing me as Rover would be complicit in the lie. Likewise, if I refer to someone born as a male as “She”, I will be lying. The proposed legislation would force me to lie or face prosecution. Under present legislation I do not have the right to insult or ridicule a man dressed as a woman and this is right and correct. Society however does not have the right to disallow me to express my view that a biological man will always be a man.

Under the proposed legislation men, dressed as females, will be allowed to enter female only spaces and any female who objects is liable to face prosecution. This proposed legislation is dangerous.

The SNP administration, in their pursuit in their quest for independence, use misogynist and anti English rhetoric. Whether one sees this as patriotic, treasonable or rabble rousing is immaterial - it is healthy political debate. This is a basic human right in any free and democratic society which this proposed Bill will remove. All political debate will only take place within the strict confines of this proposed Bill. Effectively, we can continue to debate but the subject matter and discourse will be dictated by what the Scottish Administration allows. Free speech will become outlawed.

Lord Grayscale was clear in stressing the importance of distinguishing between legitimate debate and rabble rousing. This proposed Bill makes no such distinction and is unfit for purpose.
Mary Lockhart

I must have my disappointment noted that only a 96hr window has been allowed for the public to express their views. Also, the Scottish Administration has not made the public aware of the huge implications that can and will arise. It is neither politically nor morally correct to keep slipping these issues under the carpet.

Whilst the additional protections offered in options 1 and 2 give some protections for debate on religion, they do not go far enough. For instance, religious debate must be undertaken in a way in which current controversial issues can be discussed in a free and open manner. Where these issues are in direct opposition to faith held beliefs there have been no safeguards included within these options. If I believe that my faith condemns homosexuality and by extension changing one's birth gender, then I must have the freedom to express those views. Therefore, religious debate is being stifled within options 1 and 2 in their present form.

If a person should decide to put a saddle onto his or her back, it will not turn either of them into a horse. Likewise if a man should choose to wear women's clothing, it will not turn him into a woman, nor a woman into a man should she choose to wear men's clothing. It seems ridiculous to have to resort to using this kind of example, but the point needs to be made. A person may decide to wear whatever they choose. They may wish to see themselves as a changed gender by changing clothes and changing their name, this is their prerogative, and should not cause or create any hatred to befall them. However, the same principal must be allowed to others that do not see a change of clothing and name as a legitimate change of gender, and neither must they be forced into the charade and/or the lies by addressing said person as the new/changed gender. A further and even more preposterous example is the possibility that a man dressed as a woman should enter into and use the female only spaces. Under this Bill, females would be prohibited from objecting to this invasion.

In the pursuit of independence, the SNP administration have consistently adopted a misogynistic and increasingly anti English rhetoric. Some would see this as patriotic; some would see this as treasonable, whilst others would see this as stirring up hatred. A more pragmatic approach would see this as healthy political debate. Whether, or not, one agrees with these is immaterial, what is important is that individuals are allowed to express their deeply held views freely without fear of reprisal. This Bill in theory will stop all political debate. We will only be allowed to state that which the Scottish Administration considers acceptable. This, were it allowed, would be state sponsored bullying and remove free speech in Scotland.

Lord Bracadale has already stressed the importance of distinguishing between legitimate debate and rabble rousing. This proposed Bill takes no account of this and is therefore not fit for purpose.
Rachel Carmichael

1. When I practiced law I sometimes had to tell clients that they could to choose to have a complicated contract done fast, or done right. I am very concerned that given the significant points of concern amongst all interested parties, the progress of this Bill, which will restrict a fundamental human right, is being rushed. I do not want Scotland to have another poorly drafted law that is subject to multiple legal challenges or ends up swiftly being abolished by a subsequent administration. It is the duty of the legislature to avoid that happening.

2. As I understand it, the Justice Secretary, Lord Bracadale and many third sector bodies have expressed dissatisfaction with the options being considered. My first choice would be to put this Bill on hold until further discussion can take place. It is folly to proceed in a manner contrary to the advice of a member of the judiciary consulted for the purpose of advising on the content of the Bill.

3. Of the options being considered, Option 1 seems to me to be least unsatisfactory, but it still requires work to strengthen and clarify the extent to which free speech on matters such as the protection of sex-based rights under the Equality Act 2010 will be permitted.

I feel very sad that I am having to request members of my government to confirm that full and free discussion of all aspects of equality legislation is not going to be criminalised.
Daniel Lander

I would like to register my concern as to the considered proposed provisions for freedom of expression amendments to the above-mentioned Hate Crime and Public Order Bill.

As a genuine practising Christian, I have had the liberty to preach in public places for the past 30 years announcing God’s Glad Tidings. I seek to follow what it says in the Bible 1 Timothy 2 verse 4 “God our Saviour; Who will have all men to be saved, and come unto the knowledge of the truth.” This would be practised by all able to do so in the Christian Church I belong to, with whom I celebrate the Lord’s Supper. The open-air preaching has obviously ceased during the current pandemic, in order to obey Government guidelines which we hold to; Romans 13 verse 1 “Let every soul be subject unto the higher powers”, but as soon as restrictions are lifted we intend to continue this practise.

In order to pursue practising this essential work we would need the provision of Option 1 as a minimum, and options 3 & 4 would not provide sufficient protection.

It is never my intention to stir up hatred or behave/speak in a threatening or abusive manner, I have the utmost respect for all members of society and strongly condemn hate crimes, but I could unwittingly say something that someone could claim was offensive or shocking to them, and be accused by that person of being “abusive”.

Therefore some additional protection and clarification, in my view, is still necessary in addition to what the Government proposes. Can some wording be inserted that protects the right of any individual to say things that others might consider disturbing or even offensive, providing these are not said in a threatening or abusive manner and thus not intended to stir up hatred?
Susan Ireland

I’m writing to express my concern about the four new amendments tabled for the Hate Crime Bill, none of which adequately protect women’s right to free speech, as we struggle to defend women’s sex-based rights.

For example: as a parent, I have been horrified by the Scottish Government’s school guidance “Supporting Transgender Young People”, which is still in place, despite the agreement of Scottish Ministers over 18 months ago, that it does not adequately protect the rights of girls. I’ve personally complained to my Local Authority that its recommendation to allow boys who identify as girls to use communal showers/changing rooms is inappropriate. It worries me greatly that in future, under the new Hate Crime Bill, voicing such sentiments could either be illegal or that other women will be afraid to speak up for fear of falling foul of hate laws.

As a lifelong feminist, I could never have imagined that defending women’s right could be deemed hateful. Overall, my preference is for option 1, with the free speech provision extended to all characteristics. The Government should clearly state that the Hate Crime Bill should not be used against women seeking to retain existing legal rights or challenging policy.
Caroline Adams

I do not have a gender identity and consider it the same as every other religious belief and fail to understand why it's being afforded a different form of words to other protected characteristics.

In addition the Parliament has failed to define exactly what is meant by gender identity and transgender identity.

With that in mind the general provision covering only 'discussion and criticism' cannot provide a secure and clear point of reference that is needed for transgender identity. The line between the criminal and the offensive has to be asserted more clearly.

If the Parliament is determined to legislate in this area I think that the belief in gender identity and transgender identity should be treated as the same as what is already proposed for other religions. This should apply equally to all characteristics to ensure the same form of protection for all characteristics instead of creating a hierarchy.

This option 1 would be the least worst option, given that within the discussion of the Hate Crime Bill the Justice Minister was unable to confirm the scientific consensus that there are only two sexes.

I have huge concerns that this Hate Crime Bill will have a chilling effect on the discussion of women’s rights and biology as defined within the Equality Act 2010. The abuse that Hebo Hardere is suffering for campaigning on FGM is a typical example.

If there is no clarity around what constitutes hate from parliamentarians then how will ordinary members of the public be expected to negotiate this new law.

Instead of punishing those for causing harm to others this law will be used to punish those who want to talk about their own biology, or are less informed or unwilling to follow certain beliefs.
Dr Graham Keith

The Overview

Before I comment on the four options presented by the Bill, I would like to express my dismay about part of the ‘overview’ provided by the Justice Secretary - notably where he writes, ‘I do believe it is important to give comfort to those concerned about the impact of the Bill on Freedom of Expression, that criticism, including very robust criticism, is in itself not a matter for prosecution under this Bill.’

I am neither comforted nor reassured by this remark. This does not match the content of the options themselves. Only under Options 1 and 2 is robust criticism recognised as legitimate. I am happy to acknowledge that these options give a generous and fair understanding of robust criticism since it includes ‘expressions of antipathy, dislike, ridicule or insult’; but this is confined to the sphere of religion (including anti-religious stances on life). In other words ‘robust criticism’ will apply, as far as the proposed law is concerned, only to the sphere of religion. This is not good enough. Given the vigour and the public importance of the ongoing debate on same-sex marriage and on transgender issues, it is disturbing that robust public debate is effectively being discouraged by the failure to apply the same principles to these contentious issues as to general issues related to religious belief and practice.

I find it highly ironic that while religious sentiments can be bandied about (according to Options 1 and 2) which will be highly distasteful to some genuinely religious people, criticisms of same-sex marriage and transgender identity are evidently being regarded as some sort of holy grail where transgressors will automatically incur the wrath of the authorities.

Returning to the Justice Secretary’s overview, I find little appreciation that ‘abusive’ is a very elastic word, where one person’s abuse can be another person’s robust criticism. No doubt, a ‘reasonable person’ test is better protection than nothing against frivolous prosecutions – but at best it is very slender protection. After all, in a diverse society, who exactly counts as a ‘reasonable person’ – the Justice Secretary, a High Court judge, myself, or an LGBT activist? The question is fraught with problems.

I fear that to suggest as the Justice Secretary does, that a clear division can be made between robust criticism and abusive behaviour, which will include words, is to play with language. And this is most disturbing when a person who is found guilty under the terms proposed could face up to 7 years in prison.

The Options

As regards the options, I strongly prefer Option 1. I have already indicated my approval of its broad understanding of robust criticism, which I think should be extended to other areas. I prefer Option 1 to Option 2 because Option 1 at 2 (a) (iii) it includes a number of different criteria which are often confused with race. Thus, you will sometimes find a comment about different national characteristics being
interpreted as a racial slur. Option 1 will not prevent such confusion, but it will prevent such confusion ending up in court cases.

**General**

Finally, let me say that the issues in this legislation are so vast and important that they should not be rushed. A deadline of the end of this Scottish Parliament may prove artificial, especially if we are to have elections as early as 6th May. It would be better to leave work on this law over to the next parliament than to rush legislation through and have issues brought to the courts which ultimately cause more injustice than they are supposed to remedy. I am sure the Justice Committee will be aware of the huge damage to the criminal justice system caused by the recent apology before the Scottish Parliament from the Lord Advocate (on behalf of his predecessor) because of a high-profile malicious prosecution by the Crown. This is a situation where ordinary citizens like myself wonder what faith we can put in the current Scottish judicial system. Such faith will only be restored over time by careful action from both law officers and parliamentarians. Now is not the time for experiments where highly controversial legislation is passed. When the very foundation of the Scottish judicial system has been shattered, the need of the hour is to repair these very foundations. The Hate Crime and Public Order Bill in its current form will not help; it will further undermine these foundations.
Diane Davidson

I do not believe that any of these proposals are worthy of debate. The Bill is a mess and no amount of fiddling with the detail in order to push this through our parliament before the election is going to make it good law.

I am of the opinion that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings. It was a flawed idea from the outset and should never have even been considered in the present session.

We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women's rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious.

There is a hierarchy of characteristics which fails to ensure equality. Even under the best of the abysmal options, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

You are making a mockery of Women's rights and unless this is shelved/scraped the Party will have lost my vote.
Billy Turnbull

In terms of the clause in Options 1 and 2 regarding religion, I think this is a move in the right direction and I say this as a Christian and Church Member. I say so because it recognizes the fact that evangelism is an essential part of the Christian religion and Options 1 and 2 allow for that. On the other hand I accept that there are those who have a strong dislike of the Christian faith and may feel a great deal of antipathy towards Christians. Similarly with other religions, there are many people that have a very negative view of Islam for example. Nonetheless, I can't see how the expression of that antipathy and dislike can be a crime. In terms of ridicule, I don't like being ridiculed but sometimes, as in satire for example, it is a healthy and warranted expression. Options 1 and 2 do appear to provide a more robust framework for allowing free speech as far as religion goes. However, religion has been with us for ever and I've never seen the need for the state to intervene at all to determine what can or cannot be said.

More broadly though, surely, if a person commits a crime against another person, then they are charged and face justice and if hate is a motivating factor, then that can be considered in the justice meted out against them. Is that not the case with the law as it stands? If not, perhaps this Bill (not Part 2) assists a judge in making a judgement where hatred is a cause based on one of the characteristics. However, it seems to me that the intent of Part 2 of the Bill goes beyond that and is designed to curtail discussion and free speech, which is very worrying because many people are already afraid to express their opinions on certain subjects among them some of the characteristics listed in the Bill.

For example, suppose someone believes that a person born a male with X & Y chromosomes is a male. They then refuse to call a man who has transitioned by a female pronoun, such as Miss or Ms, but instead use their male name. Now that may be very hurtful to the transgender person but surely it couldn't be deemed a crime? Could it?? The problem I see here is that transgenderism and gender identity form part of a political agenda that is currently being rolled out and this law will enable the prosecution of a person on political grounds where the characteristic is used as a weapon against those who oppose it.

We are brought up to believe that we live in a free society, one where people can speak freely without fear or favour. A contrast will often be made between our country and totalitarian states where people are jailed for advocating free speech. The very fact that we are setting up these characteristics and then limiting the discourse to 'discussion and criticism' I find troubling. Why have we never required these laws before, as far as I can see we've managed fine without them.

I am therefore unhappy to support any of the options proposed although I recognize that some progress has been made with regard to religion in Options 1 and 2. Ideally, as far as I'm concerned I would like a more firm commitment to free speech on the other characteristics too.
I hope you can reconsider what is being proposed and allow us in Scotland to be proud of the laws we have, which protect our freedom of speech, freedom of expression, freedom of conscience, and religion.
Pam and Anthony Franks

We welcome some of the amendments to the above thus far, but we remain very concerned about the following:

1) For Options 1 & 2 is is essential that there is additional protection to permit religious debate.

2) Regrettably none of the Options give sufficient protection for the views and beliefs that people have regarding transgender identity and sexual orientation. The protection for these aspects need to be much nearer that for religion.

3) Diluting and watering down the protections for debate and discussions concerning sexual orientation is a serious mistake.

In conclusion, it seems that the four options being offered are not really options at all in relation to sexual orientation or transgender identity. They are all saying the same thing and this is despite the fact that these are the most controversial aspects. Why are there not more options being given?

On all of these matters, people must be allowed to disagree about these things without fear of prosecution.

Please endeavour to achieve this level of protection.
Norman and Sheila Cumming

1. Options 1 and 2 appear to give good protection for rigorous debate on religion.

2. A similar protection seems to be missing for debate on sexual issues in all the options. Essentially, sexual behaviour is a religious issue for many people of different faiths. We must be able to disagree robustly on issues around sexual orientation and transgender identity, without descending into realms of rabble-rousing. Public freedom to disagree radically and openly with people of different understandings is vital. Inevitably this may result in hurt feelings. It is a privilege, however, of a mature and open democracy.
Eric Mackay

1. Please include the provisos on religion in option no 1.
2. Please include more specific protection for debate on gender and sexuality. Disagreement on these matters does not mean hatred. The loose usage of the term ‘homophobia’ already illustrates the need for much clearer protection to allow open discussion.
3. In the Independent review on Hate Crime, chaired by Lord Bracadale, stress was made on the necessity to permit reasonable debate, and to put a legal check on ‘reckless use of language’. Inclusion of such a clause would serve as a filter to screen out trifling complaints.
David Ellerby

Whilst appreciating the need to make provision for the protection of vulnerable persons and groups, whilst also protecting free speech and the social and emotional welfare of the individual and nation at large, I wish to make the following submissions and requests.

I have read, and in the main understand the implications of the proposed Bill and the attempts to protect some very vulnerable sections of society, as well as society at large, from attacks on personal beliefs, sense of personhood and personality expression, gender expression, cultural nuances, and indeed the many and varied differences which arise in a truly multi-cultural and open, tolerant society.

However, I feel that the Bill is somewhat unnecessary as it seems to seek a broadening and deepening of existing legislation which already provides sufficient protection by way of bringing correction of expression or prosecution of criminality.

Concerning religious matters, Scotland has provided a safe haven for refugees for many years and has allowed freedom of expression of all religions, provided such expressions can be carried out within the letter of the law. Where religious practices become abusive within current societal norms, it is quite right that the exponents of the religion concerned be advised to modify, minimise and eliminate such expressions. However, religious debate, comment and critique must be allowable, as a general freedom provided there is no demonstrable harm to individuals. This is a given. But there needs to be, must be automatic and additional protection in both Option 1 & Option 2.

Thinking of the current climate of debate and exploration around sexuality, sexual expression, gender and transgender expression, not all members of the public do agree or will agree with the proponents of the political and personal movements concerned. There may be a variety of opinions ranging from utterly disinterested to completely convinced. However, no individual should be in danger of prosecution, even attempted prosecution [and all the emotional and mental disturbance attached to such prosecution] simply because they do not agree. This is not freedom of speech or even worse, freedom of thought. It also opens the possibility of malicious charging brought about by persons who are so passionate about their stance that they are automatically offended by disagreement no matter how genial or well presented. There is already sufficient provision to bring about lawsuits or prosecution of abusive or offensive behaviour. Therefore I would wish to see similar additional protection to those for religion but protection for beliefs concerning sex, sexual identity, gender, transgender issues.

Similarly I feel any reduction of the protections within the Bill over matters concerning sex, sexual identity, gender and transgender issues should happen and would be a grave error in terms of oppressing public freedom in favour of already well protected minority groups.

It is absolutely vital that people in Scotland can engage in vigorous debate about politics, philosophy, science, morality, ethics, as a normal part of living in a free society. If at any point, reasonable law abiding persons feel they are in danger of prosecution
for having, expressing and exploring any opinion, then we as a nation have become a controlled and oppressed society, a police state. This is totalitarianism in my opinion. This Bill is dangerously close to imposing that level of control and this must be averted at all costs. As I keep stating, there is already sufficient protection available within existing statutes.

As I understand the four options, the main emphasis appears to be centred on sexual matters and yet, important as these are, there is very little room for further discussion or refinement than is on offer. Given the possibility of faux offence being taken in order to punish individuals who disagree with one’s views on, say, sex or gender expression, which might lead to a jail sentence and criminal record, then there needs to be significantly stronger protections for our citizens with much stronger safeguards. Why are these not being explored? This Bill - if it has to proceed - still needs much more work carried out in it’s construction.

In Lord Braccadale’s report, in the section “Why have Hate Crime Legislation?” there is a paragraph which states:

“Harm to wider society
  • Undermines society’s moral values
  • Less tolerant society
  • Hatred not recognised or challenged because it becomes the “norm”
  • May increase social unrest “

It is quite right to be concerned about the ‘harm to wider society’, however, this proposed legislation appears Draconian in manner and intent and disproportionate.

Moral values in today’s increasingly liberal Scotland has become a philosophical issue with each individual able to define their own moral landscape. Quite rightly so. No law needed to enforce the morals of one person on another.

The above point leads on to tolerance. If person A is prosecuted for not agreeing with person B’s morals or standpoint on sex and sexual issues, then B could be held to be equally intolerant, or possibly even more intolerant by seeking to force A into submission via the police and the courts.

Hatred is certainly recognised in Scotland as evidenced by recent trials and legislation.
I have already stated and repeat, that existing laws are more than adequate provided they are policed and judged appropriately. Additional training for the procurators fiscal might be a way forward rather than any significant increase in complaints made for whatever reason due to the Stirring Up Hate Crime Bill.

Increased social unrest will almost inevitably arise as a result of this legislation as politically motivated complaints are made seeking to use the Law for their own ends. I would urge the Committee to take heed of Police Scotland and their request for robust free speech [ and by extension, free thought ] clauses in any future legislation.

Thank you for the opportunity to register my thoughts and opinions.
1. General comment

The prolonged period over which this proposed legislation has been discussed, inside and outside parliament, is testament to its poor design and aims. One is left with the impression of a governing body which has limited interest in dealing with the day to day matters of government and the pressing needs of our national life, instead preferring to tinker with pet projects around the fringes. This legislation is ill-conceived and will do far more harm to our national life than any good which could possibly accrue.

I am at a loss to understand why we need further consultation on this Bill, when it is apparent that its purpose is so fatally flawed. Has no one in the Scottish Government ever heard the expression ‘Don’t keep flogging a dead horse?’

Additionally, the hasty call for responses at this particular time can be interpreted in various ways. A charitable interpretation would be of someone desperately realising that they had better ask the public about specific proposals, before they plunge ahead with the next stage of legal process.

A less charitable interpretation would be that they have deliberately kept consultation to the last possible moment, then made it as difficult as possible for people to respond (e.g. using Microsoft Word based responses only).

At a time when confidence in political figures has been systematically eroded, the Scottish Government are doing little to help themselves by these courses of action. The best outcome for everybody concerned – including the Justice Secretary - would be to scrap this legislation forthwith.

However, common sense and logic appear to play little part in current governments thinking. On the basis that the eminently sensible advice above will be overlooked, I have provided responses to the so called ‘Options’ below.

2. Options

If the purpose of these ‘Options’ is to obfuscate, the author has done an excellent job. To the layman, they appear to say the same thing, with greater or lesser detail on each page.

It appears to matter little which of these ‘Options’ is adopted, if they are done so as written. On the surface they look non-threatening; but in practice they will be used as part of the overall Bill to intimidate and silence those who disagree with certain political or religious practices. The narrative of ‘People have nothing to fear from this legislation’ will quickly change to ‘These bigots deserve everything they get’. As an example, one can easily pinpoint the current vitriol within national dialogue, around transgender issues – it even rests on the current governing party’s
doorstep. Why is the Justice Secretary so intent on pouring petrol on this particular bonfire?

In the absence of scrapping this legislation, the ‘Options’ could be strengthened by inclusion of wording on the following:

- Free speech must cover the ability to make statements which others may find offensive. Otherwise, it is not truly free speech.
- Specifics to protect disagreement on sexual orientation / transgender identity. The second of these categories deserves special protection, given its incendiary effect on reasoned dialogue.

Finally, we cannot, and should not, expect Police Scotland to become arbiters of complaint categories created by this legislation.
Jonathan Rainey

I write to your committee to inform you that while I accept some revisions of the Hate Crime and Public Order (Scotland) Bill to scrap provisions on restricting the section on the Stirring Up of Hatred offences in order to make sure that intent is proven, removing the sections on Public Performance Plays and the possession of Inflammatory Materials, it in my view that the ability to protect Freedom of Speech would be more effective if Part 2 of the bill or the whole entire bill was dropped altogether. I refer my concerns in particular to the recently prescribed options to the section on Freedom of Expression below:

Options 1 and 2 allow for ‘expressions of antipathy, dislike, ridicule and insult’ towards religion and belief, but only ‘discussion and criticism’ of the other characteristics listed. Robust free speech should be allowed when it comes to religion and belief but other topics would not be included in proper debate when it comes to not being allowed to express antipathy, dislike, ridicule and/or insults to those characteristics.

Options 3 and 4 suggest allowing ‘discussion and criticism’ of all the characteristics listed under the stirring up offences. This wording would work for some listed characteristics such as race, age and disability, it would not be robust enough to protect debate around other characteristics. The latter 2 options are more weakly structured than the former and therefore should not be fully considered as a reasonable amendment to the section on Freedom of Expression.

To discuss in further detail about why I am also opposed to all of the options listed, I will list my reasons as it goes:

Trans people are, of course, entitled to the same rights and protections as anyone else in society. However, beliefs and practices associated with transgender identity must be open to scrutiny and debate – even if this is uncomfortable. Many people, especially heterosexual & gay men and heterosexual & lesbian women as well some Transgender people have faced shameful abuse and vitriol for daring to vent opinions on transgender issues and policy proposals such as reform of the Gender Recognition Act. So much so that they would face instant accusations of being against transgender people as a entire collective and would be borderline accused of committing a hate crime along with possibly breaching S127 of the 2003 Communications Act with a report also being made to the police as well as to beg social media platforms to censor them and beg their employer to sack them from their jobs. Being suspended or expelled from attending any educational institution for daring to state opinions on why you think there may be only 2 genders is also happening in this country. It seems unlikely to me that protecting mere ‘discussion and criticism’ of transgender identity would afford the degree of free expression necessary to allow people to oppose such policy proposals and question the safety and efficacy of certain beliefs and practices pertaining to transgender identity.

On Religion, people have very strong views from literally all faiths which must be protected. The right to proselytise and urge others to cease holding certain beliefs is also an historic right but that does not make it abusive or hateful when aimed in
certain directions. ‘Discussion and criticism’ is not a suitable articulation of these freedoms.

On the characteristic of sexual orientation, faith communities have strong views about marriage and sexual conduct outside the confines of traditional marriage. These views are undoubtedly offensive to some groups. ‘Discussion and criticism’ is, again, an inadequate threshold if the expression of such views is to be properly protected.

That is the price of living in a free society – accepting the right of others to rail against one’s own most-cherished beliefs.

I do agree that individuals must be protected from harassment and abuse. However, beliefs and ideas should be open to strong debate and even derision without the mere accusation being thrown around of (supposedly) abusing or harassing anyone who happens to hold beliefs different to me or vice versa. As Lord Justice Sedley famously said:

“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”

George Orwell also perfectly described what liberty really is supposed to mean in a free society in the lead up to his book Animal Farm when he said the following:

“If Liberty means anything, it means the right to tell people what they do not want to hear”

I formally propose that the ministers of this committee and this parliament adopt a better written Freedom of Expression clause in this bill which shall go as follows:

(1) This section applies for the purposes of sections 3(2) and 5(2).

(2) Behaviour or material is not to be taken to be threatening or abusive or intended to stir up hatred solely on the basis that it involves or includes –

(a) discussion, criticism or rejection of or expressions of antipathy, dislike, ridicule or insult towards any beliefs or practices or actions relating to any characteristics, or any propositions or proposals based on such beliefs, as well as actions or owning and/or usage of items/property which include---

I) All Age ranges
II) All kinds of disabilities
III) Race, Colour, Nationality (including citizenship), ethnic or national origins of any kind
IV) Sexual Orientation of any kind
V) Transgender Identity of any kind
VI) Any variation in sex characteristics
VII) Diet and/or health status
VIII) Any form of private sexual activity between consenting adults, with or
without protection, inside the individual's own private property (ideally away from non-permitted prying eyes)

IX) Any form and colour of hair or lack thereof

X) All forms of religion or non-religion (including spirituality)

XI) Any form of religious accessory

XII) Environmental Beliefs of any kind

XIII) All forms of political beliefs (including the supporting and/or membership of Political Parties). This shall also include the supporting of or helping to promote election candidates

XIV) All forms of scientific opinion and facts

XV) All forms of medical beliefs

XVI) All forms of pets

XVII) All forms of animals and mammals

XVIII) Owning or renting of property or lack thereof

XIX) All forms of antiques

XX) All forms of marriage or relationships

XXI) Books of any kind

XXII) Films/Movies of any kind

XXIII) All forms of music

XXIV) Any form of game (including video games)

XXV) Any form of electrical or non-electrical communications (including languages)

XXVI) Any lifestyle that involves living on the power grid or off the grid

XXVII) Banners, Customised Bags/Bathrooms/Calendars/Cups/Bars/Pubs/Cafes/Restaurants/Homes/Bedrooms/Halls/Streets/Paths/Walkways/Theatres/Comedy Clubs/Basements/Vans/Pick-Up Trucks/LGVs/HGVs/Farm Vehicles and/or Construction Vehicles/Mouse Mats, Pens/Pencils, Pencil Sharpeners, Posters, as well as Accessories, Clothings (including Customised Clothings), Flags, etc, of all kinds

XXVIII) All forms of musical instruments that the individual or group likes or plays

XXIX) Every kind of Sport (including any Sports Team or Teams) that the individual or group takes part in or supports

XXX) Ownership and/or operation of vehicles of every kind (including vehicles with 4 wheels, 2 wheels, 1 wheel, track wheels, engines, no engines, wings without engines, wings with engines attached, etc) including fuel
source(s)

XXXI) Any form of transport

XXXII) Any form of PPE equipment or cleansing equipment the individual uses

XXXIII) Any form of body piercing including Tattoos

XXXIV) Banks of any kind, Credit Unions, Friendly Societies, Stocks, Bonds, Companies or Materials that any individual or group holds commodity in.

XXXV) Any Charity that the individual or group supports, donates to and/or works with

XXXVI) Any funeral that the deceased wishes to hold in his/her/their honour/will and/or the family of the deceased wishes to hold.

(b) urging of persons to cease any practices or to cease to hold any beliefs, or to cease any actions that are peaceful with no trespass or

(c) discussion or criticism of other matters relating to any characteristic or non-physically harming action

(3) Trespass defines that if any expression or action listed in article (2) (i-XXXVI) directly & physically violates any other person(s) property or body (excluding feelings), it shall be counted as such but with proven, not perceived, intent or reason.

(4) Ministers may by Order make further provision setting out behaviour or material that is not to be taken to be threatening or abusive or intended to stir up hatred.

In order to solve the problems with these provisions, and ensure that no one characteristic is ‘singled out’, I suggest the wording as listed above would make clear that robust expression about beliefs, practices and actions (with no physical attacks on individuals) is acceptable under Part 2.

I can only hope that most or all MSPs accept the suggestion to Part 2 above or failing that, the bill must be voted down in Stage 3 altogether. I also make the proposition that the vote in Stage 3 as well as any further scrutiny on the Hate Crime and Public Order (Scotland) Bill be postponed until after the upcoming Scottish Parliamentary Elections
Jessie Bell

Thank you for your call for views re your recent Amendments to the Hate Crime Bill and the four different options to be added to safeguard the Bill.

Firstly, may I say that none of the options will give enough protection for Christian beliefs around sexual orientation and transgender identity. Moral behaviours can generate vigorous debate and are issues where people must be allowed to disagree without fear of being reported or imprisoned. There must be strong, additional protection as for free Religious debate. The Bill’s protections for discussion around sexual orientation must not be watered down.

Secondly, one of the core beliefs of Christianity is that it is a life-changing encounter with Christ. Many people who formerly were of same-sex attraction have now changed their sexual behaviour to a fulfilling, celibate one. Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. It would be against the beliefs of Christians to delete this.

Thirdly, sufficient research has not been carried out re transgenderism and there are many cases of people having transgendered who have regretted it in later life and their psychological and mental problems continuing to plague them. Why are people not protected from this misinformation?
Lynn Johnstone

Thank you, firstly, for having taken the time to think through concerns that different groups and individuals have expressed.

I personally still have several concerns.

- At a time when the Westminster Govt has decided they will appoint a free speech champion to tackle Cancel Culture in universities let’s ensure we in Scotland bring our own children and young people up to robustly respect free speech and varied options expressed respectfully. (the Bill going through without further amendment and further protections for free speech would seriously undermine this.)
- People must be allowed to disagree without fear of prosecution.
- Protections for debate on sexual orientation and transgender identity needs to be much closer to the proposed protections for debate on religion.
- People could try to use this new law against their political opponents. (Police Scotland are right to be concerned about how this Law could be used)
- Not enough options have been given, rather, they are all very similar. Please be wise and delay this until you get this right for free speech for all our citizens.
Richard Smerdon

I write regarding the Hate Crime Bill

As a member of a Christian church, I am concerned that in this Christian Country, there is adequate protection of free speech for all, particularly in public speaking in churches or in street preaching.

Protection is needed so that quoting a passage from the Holy Bible is not used by someone who may disagree with it, to accuse the speaker of stirring up hatred. I have had the experience some years ago, of aggressive comments from a person because in a street preaching I quoted that “all have sinned and come short of the glory of God” Epistle to the Romans 3; verse 23.

Of the four “options for freedom of expression” amendments I would support option1. Robust protection for the right to assert one’s religious convictions is essential if free speech is to be protected.
Peter Macleod

Firstly, I'm disappointed and surprised at the very short timeframe available for public consultation on these extremely important amendments.

Religious debate MUST have additional protection included in options 1 & 2.

It is obvious that none of the options at present give sufficient protection for differing beliefs around sexual orientation and transgender identity. Are the government so out of touch on this or rather seeking to enforce their own views?

The government seek to remove the protection given in section 12 to free speech to urge individuals to change their sexual behaviour. This is a chilling attack, directly affecting Christian teachings on morality as spelt out to us by to the Bible -- which we uphold as our guide and direction from God in life.

I am deeply concerned that if these protections are not in place well meaning individuals are eligible for imprisonment and that certain groups who hold opposing views will seek to ensure this.

I caution you that the Christian church is steadily becoming persecuted by this government and we will never be silenced.

Please take these concerns seriously and address these very real issues.
Andrew T Hunter

In response to your call for views on the above, I am writing on behalf of the Fellowship of Independent Evangelical Churches (a network of churches, stretching from Dumfries to Lerwick, representing over 60 local church leaders).

We would be grateful if the following comments and concerns on the proposed draft amendments were taken into account by the Committee.

Anex – Overview Notes (Humza Yousaf, 17 January 2021)

We note the reassurance given by the Justice Secretary that each of the possible amendments are designed to protect “discussion or criticism” and “that criticism, including very robust criticism, is in itself not a matter for prosecution under this Bill”.

The examples noted are helpful, and as general principles we would be supportive of them, i.e. protecting the freedom to publicly discuss and criticise religious beliefs, sexual orientations and transgender policies (including protecting the belief in the immutability of biological sex). We would also share the Justice Secretary’s concern that such discussion or criticism should not be seen as a license for personal attacks, threats or the vilification of individuals.

Concerns

1. Inconsistent free speech protections.
   a. We note in Draft Amendments Options 1&2, the protection of both ‘proselytising’ (c) and of ‘urging of persons to cease practising their religions’ (d).

   However, unlike the previously proposed Free Speech clauses there is now no equivalent clause protecting ‘discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify sexual conduct or practices’. We would therefore ask that such a clause be re-included in the amendments, in order to ensure consistency of free speech protections across all the categories listed.

   b. We also note that while the Free Speech protections in regard to the discussion and criticism of religion in Options 1 & 2 are detailed (e.g. protecting ‘expressions of antipathy, dislike, ridicule or insult’ towards religions), there is no such specific detail regarding discussion or criticism of other philosophical beliefs (such as the nature of human sexuality or gender fluidity). Our concern being that such a discrepancy will result in certain beliefs and practices being open to discussion and criticism in ways that others will not.

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4 Call_for_evidence_Annex(1).pdf (parliament.scot)
The need for clear detail, such as those contained in Options 2(b) & 3(b), is especially needed in regard to transgender issues. As noted in previous submissions, transgender identity is a subject of enormous consequence for our society (especially for women and children). It's therefore vital that it should not, in effect, become a no-go area for public debate and comment, including robust disagreement.

We therefore ask that the Freedom of Speech protections, are at the very least, consistent in their detail as applied to all the categories contained in the proposed Amendments.

c. Further, we fear the minimal content of Options 3 & 4 will not provide sufficient freedom of speech protections. The Bill in general contains a worrying lack of definition as to distinctions between ‘discussion and criticism’ and ‘hate speech’.

The Justice Secretary notes in his overview the ‘reasonable person’ test in deciding when free speech becomes hate speech – however, in our increasingly fragmented society populated by multiple narrow interest groups, what one person regards as ‘reasonable’ may differ widely from another. In such a scenario, it will not be free speech that wins but the more socially powerful.

Indeed this likely imbalance of power will be all the more prejudicial to those who actually believe in free speech – as they will be less likely to wish to silence or seek sanctions against those who disagree with them.

General observations

We are grateful to the Committee for the opportunity to comment on these latest developments.

As Christians we believe in ‘truth’ - that is, that some ideas are objectively good and right. They therefore do not need to be ‘protected’ by coercive means – they will look after themselves! Throughout human history noble ideals and beliefs have persisted – even though at times they were persecuted or 'banned' by seemingly all-powerful regimes. Such is the indomitable power of truth and indeed the human spirit.

That confidence in ‘truth’ has been the bedrock of free speech in our society. It is the conviction that bad ideas and falsehoods can be overcome with better ideas and truths – rather than just being outlawed. The latter always suggesting a lack of confidence or fear in the prohibitors. Thus if someone believes they have the ‘right views’ let them argue for them and defend them against counter-views – but don’t let them simply silence their fellow citizens.

We, like so many in society (in academia, the media, the arts and even the police), feel that this is an unnecessary Bill – one that threatens much more than it protects. However, if it is to become Law, we urge that your Committee does all that it can to
ensure robust and detailed freedom of speech protections are included for all groups in society without favouritism.

With grateful thanks for all your work.
Shirley Otto

I have serious concerns about attacks on women's rights and safety and on the potential for the Bill and its amendments undermining free speech. Considering these anxieties Option 1 is the best of a worryingly limited range of options. Option 1 at least permits discussion, debate and criticism of all the characteristics.

What is urgently needed is Option 1 plus extra free speech provision extended to all characteristics, and a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

Given the heat and hostility associated with the bill it matters that there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the ambiguity and partiality. We really need robust protection of free speech; the tone of the debate and sense people will make of the legislation is terrifying and fundamentally damaging for all of us.

Surely the Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings.
Stephen Graham

Please see my response to the call for evidence in respect of the freedom of expression provision within the Hate Crime and Public Order (Scotland) Bill.

I am writing as a Christian who accepts as ultimate counsel the collection of books known to Christians as the Holy Bible and as such my ethics and moral position is very deeply held.

Some of the positions being protected in the Hate Crime bill are overturning of conventional wisdom that is as old as the human populous has existed. In particular the trans ideology is not backed by any scientific consensus. Being that the trans position is intangible, it is possible and is evidenced by numerous cases that those who adopt a gender position may change over time. It is also empirically evidence that transgender individuals disproportionately represent suicide cases. This at the very least should be a cause for caution and reticence to push the said ideology in such a manner as to influence children at their most vulnerable stage as they transition to adulthood.

The above is background as to why I believe the government should make every effort to ensure that the wording of the Hate Crime and Public Order (Scotland) Bill should in no way impinge on the ability of Christian parents to raise their children and Christian ministers to teach to their churches the reality set out in the bible that God made man and woman, male and female made He them Genesis ch5 v2. It should be made absolutely sure that Christians cannot be prosecuted for stating the above biblical truth and for teaching and encouraging their children and congregations to adhere to such truth. This means the ability to explicitly say “The bible teaches that there are only two genders, male and female” and to say “the bible teaches that departing from this natural order is sin” Romans Ch1 v 26-29.

The above is in no way a licence or representative of a desire to display hatred toward any individual that experiences gender dysphoria, a key part of Christianity is the respectful and merciful treatment of other people irrespective of who they are. I define hatred as a malice, ie a desire to for ill will to befall an individual. Hatred must not be defined or be in danger of being defined as a disagreement with the transexual ideological viewpoint. It is important that protections are provided if an individual is seeking to know the Christian God in accordance with the Christian Holy Bible and a minister points out that a transexual or non-heterosexual position is at odds with the teaching of Holy Scripture.

The failure to ensure the above protections exist will put practicing Christians at odds with the state and could lead to the prosecution of Christians for nothing more than the practicing of their faith.

I would counsel the ministers considering the law to carefully note the warnings of numerous examples in history of governments that chose to legislate what could be said rather than encourage public debate as the forum to disapprove bad ideas.

As such I turn to the options proposed:
The ability for those that practice faith to debate from a position of opposition to transgenderism or non-heterosexual sexual orientations on the basis that neither are ideal or right in the eyes of God must have the additional protection included in options 1 and 2.

I fear all options lack sufficient protection for beliefs around sexual orientation and transgender identity. As set out in my preamble the freedom of speech protections need to crystal clear so as to avoid frivolous criminal cases on the basis of faith.

There should protection for open and frank discussions around sexual orientation and the watering down of the clarity on this is a mistake.

Without sufficient protection activists could attempt to target Christians. As an example, a church minister who happened to be dealing with a passage in the Bible that covered one of the moral areas considered in this response could be accused of hating. A parent may have taught a child in line with the bible’s teaching at home and the child might innocently repeat the same (e.g. my mum and dad told me that there are only male and females) in the playground or classroom leading to parents being accused of a hateful attitude. Considering the very high level of sentencing ie seven years, there needs be very carefully considered protections.

It is very important that disagreement with the transexual or sexual orientation ideas is not reinterpreted as hate. I will continue to treat all people irrespective of colour or moral position as being of equal value and as having inherent dignity, but it does not follow that the same should apply to all ideas. I believe Lord Bracadale’s Independent Review on Hate Crime identified the need to distinguish between legitimate debate and rabble-rousing. The Bill as it stands does not provide sufficient clarity.

Thank you for giving the opportunity for views to be expressed.
Helen Guyan

I am responding on behalf of Inverkeithing Baptist Church as their appointed secretary,

We welcome the proposed changes to the original bill to protect the freedom of speech but are concerned these do not go far enough. Whist we welcome the proposed protections for religion in options 1 and 2, we are warning the justice committee that religious beliefs always impact the language and behaviour around other issues, particularly morality. Therefore, true freedom of religious expression needs to have the freedom to hold a differing opinion, criticise and urge a change of behaviour in matters of sexual morality.

We do not accept that freedom of speech gives permission to be deliberately offensive and the intentions of the bill to prevent hatred are honourable. However, there are differences in criticising the issues of age, disability, race and now the added variations of sex characteristics which are outside people’s choices and those contrasting issues which have been shown to change in people’s lives- their religion, sexuality and gender identification. We would therefore urge similar protections given to religion in your option 1 be extended to sexuality and gender issues.

Current issues of gender identity are particularly controversial and the freedom to debate, even where others find this offensive, is also paramount to a free society. The right to hold an opinion is worthless unless you are allowed to express it, using the language (including pronouns) of the speaker. The reaction of the listener will always be subjective. We have little confidence in the promise of a ‘reasonable person’ test to determine whether speech or material is hateful, suspecting this can be a political opinion and totally subjective.

As a congregation we pray for a free and tolerant society where all opinions are heard and examined fairly. We pray for your committee as they meet and debate these issues.
Penny Shackleton

I believe that freedom of speech and a society where different viewpoints can be held and expressed without fear of reprisals is the way to lead to a cohesive society - we can only understand anothers viewpoint by listening and airing our differences. We become a more tolerant society when people are allowed to hold and express differing views, not when discussions are silenced by fear of offending the other person - especially if that offence becomes subjective - what may offend me one day will not be offensive in another setting with another group of people.

It is only by debate and discussion that all people develop and form and even change their viewpoints - to silence debate on any issue enables more radical viewpoints to be internalised and held more strongly - and who decides on what is and what isn't offensive?

We need explicit protection for free speech about transgender identity because it is a highly emotive subject - it must not become criminal to disagree with the concept of transgender identity - many scientists would say that for most people the sex which they are given at birth must define their gender and people especially in influential positions eg doctors and teachers must maintain the freedom to refuse to call a person by their chosen pronoun if they do not support the present LGBTQ+ ideology.

Therefore: options 1 and 2 must include religious debate in the additional protection clause.

Beliefs around sexual orientation and gender identity must have similar protection as religion ie watering this down is , in my opinion, misguided.
Jo-Anne Pugh

In all options, the phrase "variations in sex characteristics" is opaque. It should be replaced by "sex" which is a legally recognisable, widely understood concept.

Option 3 is the best of a poor selection. I remain extremely unhappy that something considered by someone somewhere as being "insulting" opens one up to prosecution. Hate crime legislation should be aimed at prosecuting people who engage in threatening behaviour or who encourage or endorse violence.
Hayley Newill

I understand that you are reviewing amendments to the hate crime bill around freedom of expression and have asked for views of people regarding this? I would like to request Option 1 as a starting point.

Option 1

Protection of freedom of expression

(1) For the purposes of—

(a) section 3(1), behaviour or material is not to be taken to be threatening, abusive or insulting,

(b) section 3(2), behaviour or material is not to be taken to be threatening or abusive, solely on the basis that it involves or includes an expression of a type described in subsection (2).

(2) The types of expression referred to in subsection (1) are—

(a) discussion or criticism of matters relating to—

(i) age,

(ii) disability,

(iii) race, colour, nationality (including citizenship), or ethnic or national origins,

(iv) sexual orientation,

(v) transgender identity,

(vi) variations in sex characteristics,

(b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards—

(i) religion, whether religions generally or a particular religion,

(ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,

(iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,

(c) proselytising, or

(d) urging of persons to cease practising their religions.

NONE of the options, in my opinion, will protect any of us from police investigations into ‘transphobia’ for speaking about women’s rights, a much needed debate. The idea that if I state a belief in biological reality of the sexes I can be criminalized for it is insane and frankly a denial of my human rights! (Adam Tomkins, Convener of the Committee, admitted he was “alarmed and distressed, and perhaps even, if I’m honest, a little afraid”, Johann Lamont was “anxious” and Justice Minister Humza Yousaf was unwilling to confirm if there are only two sexes - see the Herald article.)

Option 1 seems to be the best of the options on offer as it allows for discussion and criticism on all the characteristics and provides some further protection for
people to express antipathy, dislike, ridicule or insult on matters relating to religion. Prominent campaigners for example Tim Hopkins Graham Campbell are talking about hate crimes as including "using the wrong pronouns or the wrong first name". Already there have been instances of women who have been physically assaulted by males who self-identify as women and are told to refer to their assailants as women. This potentially risks women who are giving evidence in court against their rapist being forced to refer to their rapist as 'she' or face prosecution themselves. A situation like this beggars belief but could be a reality.

We have also seen the introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. Women still face oppression and a lack of representation due to institutionalised sexism yet people never socialised in this oppressed class are free to take on those roles due to a particular use of language. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

There is evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like MBM, WPUK, etc "hate groups" and nothing is being done check this. We really require clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election. As a woman who works with disenfranchised young women in Glasgow who have been subjected to a range of (sexual) abuses predominantly by men because of their sex, not chosen gender identity, I feel strongly about the GRA yet if I attempt to speak up about this I can be prosecuted for hate speech if this is not checked.

Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms, trust me, I have been threatened, yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

Overall, I would ask for Option 1, with the extra free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes. Also despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. This same government that was taken to court for not correctly consulting the nation over the GRA. Similarly, it is not clear what "criticism" or
"abusive" encompass and more could be done to remove the uncertainty and subjectivity.

This Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and we may yet have to rely on a more appropriate amendment at the final stage.

I wrote last time this was being debated. I have been a free speech advocate all my life. I am going to add a copy of my email regarding the advantages of free speech, the complexities and the essential nature of it....I do ask that you excuse any odd tones and rantings in this. I am just exhausted after a night shift and haven't been to bed yet. I just feel so strongly about this.
Margaret Wilson

I do not represent any organization or pressure group, I am not a member of any such group, I am simply a member of the public and as such I wish to comment on the Hate Crime Bill and amendments at present under discussion at the Scottish parliament.

There has been much talk of late about what it means to be British and one of the many things mentioned as being admirable is the long standing right of free speech, particularly in the political sphere.

I have grave concerns that the bill and the 4 amendments under consideration will seriously impinge on that right. There is already some evidence that this is the case. The Law Society of Scotland cited Lord Justice Sedley, “Freedom only to speak inoffensively is not worth having”. A small gem of a remark!

We need robust protection of free speech and if MSPs from three political parties have expressed trepidation about the tone of the current debate around women’s rights and reform of the GRA, then the effect on ordinary citizens such as myself to feel able to speak freely about these issues is surely obvious. Amendment 82B lodged by Liam Kerr MSP at stage 2 was withdrawn the evening before the first Stage 2 session on the bill and therefore not debated. That is exactly the type of amendment which should be being debated. It was strongly condemned by some people and that I believe is evidence of the need to debate something on those lines. There has been far too much stifling of open debate of late in places where it should flourish – our universities, councils and parliaments.

(“See the appendix for detail of Liam Kerr’s amendment.”)

It needs to be made clear where the line is drawn between offensive behaviour that has not been criminalised and the type of behaviour that is being criminalised. At the present time this is unclear and open to interpretation or misinterpretation due to the woolly terminology being used. The Bill should put beyond doubt that certain types of statements, controversial in the context of transgender identity, are not intended of themselves to be criminalised by the Act.

Much of what is under discussion is surely already covered by existing legislation on equality, discrimination and incitement to hatred.
It is of concern to me that this bill, its amendments and its far reaching ramifications are being given neither sufficient consideration nor public airing. In recent times we have seen bad legislation rushed through and the consequences of that are still being felt by our society. This matter is too important to be badly done.

Margaret Wilson (Mrs.)

APPENDIX

Amendment 82B (withdrawn)

Behaviour or material is not to be taken to be threatening or abusive or as stirring up hatred solely on the basis that it involves or includes :-

(a) Discussion, criticism or rejection of any concepts or beliefs relating to transgender identity.

(b) Questioning whether any person should undergo, or should have undergone, a process of gender reassignment.

(c) Stating that sex is an immutable biological characteristic.

(d) Stating that there are only two sexes.

(e) The use of:-

   (i) “woman” or “man” and equivalent terms.

   (ii) Third person pronouns in a way other than that which a person prefers, or

(f) Reference to any past name used by a person.
Brenda and Brian Mitchell

In reference to the Hate Crime & Public Order (Scotland) Bill – Freedom of Expression Amendments -Annex dated 17th January Options Paper I would like my concerns noted.

Protection of freedom of expression

I have been subjected to abuse and insults in relation to age, disability, race and sexual orientation during my life. However, I do not agree that we should take away the ability to discuss these topics freely. If we cannot talk, discuss or debate these issues then how are people to be educated. The more these issues are legislated for the less likelihood there is for free speech.

The free speech clauses are essential to stop people using a new law like this against those of a different view.

Religious debate must have the protection set out in Options 1 & 2 otherwise there is a severe risk for practising ministers to be forced into breaking the law. However, none of the options give enough protection around deeply held beliefs of sexual orientation and transgender identity. The beliefs held on sexual orientation and transgender identity are fundamental in many world religions and therefore this form of freedom of speech should be granted protections closer to those on religion

Diluting the Bills protection for discussion around sexual orientation may unintentionally cause severe difficulty for those practising their beliefs.
Daniel Lander

I would like to register my concern as to the considered proposed provisions for freedom of expression amendments to the above-mentioned Hate Crime and Public Order Bill.

As a genuine practising Christian, I have had the liberty to preach in public places for the past 30 years announcing God's Glad Tidings. I seek to follow what it says in the Bible 1 Timothy 2 verse 4 “God our Saviour; Who will have all men to be saved, and come unto the knowledge of the truth.” This would be practised by all able to do so in the Christian Church I belong to, with whom I celebrate the Lord's Supper. The open-air preaching has obviously ceased during the current pandemic, in order to obey Government guidelines which we hold to; Romans 13 verse 1 “Let every soul be subject unto the higher powers”, but as soon as restrictions are lifted we intend to continue this practice.

In order to pursue practising this essential work we would need the provision of Option 1 as a minimum, and options 3 & 4 would not provide sufficient protection.

It is never my intention to stir up hatred or behave/speak in a threatening or abusive manner, I have the utmost respect for all members of society and strongly condemn hate crimes, but I could unwittingly say something that someone could claim was offensive or shocking to them, and be accused by that person of being “abusive”.

Therefore some additional protection and clarification, in my view, is still necessary in addition to what the Government proposes. Can some wording be inserted that protects the right of any individual to say things that others might consider disturbing or even offensive, providing these are not said in a threatening or abusive manner and thus not intended to stir up hatred?
Keith Buchan

I am writing to thank you for agreeing to ammend the above bill. Having read the four options for ammending it I am broadly in favour if option 1, Which I have copied below -

Option 1 Protection of freedom of expression (1) For the purposes of— (a) section 3(1), behaviour or material is not to be taken to be threatening, abusive or insulting, (b) section 3(2), behaviour or material is not to be taken to be threatening or abusive, solely on the basis that it involves or includes an expression of a type described in subsection (2). (2) The types of expression referred to in subsection (1) are— (a) discussion or criticism of matters relating to— (i) age, (ii) disability, (iii) race, colour, nationality (including citizenship), or ethnic or national origins, (iv) sexual orientation, (v) transgender identity, (vi) variations in sex characteristics, (b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards— (i) religion, whether religions generally or a particular religion, (ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice, (iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief, (c) proselytising, or (d) urging of persons to cease practising their religions.

I do have concerns about the wording of the bill and would urge that the term “abusive” be dropped from the bill in favour of the much simpler to understand term “threatening”. The term abusive could be stretched to include any forthright disagreement with the positions being championed by the LGBT lobby. The bill should also include a clause to protect those who do not believe same sex marriage is appropriate, natural or good for society. Discussions in the home on the various aspects of life being considered in the bill is a vital normal part of growing up. Children are not responsible adults and it is perfectly possible that they might have limited understanding of the issues being discussed because of immaturity and fail to grasp the nuances of what was being said. It would be all too possible for them to misquote a parent, leading to unnecessary and harmful state intrusion into life in the home. It is very common for children who declare themselves to be homosexual to experience a response of disappointment and disapproval from their parents. Under these circumstances heated arguments might be envisioned in which unguarded words were said or incorrect statements imputed to drag the authorities into the situation with the intention of inflaming everything. The home is a place where everyone makes mistakes in what they say as it is the one place where we feel we can be secure to say whatever we feel, even though we sometimes get it wrong. It is an important part of growing up for children to see that their parents are not perfect and to experience apologies and reflective comments about words said in haste. We should also remember that in some homes there may be reasons for mental impairment such as excessive alcohol consumption or dementia and such individuals may say things that they would not have said under conditions of normal mental function. For these reasons the dwelling defence should be retained in the bill. This will not stop the authorities from checking mobile phones/internet activity and to that extent there is already the capacity for considerable surveillance of what is going on in everyone’s home. Finally, the general public would prefer that the Police were
tackling conventional crime, especially drug related crime, than being diverted onto matters of political correctness or being used as a weapon for the LGBT community to increase their power in society by attempting to silence their critics.

As a society we pride ourselves on being a liberal progressive democracy. If we value that freedom then we have to protect the rights of the individual to free speech on the matters raised above without fear of being prosecuted. People’s views do change with time as their experience of life increases and the freedom to change one’s mind about moral or religious issues is something which needs to be protected in law. Legislators need to realise that a democratic society has to tolerate dissent along the lines of the Elizabethan tenet of “Live and let live”. Utopianism and democracy are incompatible. The Hate Crime Bill should be there to restrict the effects of disagreements so that they do not result in physical violence, discriminatory measures or communications aimed at inciting such actions. It will not be able to stop disagreements from happening and should acknowledge this and give protection for it to occur within well defined rather than vague subjective parameters.
Christopher Groves

Over two years ago I responded to the consultation invitation on Scottish Hate Crime Legislation.

At that time the essence of my response was that the unfettered principle of freedom of speech is one on which true democracies are founded. A review of history demonstrates how often a small degree of limitation on freedom of speech has proved to be the thin edge of the wedge leading to countries changing gradually or quickly from being democracies to being authoritarian, centrally-controlled autocracies. Consequently, any moves or proposals to remove or qualify the right of any person holding strong views on any matter to freely express these views emphatically in reasonable ways must be opposed and rejected.

I would commend the Justice Committee for its report last year on the Hate Crime and Public Order (Scotland) Bill, and the Justice Secretary for amending it in response. However, I am still gravely concerned that the Bill, and the four Options regarding freedom of expression still amount to a step that seriously and dangerously undermines the basic principle of freedom of expression which I hold dear.

More specifically

- None of the Options give enough protection for freedom of expression on matters that some or many consider to be highly contentious and liable to engender differences of opinion. To constrain anyone from voicing these opinions publicly or in private, with the threat as a result of being criminalised with up to seven years in prison, is disregarding, if not destroying, true and democratic freedom of expression.

- The difference between the Options should not be evidenced by the treatment given to religion and/or race in particular. Freedom of expression about all moral and political issues – old and new – must be allowed without specific inclusion or implicit exclusion, particularly as these issues should involve open, honest and vigorous debate in both politics and society. Personally, I strongly believe that provision for open and honest debate about religion and/or race should not be excluded from Options 3 and 4. Therefore, Options 3 and 4 should be rejected on these grounds alone.

- It is noticeable that none of the Options proposed for the Bill provide adequate protection for freedom of expression around matters related to sexual orientation and transgender identity in particular. In fact it would appear that these protections have been diminished in these Options from what they were previously. Just because such issues give rise to strong differences of opinion cannot justify limiting people (on both sides) from expressing these differences reasonably, openly, honestly and vigorously. In fact, suppression of such strongly held views might be likely to lead to outbursts of violence between two (or more) sides. Surely it is best for such views to be aired and openly expressed in
healthy debate and discussion, than to be suppressed by which inner feelings of antagonism are built up and fostered.

In conclusion, I would thank the Justice Committee for consultatively seeking views on the Justice Secretary’s latest proposals for amending freedom of expression in Hate Crime and Public Order (Scotland) Bill. Such a consultation is in itself a symptom of a democratic governed country that appreciates the importance and value of true freedom of expression. I hope in this response I have made it clear how strongly I believe in and hold dear the unqualified principle of freedom of expression, a principle that should be held as immutable.
Trina Budge

Of the four options, Option 1 is marginally better than the others in that it permits citizens to express “antipathy, dislike, ridicule or insult” as well as “discussion and criticism” on matters relating to one, but not all, of the characteristics. To prevent a hierarchy of characteristics the extra freedom of expression provisions should be applied across the board.

However, if these amendments were designed to address the serious concerns that women have highlighted then they have completely failed to do so. I see nothing that clarifies whether discussing matters relating to biological truths or women’s existing rights under the Equality Act would be protected against malicious reporting to the police as being ‘transphobic’.

Given the number of times this has been raised it would now seem that the lack of any clarification in the amendments is intentional. I would like it spelled out on the record, whether, for example, misgendering is behaviour that is intended to be captured by the Bill. The transgender lobbying groups certainly seem to think so, as shown by this quote from Tim Hopkins of the Equality Network:

“We welcome the withdrawal this morning of amendments that were specifically about trans people, and could have been interpreted as giving the green light to, for example, deliberately referring to trans people using the wrong pronouns or the wrong first name.”

I don’t believe humans can change sex and therefore use pronouns that relate to a person’s sex and not that of an undefined gender identity. The advent of the Gender Representation on Public Boards Act (where use of the pronoun “she” is used as evidence that a man can somehow become a woman) has meant that to do otherwise would make me complicit in giving away women’s rights to make up 50% of public boards.

This Bill already discriminates against women and we are disproportionately affected by the possibility of hate crime convictions just for taking part in the debate instigated by the Scottish Government on Gender Recognition Reform. The, extremely poor, Equality Impact Assessment at the consultation stage did not consider the consequences and has not been revisited or updated since.

Since the leading party of Government has produced a definition of transphobia at today’s NEC meeting, which includes misgendering, I should like to know how this fits alongside the Hate Crime Bill amendments. It either makes a mockery of any attempts to reassure women thus far, or the Scottish Government intends not just to prevent certain types of speech – but actually compel citizens to say things they do not believe. Women deserve such information to be on the face of the Bill so that we can either choose to abide by it or instigate a legal challenge.
Ann Hall

My preferred option is Option 1 WITH the additional protections afforded to religion and belief applied to all the characteristics.

At the very minimum, the additional protections afforded to religion and belief in Option 1 should be extended to the other characteristics. There are aspects of belief that encompass other areas of thought and practices beyond religion. As a specific example of this, it is differences of belief (about the nature of gender identity, its effect on issues relating to sex, how many sexes there are, whether a human being can literally change sex, what defines being a woman or a man, whether a person can literally be ‘born in the wrong body’, etc) that are generating much of the deep disagreement in relation to transgender identity. I also note that, despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of ‘transgender identity’ from the Scottish Government.

I would draw attention to Liam Kerr MSP’s amendment at Stage 2 of the Bill, which I supported but was subsequently withdrawn. This was strongly condemned by some people and the intense reaction was described by the Convener of the Committee as ‘alarming’. Johann Lamont admitted to feeling ‘anxious’ and Justice Minister Humza Yousaf was left unwilling to confirm if there are only two sexes. This is precisely the reason that more clarity is needed to understand whether or not the points listed in that amendment are to be recognised as criminal. There must be assurances in this regard.

From a personal point of view, I have attended meetings to discuss the legitimate concerns regarding the reduction of women’s sex based rights as a result of transgender ideology and in particular proposed reforms to the Gender Recognition Act 2004. Many who believe in transgender ideology saw those meetings as ‘hateful’ or ‘abusive’.

There is growing evidence that individuals and lobby groups would use this legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to Scottish political parties are openly calling groups like For Women Scotland, MBM, WPUK, LGB Alliance, etc ‘hate groups’, yet nothing is being done to counter this.

Councillor Graham Campbell and potential MSP has indicated that ‘using the wrong pronouns or wrong first name’ is a hate crime. There have been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. IPSO guidelines ask that reporters refer to male criminals who commit horrific crimes as ‘she’. Compelled speech should not form part of the bill.

A clear and unequivocal statement from the Government is necessary that the Hate Crime Bill will not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women’s rights in law or be used to silence critics of proposed policy.
There has arisen a hierarchy of characteristics which fails to ensure equality. Feelings of ‘antipathy, dislike, ridicule or insult’ may be expressed towards women, who are not included in the bill and often encounter this in highly abusive ways, yet women are confined to ‘discussion and criticism’ of areas that profoundly affect them. This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

I remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings. Scrutiny of this important aspect of the Bill should be extended, if necessary into the next parliamentary session.

I believe the Bill is fundamentally flawed, lacks clarity, is excessive and, without more robust protections to cover all the characteristics, represents an unacceptable erosion of freedom of expression, particularly for women. It should not in this case proceed.
Janet Shrimpton

I am writing regarding the proposed amendments to the Hate Crimes Bill on the subject of freedom of expression.

So far as I can see, there are only two differences between the proposed options:

1) Whether to give additional protection to disagreements regarding religion;

2) Whether to include provision relating to race.

Why is there no option to give additional protection to disagreements regarding transgender identity included? This is surely one of the most contentious issues today, and therefore the one which needs the most protection of free expression. There have already been numerous examples of transgender activists trying to shut down debate on this issue. A bill which does not contain the most robust defence of free speech – along the lines of the additional protection concerning religion included in options 1 and 2 – will encourage attempts to suppress what, until recently, would have been the “mainline” view on the subject. It would potentially criminalise the free expression of basic tenets of religions such as Christianity and Islam.

It is also important that there should be explicit protection of discussion and criticism of sexual conduct and preferences, not just “matters relating to sexual orientation”. In particular, it must be possible for someone to counsel others to change their sexual behaviour without risking prosecution, just as options 1 and 2 allow proselytising or urging a person to cease practising their religion.

I will be glad to discuss any of my concerns further should you so wish.
Angus Morrison

I refer to the above and wish to make the following points:-

1. I believe that not enough time has been given to the discussion process in this bill; it now appears that the Justice Secretary is trying to rush the Bill along in order to bring it to a conclusion in the current session of parliament.

2. The issues covered by the Bill, particularly relating to Freedom of Speech, are so critical to our Nation that it is simply not acceptable to rush the Bill to a conclusion in this way.

3. It is not acceptable that the Justice Secretary should be disproportionately influenced by the transgender lobby to the extent that the latter are allowed to seek exemption from honest and proper scrutiny/criticism from the people of Scotland. There should be robust protection within the Bill to allow freedom of speech around sexual orientation and transgender identity.

4. I disagree with the principle of Hate Crime in view of the fact that our existing laws offer sufficient protection to any reasonable and sensible person who recognises that the world does not revolve round them and their ‘rights’.

5. If the Bill is to proceed on the basis of the Options on offer for Freedom of Expression then I regard Option 1 as the least worst, albeit it is far short of what honesty and integrity requires.
David Macphail

Having reviewed the options presented for changes to the hate crime bill I welcome the proposals given in the first options providing additional protections to religious debate. These alterations do not however go far enough in that there should be greater protections for speech/expression on any issues, particularly highly controversial ones such as sexual orientation and transgender identity and as such I would urge that an extension of the additional protections on religious debate be extended to all the listed topics.

The forced silencing of discussion around these controversial topics, and for that matter any topic, does nothing to reduce the tensions that exist between differing parties and those holding different views. The results are in fact opposite.

The only way to change opinions on sensitive social and political matters is through increased discussion, not suppression of questions and voicing of alternative views, whatever form this may take.

Any idea, position or belief that cannot stand up to verbal opposition and requires the protection of government and legal censorship of opposing dialogue is simply unsustainable and not worth protecting. It is not the role of government to act as a moral arbiter for society, making decisions on what expressions, views and beliefs are acceptable.

This kind of interjection by government into society sets a very dangerous president as it allows the potential for those in positions of power to use the law to silence political opponents.

The solution to wrong speech is MORE speech, not the criminalisation of speech.
Ed Tulloch

Thank you for opening this consultation on the freedom of expression amendments to the Hate Crime and Public Order Bill (Scotland) proposed by the Cabinet Secretary for Justice. It is good to thoroughly consider the views of stakeholders on this issue.

I do think that religious debate is adequately protected by the first two options (and not options three and four). However, I believe that there are not adequate protections in place in any of the proposed options regarding discussion around sexual orientation and transgender issues. The protections for freedom of speech on these issues should be similar to those on religion. These issues divide opinion greatly in Scotland. There needs to be protection for respectful discussion and disagreement on these topics without fear of criminality. Open, rational and respectful debate is the best way to allow progress.

We need explicit protection for free speech about transgender identity. As a medical doctor, many of my colleagues have privately expressed concern about ideology being labelled as medical fact. However, people are afraid to speak up on the issue for fear of being branded as bigoted and transphobic. This is not in order to encourage insult or rudeness, but to encourage rigorous and respectful debate. The current proposals are not the way to have a healthy debate – it will just foster resentment. Building in adequate protection for free speech on this issue is absolutely essential.

There is significant risk that political motivations will allow mis-labelling disagreement as hatred. Those holding certain views will then be silenced by fear rather than proper discussion. Lord Bracadale's recent Independent Review on Hate Crime urged the importance of distinguishing between legitimate debate and rabble-rousing. The Bill fails to do this as it currently stands. Giving the same protections as religion for freedom of speech on sexuality and transgender issues will solve this.
Ryan McKernan

I want to express a few important points regarding the above consultation due to take place on Mon 22nd Feb 2021.

The first two options included in Justice Secretary Humza Yousaf’s suggestions offer robust protections for debate on religion, which is important and most welcome. However, there are insufficient protections offered for discussions concerning sexual orientation and transgender identity. It would be a tragic oversight to deny people the right to express reasonable disagreement on these issues. In the effort to shelter one section of society from even hearing alternative views on matters important to them, you will incriminate another entire section of society who regard these matters just with as much importance.

A person’s religion/faith/worldview is an integral part of their being. It represents their core beliefs regarding their very existence and meaning of life. If freedom of speech in this area is protected, why are alternative views on sexual orientation and transgender identity not? These issues are an inseparable part of the core beliefs relating to a person’s religion/faith/worldview. A person of faith has to accept myriad alternative views within society that oppose their own. As long as those views are expressed respectfully (often they are not) and without intent to insight hatred (often they are), we must accept their right to be expressed.

Likewise, people have to accept that there are different opinions about sexual orientation and gender identity. Granted, any wilful and clear attempt to insight hatred or violence should be dealt with swiftly and appropriately, but you will generate a political and legal quagmire if you do not protect the right to respectfully express differing opinions. To do otherwise is nothing short if bias toward one section of society over another and makes you the very thing you claim to be preventing—intolerant.
Cameron Scott

Any option chosen must include protections for “expressions of antipathy, dislike, ridicule or insult towards religious beliefs or practices”.
Murdo Morrison

Thank you for the opportunity to submit views to the Justice Committee.

Of the four options put forward by the Scottish Government on freedom of expression within the Hate Crime and Public Order (Scotland) Bill Option 1 is the best option. This is because Option 1 provides the most protection of freedom of expression.

However, Option 1 needs to be made stronger. The additional safeguard of "expressions of antipathy, dislike, ridicule or insult" allowed for religion needs to be applied to sexual orientation and transgender identity. Age, disability and race cannot be treated in the same way as sexual orientation and transgender identity. There is real disagreement over the latter two issues that is not possible with the first three issues. Sexual orientation and transgender identity are part of an ideology, similar to religion, around which there is strong disagreement. Antipathy and ridicule towards an ideology cannot be equated with hatred of those who follow that ideology. Therefore the strongest possible freedom of expression clauses must be allowed in these areas.

However, while freedom of expression clauses are welcome, I would like to challenge the principle of "hate speech" legislation. There are already laws in Scotland that deal with threatening behaviour and crimes aggravated by prejudice. So what is the point of the "stirring up hatred" offence included in the Hate Crime and Public Order (Scotland) Bill? There is no objective definition of "hate". Why do politicians think they have the right or ability to decide what is, or is not, an acceptable opinion or statement? Where opinions expressed are genuinely offensive or bigoted, communities and individuals should oppose and rebut them but it is not the job of the state. It is a dangerous road to go down where peoples' opinions are policed by the state. We should not have to rely on freedom of expression clauses within legislation to allow us to think and speak freely. There should not be laws governing speech in the first place.
Robert Craig

I write to respond to the consultation on an amendment to the HCB.

Of the four options presented, option 1 is the best option, as it provides the most protection.

However, it does not go far enough in the protection of free speech. That protection must include the right to robust debate, which the HCB attempts to suppress. It conflates hating the sin with hating the sinner.

Specifically, it would impact the current debate about the conflict between transgender rights and women's rights. We need to be able to debate these matters; the HCB, even with any of these amendments, would make this debate difficult.
Challum Finbow

If the bill does go ahead then please ensure that debate over religious issues has very strong protection. People should be able to criticise religion and say things which some find offensive about religion and all world views; there must be at least the protections described in options one and two.

The options for speaking about sexual orientation and transgender issues are too weak. These must have the same protections as religious debate. No one should feel as if the government is dictating what people must believe on these issues. It was wrong in the past when homosexual relationships were illegal; it is equally wrong for people to fear saying that they believe women are women and men are men or that you can’t marry someone from the same sex as by definition the word ‘marry’ means the coming together of two different types. These statements are clearly offensive to some but they should not and cannot be issues that government dictates to society.

In the same way someone should be able to ridicule religious position so people should be able to criticise or even ridicule another's position on gender or sexual orientation- people should be able to ridicule the widely held view that same sex marriage is not marriage or the widely held view that people can't change gender and vice versa. We need to be able to have full and proper debates without fear of prosecution about matters of morality and politics. These are matters on which people can change their mind through debate- by closing debate you tend to find people are more likely to hold on to their narrow viewpoint.

One of the fears of normal everyday people is that just for holding and expressing a view suddenly you become seen as a criminal. We all know how ‘dirty’ politics can be or how people with agendas can use what people have said against them- the free speech clauses are thus vital to stop political/world-view opponents from mischief and harm- you need to get this law correct- with tight definitions and with no words and phrases that can be misconstrued such as ‘reasonable’ or ‘stir up’.

A further issue is the proposed deletion in section 12 of the Bill that protects the ability to urge change in behaviour regarding sexual ethics. Protecting the right to urge change in this area is essential or you will be bringing about conflict for people of some faiths. They will be faced with the conflict of following what their religion teaches and obeying the law. It is offensive that at least two of the World’s religions say that sex is only for marriage between a man and a woman but surely Scotland is not going to pass a law that brings both main line Muslims and Christians into conflict with the law? It is asking for trouble and division.

Personally, I feel that this bill should be scrapped and that the response from wide sections of Scottish society tell you this- very rarely do you get this type of response to a bill in parliament. It feels now however that the parliament will plough on regardless with some members determined that this passes before the election. The bill repeals the blasphemy law; the irony of it is that, to many, it feels now that you dare not speak out against the new religion: the progressive agenda.
It is clear that some people in society seem to think that having a different point of view means that there is hatred—note the recent issues in the SNP a party I had voted for all my life. This has become clearer—some people think their way is morally superior to others and want the opposing view not just shut down but made into a criminal offense. Most people in Scotland do not want thoughts and ideas policed—however there are surely some people that do and legislation that moves nearer that is dangerous.
This is my response after reading the 4 replacement amendments to the proposed Hate Crime Bill at the Scottish Parliament.

Firstly I would like to make clear that I oppose the introduction of this bill into law, entirely. I believe that in any fair and open democracy the Freedom of Speech is a privilege which ought to be robustly protected. Obviously such freedoms do come with accountability but I also believe that we do have already legislation in place to hold real hateful communication to account.

I believe this bill is being introduced during a climate of change and sadly division and toxicity. Already we are seeing people being insulted, demonised and metaphorically pilloried for having opposing views to another ideology. It seems unwise to me to add to this toxic environment by introducing vaguely worded legislation which some particularly extreme activists might use maliciously against the general populous, who in their innocence may hold the ‘wrong opinion’.

The debate around changes to the GRA and Gender Representation on Public Boards Act have already generated a lot of heat. It is a concern I have when a government chooses to come down firmly on one side, with result that any opposition, or opinion may result in others being silenced or criminalised for discussion on their own protected rights.

If a selection must be made, in the very short time that I have had to read and digest the information before submission, then I would firmly come down in favour of option 1. It does allow for some discussion and criticism on all the protected characteristics, including expressions of dislike/ ridicule on matters related to religion. As a person who has no gender indentity beliefs and find gender stereotyping both harmful and reactionary, Identitarian politics behaves as a religion, it is a belief system. This would allow for open discussion on what is the truth, scientific fact and what is ideology. Women must be able to protect their identity as a sex, in order to protect our sex based rights through the equality act.

My concern about this Bill remains re freedom of speech, the lack of clarity, dubious protection of women from misogyny, the erosion of the female identity & the closing down of dialogue.
Margaret Lynch

Forgive me if I am going about this the wrong way – I have never written to the Justice Committee before. It is also probably, the most improbable letter I have ever typed.

Away back in the 1970’s I first saw “Inherit the Wind” – the Spencer Tracy film of the Scopes Trial where a school teacher was prosecuted for teaching Darwinism. At the time public schools were banned from teaching that man had descended from the apes. The film makes it look like the Creationists were sent packing – but real life seldom imitates art – and in fact Clarence Darrow (the character played by Spencer Tracy) lost the case with the result that for the next 50 years students in schools in Tennessee continued to be banned from teaching kids about evolution.

There was an exchange between the two lawyers on the case – Darrow and Bryan where Bryan declares “These gentlemen did not come here to try this case. They came here to try revealed religion. I am here to defend it and they can ask me any question they please”.

Darrow’s response was to say, “You insult every man of science and learning in the world because he does not believe in your fool religion”.

The battle between the Creationists and the Darwinists over what was taught in public schools in the Deep South of the United States of America nearly a 100 years ago and the current spat between Transgender Ideologues and Feminists have many similarities – and one important difference.

The Creationists were able to use the law to determine what was taught in public schools – but as far as I am aware, they never got as far as dictating what people thought – or rendered the conversations that one might have around one’s dinner table criminal conversations. In my day that meant something else entirely, but I digress.

So, the 4 Options. I would ask the Committee to consider which one would allow me to do the following: -

To think and say, to write and publish

- that men who undergo chemical and surgical sexual reassignment surgery do not in fact become women but are transgender women which is a different thing entirely.
- that men who comport themselves as women by dressing and wearing make-up etc some or all of the time are not women but cross-dressers, or transvestites. (To be honest I am not sure which is which).
- that men who comport themselves as women and who still have penises should not be allowed to enter women’s spaces (toilets, dressing rooms, refuges, hospital wards etc)
• that I find men who want to dress as women and hang about women’s toilets, changing rooms, refuges etc a bit creepy – in the way that in days gone by guys who hung about women’s toilets were called “peeping toms” and were generally made you shudder.

• that I think that men who seek to compete as women in women’s sports – or to take up women’s places on boards or act as women’s representatives are in fact seeking to secure an unfair advantage and that this should not be allowed.

• that I think that men who demand to be allowed into women’s prisons, many of whom did not “identify” as women prior to their incarceration are most probably sexual predators who pose a threat to women prisoners.

• that the census should be accurate, that women’s services should be for actual women – the ones with wombs, who get pregnant, have babies, miscarriages, menstruate, get breast cancer and prolapses that no man -ever – will get because he does not have the same biology.

• that I think that men as a sex class are privileged and have been for millennia, that women in the last 100 or so years have fought for and won some measure of social protection – and that these social protections will be dismantled if they are made available to men also.

You cannot protect women from sex discrimination unless you accept that women exist as a separate sex class.

Which of the 4 options will allow me to do all this?

Option 1

This option allows people to express antipathy, dislike, ridicule or insult on matters relating to religion – but does not appear to extend this license to the other protected characteristics. So, you cannot laugh at me because I am old, disabled, have a different ethnic origin and sexual orientation, have a transgender identity – but if you are ridiculing me because I am Catholic – carry on, no problem. How is this either fair or rational?

Generally speaking, and because I believe in civility, I have no problem in addressing someone by their chosen pronouns. But I have been told by several people that my refusal to accept or believe that a transgender woman is in fact really a woman is insulting to them. In fact, I have witnessed many exchanges where individuals have asserted that it is abusive and insulting to assert such a belief.
The other issue which this raises is proselytising or urging of persons to cease practising their religions. Does this mean that you can proselytise a religion but not a belief? I think this then takes us to an arcane, but probably relevant discourse around the difference between religion and ideology in the 21st Century. In what respects does transgender ideology differ from fundamentalist religion? I would like to know why, philosophically, religion is worthy of less protection when it comes to freedom of speech? And vice versa – why is freedom of speech less important when it comes to ideology.

And now to definitions

What is transgender – what does it mean when it is subject to self-identification. Does that mean it is different things to different people? To some people to be transgender is to have surgically and chemically transitioned and to have obtained a sexual reassignment certificate. To others to be transgender is to declare oneself to be, to shave one’s legs, beard, get a different hairdo, put on makeup and nail varnish and wear shoes with heels and a dress – and not necessarily all of the time.

How is the law going to work here – if it is so subjective in one direction – why is it not equally subjective in the other? If the law has not defined what transgender actually means – how can the law be precise about when a hate crime is being committed. If a group of guys on a stag do grotesquely cross-dress as I know some do – are they guilty of a hate crime? If they are lampooning women – is it OK? But not OK if they are lampooning transgender women?

When is a man a man, a woman a woman? Will women giving evidence in court cases be compelled to refer to the guy who raped them as a women/ address them as she or face prosecution? Will children be forced to address their father as mother? Will women be forced to accept intimate healthcare services from men – or run the risk of being labelled as bigots?

How can we have a system where science says that men and women are biologically different, that the human race has two sexes and the law says something different? How is that going to work in practice? How will you get people to respect the law when to quote Mr Bumble “the law is an ass”?

Politicians of all political persuasions have expressed concerns about the ability of women to speak openly on these issues and the degree to which the public discourse has been dominated by a cancel culture, shutting down opposition, silencing women. Our own Justice Minister Humza Yousaf was like a rabbit caught in the headlights when asked to confirm if there were only two sexes. Others have said that they are anxious (Johann Lamont) and your own chair stated that the tenor of the debate had made him “alarmed and distressed and perhaps even if I am honest, a little afraid”.

Of the 4 options before you, Option 1 is the least worst – but even it does not guarantee my right to believe and argue that sex is immutable, that it is binary, that women as a result of our biology have suffered discrimination and oppression for centuries, that our hard won freedoms are being taken away by a group of transgender ideologues who do not command the wholehearted support of their own
community. Ironically, I may just escape conviction if I argue these beliefs because I am a Catholic, not because I am a woman.

This law will either be widely ignored – or widely contested. If widely contested, we will have need of our own Clarence Darrow at some point in the future. As a Catholic I was always quite pleased that my religion enabled me to simultaneously accept the teaching of the Bible and Darwinism. I do not understand why it is not possible to simultaneously respect the rights of transgender people – and protect the rights of women, and the rights of all to freedom of thought, speech association and the freedom of the press.

This whole business is taking on the flavour of a modern day Albigensian crusade with those of us who continue to put our faith in biology and science labelled as 21\textsuperscript{st} century heretics by those who bear more than a close resemblance to the Spanish Inquisition. We are on the brink of enacting laws in Scotland which will criminalise people based on beliefs which are rooted in science.

On a brighter note there is a future for PhD students who want to work out how the first 20 years of the Scottish Parliament got us to the point where the Scottish Enlightenment might as well never have happened.
Ellen Turner

Freedom of speech and the freedom to hold an opinion and to discuss and debate that opinion form the basis of our free and democratic society and differentiates us from autocratic, dictatorial regimes in other countries.

All topics, even those which are more difficult areas in our modern society, should be subject to freedom of speech, discussion and debate, whether the topic is race, religion, sexual orientation or transgender issues and as such the freedom of speech protections regarding religious beliefs in Options 1 and 2 should more closely be applicable to those beliefs regarding sexual orientation and transgender identity. The dilution of the Bill’s protection for discussions around these latter two issues is ill-advised, indeed wrong.

All people in society have strongly held views on the topics mentioned above and it is important that people can have vigorous debate and discussion without fear of prosecution for voicing an opinion that is sincerely and genuinely held.

Section 12 of the Bill protects the ability to urge people to alter their sexual behaviour. This protection must not be removed. People from many religions including Christianity and Islam have strongly held beliefs on this particular topic. They are allowed to hold an opinion on this as on any other matter. Discussion and debate are healthy for all involved and anyone taking part in such debate or discussion have the option to change their mind if so persuaded.

Our Police Force are busy solving serious crime and protecting the public and surely have enough to do without making a judgement on who said what about what in a conversation and whether it should lead to prosecution which could result in seven years imprisonment – a very serious concern for law abiding people. There needs to be a clear distinction between discussion and inciting others to hatred included in this Bill. As it stands at the moment this is missing.
Pamela Cunningham

I am genuinely concerned that none of the four options offered will adequately give protection from investigation when speaking about such things as women’s rights, protecting women’s rights in law, sex, the use of pronouns, statements of scientific or biological facts, religion, and when challenging potential policy changes.

I do not feel that enough time, or deliberation has been given to this Bill, in Parliamentary proceedings so far and the Scottish Government appears to have failed to give clarification as to the definition of “gender identity” amongst other issues.

I think that this Bill should be brought far more to the attention of the Scottish Public because of the huge significance it carries. Most of my friends are unaware of its contents when I ask them about it. Whilst I understand the intention behind the Bill is good, I fear that the impact of the Bill as it stands, will be catastrophic.

However, given only the four options and the opportunity to express a preference I would like to support Option One to be added as an amendment, with the caveat that it does not go far enough to provide adequate protection and I would therefore request it to be extended to further cover areas such as those mentioned above.

With thanks for your consideration of my views.
Dierdre O'Reilly

I am writing in response to the call for response to the new consultation on the Hate Crime and Public Order [Scotland] Bill. I am deeply concerned that the protections for freedom of expression regarding debate on sexual orientation and transgender identity are not adequately robust.

a] I appreciate that Options 1 and 2 include protection for religion, religious beliefs and practices, and the not holding of religious beliefs. However, I am deeply concerned that there are not similar protections for the protected characteristics of sexual orientation and transgender identity in any of the four options given.

b] In a free society one should be able to have serious open debate on matters of morality and also to be able to change one's mind. One should be able to express even unpopular opinions without fear of legal reprisal. The current Section 12 of the Bill gives protection to those who wish to urge others to change their sexual behaviour but the proposed amendment would remove this protection and thus weakens the provisions for freedom of speech.

c] I strongly consider that the new proposed free speech clause terms -- "discussion and criticism" of "matters relating to" sexual orientation ---- are not robust enough to give adequate protection to freedom of speech. This is a weakening of the present wording of the Bill which, at the moment, specifically protects discussion or criticism of "sexual conduct or practices". I believe that, regarding marriage, one should be able to express views regarding the 'sex of the parties to the marriage' without legal reprisals.

d] I consider that the Bill should give specific protection to the belief that there are only two sexes or genders, that sex is immutable and to the freedom to use birth names or pronouns. One must have the right to disagree with the view that binary sex is fluid or that more than two genders exist.

e] I consider that the scrutiny of such important aspects of the Bill as mentioned above are vital to the robustness of freedom of speech and of expression in Scotland. These matters merit much deeper study than is possible in the life of this parliament and I suggest that their prolonged and complex consideration would be better served by delaying these aspects of the Bill until the next Parliamentary session. As offences can result in a prison sentence of seven years, such a serious penalty would indicate that it is vital that this Bill is clear and robust.

I trust that you will take serious consideration of my concerns.
Carolyn Lang

As a committed Christian I would like to submit my views on the above as I am extremely concerned about this Bill & the effect it will have on free speech for Christians, especially on issues of religion, sexual orientation & transgender identity. It is very important that as citizens in our country we are able to discuss these topics & our beliefs on them without being in fear of being criminalised.

With regards the four options proposed I believe that debate on religion should be given the same protection that it is included in options 1 & 2.

I am concerned that none of the options have enough protection offered around beliefs on sexual orientation & transgender identity – we must all be able to express our views on these two issues that currently have such a lot of focus on them.

I believe also that it is a grave mistake to weaken the Bill’s protections on the issue of sexual orientation.

These two issues have specific moral concerns for those of us who are Christians & we must be able to express those concerns without being fearful of prosecution if we do so. Christianity’s core is one of love – God’s love for us as people & our love for our fellow humans, but at times that means we have to speak up & speak out against behaviour that we feel is wrong & goes against God’s design & plan for us. This should not be regarded as stirring up hatred. I therefore believe that there must be specific protection for free speech on both sexual orientation & transgender identity. I believe we are each made specifically either male or female & this comes with great privilege & dignity for each of us & is something that we should embrace & celebrate. Saying so should not be something that anyone can say is ‘hate speech’ & seek to silence us on.

Under this Bill there are severe penalties proposed for words spoken so I truly believe that strong safeguards are needed to protect people sharing deeply held personal beliefs pertinent to their faith. We must ensure that in a Bill about stirring up hatred that we do not stir up hatred in reverse.

Sharing concerns in legitimate debate must not be taken to be something that it is not & called abusive by those who themselves are actually seeking to stir up trouble.

I pray that in our country free speech & religious liberty will continue to be upheld.
John MacDonald

I write to state that this new bill is a grotesque violation of the values of equality and fairness on which Scotland has been built, and to make an impassioned plea that late changes are urgently made to protect free speech.

In short, the bill does not allow equal rights of free speech. Debate on the subject of gender identity is not sufficiently allowed for and religious debate must be afforded the extra assurances given in options 1 and 2.

Scotland will only progress when people can share new ideas and challenge prevailing norms. As uncomfortable as free speech may be at times, it is the means by which society improves. Throughout the enlightenment, Scotland was a world leader in producing critical thinkers who pioneered ideas that we uphold today. But now, in a misguided attempt to try and protect certain sectors of society, you are about to throw away the equal right of all citizens to freely express their views by criminalizing those who might criticize gender ideology.

As a Christian in Scotland, my sincerely held views are frequently ridiculed, mocked and mis-represented in the public arena with little protection or defence. Modern Scotland is in many ways hostile to its Christian citizens. To many Christians this is hurtful, but we accept this because we agree that others have the right of free speech. Moreover, we have the confidence of our convictions that our faith can withstand criticism from others. Therefore we are happy for others to criticize our beliefs because we know our beliefs can stand criticism.

What is so pernicious and divisive about this new bill is that the same courtesy is not going to be extended in the other direction. Most faith communities hold the sincere belief that a person’s gender is their gender at birth. This conviction is not some passing whim in response to modern transgender ideology, but a deeply held view rooted in the fundamental belief that humans are created beings and therefore special, as opposed to the extreme materialistic belief that humans are ultimately bags of chemicals. Under the new law, Christians, Muslims and Jews alike will be deemed criminals for expressing some aspects of their sincerely held beliefs.

There has been mounting evidence coming to light in recent months of young people who have had their health and fertility ruined because, as teenagers, they were prescribed puberty blockers or changed their sex, seemingly with little challenge. Sex changes appear to have gone ahead because professionals are too fearful to suggest that they are not the best option. How can vulnerable young people in Scotland be protected from making ruinous decisions if no one is willing to counsel them otherwise for fear of prosecution?

I am not some closet bigot who wishes to persecute ‘transgender people’. Far from it. Nor do I support any sort of abuse of ‘transgendered people’ or any other group in any way, shape or form. What I do support is the right of people of faith to speak their views on this issue, even if those views are uncomfortable for others. Ironically, in seeking to protect ‘transgender people’, this new bill may actually do more to harm
them, since they will only hear positive reinforcement of their belief and no criticism that might save them from making irreversible and ruinous decisions.

Society can only thrive with free speech. Well-meaning MSPs have convinced themselves that this bill still allows for free speech. It does not. All this bill allows for is a sanitized version of free speech in which the only views that accord with prevailing norms are allowed. Real free speech allows people to properly address deep and controversial matters. You are about to embark upon outlawing certain rights of free speech and I fear you are leading Scotland down a slippery slope. I sincerely hope that the Scottish parliament will come to its collective senses on this matter.

I wish for my views to be recorded for posterity.
Donalda MacSween

Thank you for taking the time to read this email.

I believe that the proposed free speech clauses are vital to stop political and social opponents using the new law in a wrong way to score points and possibly waste police and courts time by wrongly accusing them of stirring up hate. Parliament cannot afford to get this wrong just now.

The protection for religious debate must have the additional protection that is included in options 1 and 2. It should have full protection to discuss beliefs on transgender identity and sexual orientation freely. Surely we should be free to discuss morality, religion, politics or whatever topic and have an open debate where people are allowed to disagree. It is wrong to live in fear just because you could be prosecuted if someone disagrees with your opinion and twists it into a hate crime when that was never your intention.

It would be a mistake to water down any protection this Bill offers on sexual orientation matters. Section 12 is essential to protect free speech for Christians. Please don’t let the Government delete it. Surely Christians are allowed to have their core beliefs protected like everyone else.
Dr Susan Lawson

I would like to make my views known on the four options for amendment for freedom of expression provision within the Hate Crime and Public Order Bill.

I have studied the four options and I find that none of them give adequate provision for freedom of speech. From my perspective as a medical doctor and a Christian who adheres to the teaching of the Bible, I do not think there is enough provision that would protect me if I were to state what I see as Biblical and biological truths. The proposed amendments are vague and people could still be accused of abusive speech just because someone does not agree with what they are saying or have written.

Christians and others hold traditional views on marriage and other matters. These views have been held throughout history and are still held in most of the world. There needs to be very strong protection for people holding such orthodox views to not be accused of hate crime for stating their beliefs. There is already provision in Scottish law to prevent discrimination. There is no need to rush forward with this.

I would therefore urge that you do not proceed with Part 2 of this Bill.
Lynne McGregor

You have asked for comments on the new amendments to the Hate Crimes Bill providing 4 options.

I would preface my comments with the observation that only allowing 4 days for this to be consulted on is an utter disgrace, but that appears to be the way of things these days. Consultations are carefully choreographed and rarely widely advertised.

On reading the proposals there is no good option here only a least worst, and that is Option 1, but even it does not go nearly far enough in protecting free speech and the rights of women in particular, to speak openly about matters which affect them and their associated rights.

We need robust protection of free speech and you must be aware of cross party concerns around the issue of hate speech and how it has impacted particularly on the debate around women's rights and reform of the GRA.

Individual women, womens' groups and LGB groups are already being labelled as haters/hate groups simply for stating biological fact and standing up for rights already enshrined in law (2010 Equalities Act).

It chills me to read of campaigners - including Tim Hopkins of Equality Network, and councillor and potential MSP Graham Campbell - talking about hate crimes as including "using the wrong pronouns or the wrong first name" and to hear of women who have been physically assaulted by males who self-identify as women being told to refer to their assailants as women. Imagine the public outcry, rightly, if women giving evidence in court were compelled to refer to a rapist as she or face prosecution themselves. How on earth could this be deemed reasonable, just or progressive?

I have previously commented on other laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. There appears to be no end to the rights of men and trans people but a moratorium on the rights of women, be it in business or sport or elsewhere in life.

Robust protection of universal free speech is a fundamental right and if MSPs from across different political parties are already expressing concern about the tone of the debate around women's rights and reform of the GRA, then surely this must be a red flag for legislators.

As someone who has been involved in campaigning for women's rights in recent months I am very concerned at the escalating rhetoric from groups with antipathy to those who have concerns around proposed changed to the GRA. What will prevent individuals, other campaigners, and lobby groups, from using any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like For Women, MBM, WPUK, etc "hate groups" and nothing is being to done check this.
Women need clear and unequivocal statements from the government that they will not allow this to be used to silence critics.

It has been noted by others that there is a hierarchy of characteristics which fails to ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

I must say that I am very angry that within this bill, in common with other recently proposed policies and legislation, and despite it being deemed necessary by the Convener of the Committee in this case, there remains NO clear definition of "transgender identity" from the Scottish Government.

I believe rather than redefining the meaning of ‘women’, which seems to be a goal of this government, we should seek to define exactly what is meant by the terms ‘trans’ and ‘transgender’, using that as the starting point to examine what really needs to be done by way of equal rights.

The vagueness of this term does nothing to enhance the existing protected rights of transsexuals under the 2010 Act (which may well need improvement), rather it camouflages less robust demands from other diverse groups who seek to attract special rights, recognition or dispensations, that actually demean and diminish the rights of others.

In common with others I remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and may yet have to rely on a more appropriate amendment at the final stage.

In conclusion I add my voice to others asking for Option 1 to be strengthened with the extra free speech provision extended to ALL characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women’s rights in law or to challenge policy changes.
Kenneth Ferguson

I am deeply concerned that the four options you are proposing as safeguards in the Hate Crime Bill are not sufficient. None of the options give strong enough protection for public discussion around sexual orientation and transgender identity. The freedom of speech protections should be closer to those that are proposed on religion.

Morality and politics are matters on which people can, and indeed should, have vigorous debate and in which they may change their minds. In today’s society, sexual orientation and transgender identity undoubtedly raise moral and political issues that MUST be discussed. People must be allowed to discuss and ultimately disagree about these things without fear of prosecution. There is a serious risk that politically-motivated complainants use this legislation to try to silence their opponents and damage free speech.

Repeatedly Police Scotland has said free speech clauses are important to prevent officers being inundated with the vexatious misuse of the Law. Under the proposed Bill, anyone who disagrees with this issue could face up to seven years in prison for words they have spoken. This is draconian in the extreme and needs very strong safeguards to ensure that doesn’t happen. Even Lord Bracadale’s Independent Review on Hate Crime recognised and stressed the need to distinguish between legitimate debate and rabble-rousing. The Bill as currently proposed fails to do this.

I would therefore urge you to strengthen the options that have been proposed to safeguard free speech.
Satwant Bance

I am writing to respond to the proposed Hate Crime Bill. I am very concerned that some of these measures fall very short of protecting free speech that may offend others indirectly, but has no intention of offending or belittling someone else.

I believe that religious debate should certainly have the additional protection that is mentioned in options 1 and 2.

For many people who follow a religion (and for many who don’t), their views on issues such as transgenderism will often be significantly different to the current ideology. There should be clear and strong protection for people to be open about their views on such issues. There is a wide spectrum of understanding on transgender issues and a range of reasons why people hold their views. Our current culture is guilty of not allowing and accepting differing views and this freedom of speech should be protected.

I find it shocking that people feel threatened to say they believe in biological sex, and the Scottish government is guilty of not doing enough to support people sharing their long held and rational views. People should be able to criticise others in such issues without fear of being prosecuted.

I am also disappointed that with regards to the most controversial current issue (transgenderism), the four options do not offer clear protection for people who do not hold the popular view. I also believe section 12 of the Bill should definitely be kept in to protect people of religious beliefs who believe that changing behaviour is possible.

Finally, I was delighted to hear that in England there are much better protections for freedom of speech in universities now, with Gavin Williamson supporting free speech and backing this with action to protect this. I sincerely hope the Scottish Government will do all the can to strongly uphold free speech, rather than watering things down to allow people a platform to be ‘offended’ by someone else’s differing view.
Guy Douglas

The free speech protections for religion, as set out in Options 1 and 2 are appropriate and helpful.

However, similar protections should be included for sexual orientation and transgender identity - to allow freedom of speech in a democratic society, such as ours, in which political and moral views on these controversial issues differ significantly. None of the four options currently addresses this concern.

The risk is that police time is wasted responding to situations in which disagreement and debate may occur, which a reasonable person would regard as neither abusive nor violent.
Marie Wilson

I am responding to your call for views on the possible amendments to the Hate Crime Bill.

I was disappointed to see that the government is insisting on proceeding with this deeply flawed piece of legislation and as I stated in my earlier submission to the consultation, this is a bill which should be rethought in its entirety.

I also note that the Justice Minister has admitted that none of these amendments were recommended by Lord Bracadale and in my opinion none of them remove the subjectivity of the Bill nor do they clarify certain areas of contention which have arisen in this debate, e.g.

* What do "criticism" or "abusive" encompass?
* Where is the clear definition of what constitutes a "transgender" identity?
* Where is the declaration that compelled speech forms no part of this Bill?

(Surely it cannot be right for a woman to be further abused in court by forcing her to refer to her male assailant as "she" on pain of being guilty of contempt of court aggravated by hate, if the said assailant has prior to the court hearing changed their gender identity.)

* Where is the reassurance that lobby groups will not be able to use this Bill to shut down critics of proposed policies?

(This really worries me, given the fact that several political parties have issued guidelines which imply that asking for the single sex exemptions in the Equality Act to be upheld is a hateful, transphobic act and a senior Labour MP has stated on social media that women have no right to single sex spaces, even when they are at their most vulnerable. Moreover, when the Justice Minister himself refuses to acknowledge that there are only two human sexes, what hope is there for women suffering discrimination because of their sex.)

* Where is the reassurance that there will be not be a hierarchy of protected characteristics enshrined in this Bill?

* Why has sex been omitted from this bill given the rampant misogyny which women face every day? (Surely it cannot be right that e.g. an attack on a woman wearing masculine garb would be considered less serious than a similar attack on a female sexed person who is non binary. Moreover, how can it be right that a trans person can express feelings of "antipathy, dislike, ridicule or insult towards a woman advocating for female only safe places, when the woman would be guilty of a hate crime were she to say that transwoman is not a member of the female sex.)

However, given that our views have to be restricted to these four amendments I would choose Option 1 as the least poor choice but would urge you also to extend the free speech provision within this amendment to all the protected characteristics.
Moreover, I would also ask you to consider urging the Government to make an unequivocal statement that this Hate Crime Bill does not seek to criminalise campaigns to retain women's rights in law or to challenge policy changes and neither will it seek to criminalise statements of scientific or biological facts nor pronoun choice.)
Rasha Tindell

I am writing to you to express my concern regarding the proposed Hate Crime Bill and the Freedom of Expression Amendment especially in regard to women and girl's rights, protections and identities.

We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women’s rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious.

It should never be made a crime to simply contradict people from ANY group where there is no violent or insulting language used. This represents a death knell for democratic debate and consensus. I see this as a very sinister development indeed.

I was deeply disappointed when the recently proposed amendments to the Bill protecting freedom of expression were summarily dropped due to pressure from a small but vocal lobby group who withdrew their support from the SNP government. Is this how Scottish democracy works?

Scotland has seen the introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

I find it perverse that the Scottish Police Federation are so concerned that they have said "...the bill would move even further from policing and criminalising of deeds and acts to the potential policing of what people think or feel as well as the criminalisation of what is said in private" – and yet male criminals who insist on claiming women’s identity and using preferred pronouns are indulged.

Please note that under the bill this reasoned, rational and respectful contribution to your consultation process would in itself be a criminal offence.

There is mounting evidence that individuals, and indeed lobby groups, are planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like ForWomen Scotland, MBM, WPUK, etc "hate groups" and nothing is being done to check this.

Clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election. I currently have little faith that they will do so.
I am very concerned at the brevity of the consultation period - four days for a piece of legislation with such wide implications for all of us can only be seen as a deliberate ploy to limit criticism and to bounce this Bill through. I believe that most people remain unaware of the potential consequences. There appears to be the creation of a hierarchy of characteristics which fails to ensure equality.

Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

Overall however, I ask for Option 1, with the ‘extra’ free speech provision extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

I also note that, despite it being deemed necessary by the Convener of the Committee, there has been no clarity on the definition of "transgender identity" from the Scottish Government. Similarly, it is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.

I remain concerned that this Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings, and we may yet have to rely on a more appropriate amendment at the final stage. As noted four days is an appalling time for members of the public to make their opinion on this matter known.

The haste in which this bill is being driven through Holyrood will do nothing to address Hate Crime and instead give succour to those who will use it as a tool to silence women and others voices who do not agree with transgender ideology.

This is a bad law and will bring shame on Scotland, making it unsafe not only to express opinions but to hold them and discuss them privately let alone publicly without fear.
Rev Andrew Fothergill.

Re the above subject, I recognise that the Scottish Government is working extremely hard to get this legislation correct. Thank you for this consultation opportunity in order to offer my views in the hope of arriving at legislation that achieves the balance between free speech and language and behaviour that is intentionally malicious and trouble causing.

I am a full-time minister of religion within the National Church. Fundamental to what I do every week is to teach from the Christian Bible, which addresses matters of human morality and ethics including Sexual ethics and behaviour. I fully recognise that these are for many subjective issues which people can have a very diverse range of opinions about. However sadly in more recent days, there is an increasingly vitriolic response by some to views around Transgender Identity and Sexual Orientation, such that to disagree with their position is to be viewed and termed as hatred. Such an extreme response polarises discussion and debate with the unfortunate consequence of silencing any meaningful opportunity to further speak on such matters.

With respect to the proposed options offered by the Justice Secretary, I believe that option’s 1 & 2 do appear to give clear Free Speech protections around the issue of disagreement with respect to the subject of Religion. However I’m disappointed that neither of these options appear to give clear and robust Free Speech protection when disagreeing and debating the subject of Transgender Identity and Sexual Orientation. Members of the Scottish public hold a range of diverse views on these matters, all of which is subjective and liable to change. I fear that without clear Free Speech protections those of us who teach from Christian scripture and preach sermons that address matters of morality and Human Sexuality particularly in the areas of Transgender identity and Sexual orientation, will become the target of alleged hate speech allegations in order to further silence our views and close down any discussion. Under this Bill a person could face up to seven years in prison for spoken words. This is an extremely serious penalty, so it needs clear and strong safeguards. I’m sure that clear safeguards will help prevent our Police resources from being drawn into complaints and vexatious reports, around subjective material preached or spoken of in Church services or recorded in online Church services.

I would also strongly request that the Government does not to remove section 12 of the proposed Hate Crime Bill, which offers some Free Speech protection when it comes to religious preaching and teaching which urges or encourages people to change their sexual behaviour and or orientation.
Sam Shields

Regarding the Hate Crime Bill, I must raise with you, my deep concerns on the matter of serious risk to free speech that this proposed Bill would bring.

The protections set out in options 1 and 2 need to apply to those, who like me, hold religious beliefs.

The government must ensure that any individual maintains the right to hold their own opinions and to be able to freely express their views through debate or discussion on any matter addressed in this Bill. On the issue of transgender, there should be no criminal penalty to state, for example that ‘someone born male is a man and therefore cannot be female’. This is a free country with many great freedoms, and so, someone whose gender is biologically male, may wish to identify as ‘other’, then they are at liberty to do so, but I should not be compelled to affirm it, while remembering I should always treat the person with courtesy and respect as an individual. No one should be compelled to abandon their religious beliefs, right to speak or conscience. Individuals should have the protection under the law when discussing, debating or criticising those holding views on sexual practices or conduct that are contrary to their own.

The government must ensure that this Bill is properly written so that individual’s the right to free speech is maintained.
Donna Maclennan

I am writing to you in connection to the consultation you are holding on the approach to free speech in the Hate Crime Bill.

I am urging you to ask for protections for debate on sexual orientation and transgender identity to be closer to the protections on religion.

I offer you these points:-

Having watered down the Bills protection for talks/debates, this is such an error;

In the Christian faith I want to be able to say what it says in Gods word about sexual orientation and transgender identity. The freedom of speech should be closer to those that we have known from past years on religion.

We have to be able to discuss freely and not be scared of persecution so this has to be included in options 1 & 2.

I pray that you will take my concerns into consideration and do what is right.
Isabel McHardy

Thank you for giving freedom of expression in Scotland such careful consideration. Your work is appreciated and it is great to have a voice in such an important debate.

I would like to voice very strongly my support of option 1 of the list of proposed options. It would give me protection when I am discussing matters of religion.

I am a Christian. I find talking about my faith really important. And I also believe strongly that this protection should be available to people of all faiths.

I often discuss matters of faith and contemporary issues with other Christians and with people from other faiths or none. Inevitably some of these issues are contentious, and are hotly debated. People hold widely differing and sincere opinions. An idea that one person believes to be true is considered by another person to be a lie. Sometimes ideas that are expressed are hurtful because they trample on something held dear. Sometimes people change their opinions as a result of discussion. In my opinion the ability to participate in such conversations is a precious part of our democracy.

I want to be able to express my beliefs and opinions freely without fear of falling foul of the law. I don’t hate people who have different opinions from me. I generally enjoy debate. I try to remain respectful and polite. Sometimes I am persuaded to change my mind by someone who presents a compelling argument. Often the upshot of the conversation is that we agree to disagree.

I really want to have the protection for freedom of expression with regard to religion offered by option 1.

Thank you again for this opportunity to express my opinion.

Grace and peace to you
Irene Buchan

I want to make my views known for the above.

I would overall like to go for option 1 but the extra free speech provision should be extended to ALL characteristics. The govt really needs to state that the Hate Crime Bill does not seek to criminalise scientific or biological facts or Choice of pronouns. In addition it should not seek to criminalise campaigns to retain women’s existing rights as outlined under the Equalities Act.

There has been no clarity (as deemed necessary by the committee) on the definition of transgender identity. Plus there is no clarity from the govt what it means by abusive of criticism so more needs to be done to specify this.

This bill has not been given enough time at all and that is lamentable and will lead to bad laws as a result.

I am also gobsmacked that in this day and age stating matters of scientific fact and dictionary definitions of the word woman - adult human female, could now be construed as transphobic and criminal. What on earth has the world come to?

Plus if women cannot identify themselves as a sex class then how can they fight the sex based violence and discrimination they face?

Also how come you have to be 18 to get a tattoo yet you can get breasts removed and be given puberty blockers and hormones before that?
Ruari Connor

I am a husband to a wife, father to a daughter, brother to a sister and son to a mother. I believe profoundly in the importance of equality and inclusion and spend my entire professional life ensuring that these values are instilled in the fabric of Scotland’s future. Hopefully this short consultative period will allow you to hear my opinion on the four amendments as I have a number of concerns centred around free speech and the rights of women in Scotland being eroded. My preferred amendment is listed below, with accompanying caveats.

We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women's rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious. Even Humza Yousaf himself was unwilling to confirm if there are only two sexes!

Prominent campaigners - including Tim Hopkins of Equality Network, and councillor and potential MSP Graham Campbell - are talking about hate crimes as including "using the wrong pronouns or the wrong first name". There have already been occasions where women who have been physically assaulted by males who self-identify as women are told to refer to their assailants as women. I would be horrified if, for example, women giving evidence in court were compelled to refer to a rapist as "she" or face prosecution.

I have also seen the introduction of laws, such as the Gender Representation on Public Boards Act, that have capitalised on the use of "preferred pronouns" as evidence that a male is entitled to apply for a role reserved for women. IPSO guidelines already ask that reporters refer to male criminals who commit horrific crimes as "she". Without the right to name men as men such practices cannot be called out, and it needs to made abundantly clear that compelled speech forms no part of the Bill.

It would be awful if lobby groups began planning to use any legislation to report women campaigning against changes to the GRA. Campaigners closely aligned to many Scottish political parties are openly calling groups like For Women Scotland "hate groups" and nothing is being done check this. Surely clear and unequivocal statements from the government that they will not allow this to be used to silence critics of proposed policy, especially in the run up to the election.

There is a hierarchy of characteristics which fails to ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

I would prefer Option 1, only if the extra free speech provision is extended to all characteristics, plus a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.
I don’t need to remind the Justice Committee of the Scottish Parliament that women’s rights were extremely hard won and are still not fully embedded in Scottish society. Various aspects of this Hate Crime Bill seem to me to critically weaken and undermine women’s abilities to continue the fight for equality. I hope you will take my concerns into account and continue to amend this piece of legislation with an objective mindset, not one that bends under the pressure of vocal minorities. 50% of Scotland is female and they could all suffer if this legislation is flawed to the point where it can be used as a blunt tool to prevent open debate and the sharing of valid opinions.
Lydia Paish

Option 1 is my preferred option, but it needs to be strengthened. The added free speech provision should be extended to all of the characteristics - not just to religion.

There needs to be clarity in the Bill as to what certain terms mean - including "transgender identity", "abusive" and "criticism".

The government should also make it clear in the legislation that stating scientific facts is not prosecutable. And that campaigning for the protection of rights is a democratic right and not prosecutable. This is in the context of transactivists arguing that, for example, stating that there are 2 sexes and that it is not possible to change sex is a personal and violent attack on them. They will presumably seek to use the Hate Crime Bill to escalate that argument.

There is so much extreme bullying of women by transactivists, including routine rape and death threats, getting them sacked from their jobs, preventing academics from even mentioning the concept of sex, etc. Even politicians have said that they are scared to debate the issue. Even to the extent of refusing to confirm that women exist as a sex. Yet the proposed hate crime legislation does not include any measures against hatred against women, despite sex being a protected characteristic in the Equality Act. At least let women debate the issues, without additional fear.

It should be made clear that this legislation cannot be used to compel women to pretend that men are women purely because they say they are. Imagine a woman who has been raped, being compelled to refer to her rapist as "she" in a rape trial. Imagine a mother not being allowed to tell her young daughter who is a man and who a woman, to help her to develop strategies to protect herself from sexual assault, for example.

Imagine our young people being prosecuted for a hate crime because when speaking to someone who is clearly a biological man and may have made no effort whatever to look like a woman they use the "wrong" pronouns.

Imagine newspapers and statisticians being required to state that women are increasingly committing rape - when only biological men are capable of doing so. Or not being allowed to collect statistics to do with which sex people are - for example to help with medical planning in view of the fact that the 2 sexes are sometimes affected differently.

Throughout our society, we are already at the stage when we are required to lie in our everyday lives. To pretend that basic biology is untrue. Even at university. Truth no longer matters - only ideology. It is hugely unhealthy to us as a society, and if we go further - and the Hate Crime Bill as drafted will be used to make it go further - I can imagine that we may never find out our way back to a healthy, truthful society, where we live our lives based on reality and when all citizens are treated as equally important and valid.
Women need to be allowed to campaign to retain their sex based rights, to campaign against changes to the Gender Recognition Act. That is essential if Scotland is to remain a functioning democracy. How can the Scottish government allow discussing changes to legislation to be classified as a hate crime and prosecuted? And why are women not allowed to object openly to the removal of their sex based rights? Why are women threatened if they dare to take part in public debate? My concern is that the Hate Crime Bill will be used as further ammunition against women, as their lives become so much worse.

This should not be rushed through during the Covid pandemic. It needs more time for a genuine open debate.

This is so important for Scotland's future. Please don't let us down, just to toe the party or ideological line. Your job is to stand up for what is true and right.
Having read over the four options for freedom of expression I was greatly disappointed. I firmly believe that none of the options would allow sufficient protection for freedom of expression.

I presume that you recognise the irony of having a "reasonable person" test in a Hate Crime Bill. Do you not expect the Scottish Government to be subject to its own laws?

It appears to me that as the Bill necessitates so many exemptions, in reality it makes itself redundant.

As a Government has the responsibility of protecting the poorest in society the police time wasted on this would make it a massive waste of taxpayers resources, affecting the poorest the most. Not to mention the waste of court time.

Because there is not even a 'Dwelling defence' provision within the Bill. The only "reasonable" option is to vote it down.
Kirsty McIntosh

I do not have a gender identity and consider it the same as any other religious belief - that is that others are free to hold it but they are not free to impose that belief on me.

Parliament has failed to define in exact terms what the legal definition of gender identity and transgender identity is or should be.

With that in mind the general provision covering only "discussion or criticism" cannot provide the secure and clear point of reference that is needed for transgender identity. The line between the criminal and the offensive has to be asserted much more clearly.

If the Parliament is nevertheless determined to legislate in this area, I think that the belief in gender identity and transgender identity should be treated as the same as what is already proposed for other religions. This should apply to all characteristics to ensure a hierarchy of characteristics is not created by this Hate Crime Bill. Thus option 1 would be the least worst option.

Given that within the discussions of the Hate Crime Bill the Justice Minister was unable to confirm the scientific consensus that there are two sexes I have huge concerns that this hate crime bill will have a chilling effect on the discussion of women's rights, as defined in the Equality Act 2010, and biology.

If there is not clarity around exactly what constitutes hate from Parliamentarians then how can ordinary members of the public be expected to negotiate this new law. Instead of punishing those for causing harm to others this law will be used to punish those who may be uneducated or unwilling to follow certain beliefs.
Dr Stuart Waiton

The freedom of expression proposal appears to have been developed with little or no regard to the hundreds of objections to this aspect of the bill and consequently reflects the very narrow viewpoint that dominates within Holyrood, a viewpoint that has little understanding of the importance of freedom of expression. It has also been rushed and left very little time for people to consider it and reply, which begs the question, what is the point of the committee stage if this the end result?

The essence of the proposals on offer is that we will be allowed to ‘discuss or criticise’ whatever we like but will not be allowed to show ‘antipathy, dislike, ridicule or insult’ those deemed to have protected characteristics.

There is also the problem that being ‘abusive’ and ‘threatening someone with violence’ is packaged together, as if they are the same thing.

Unfortunately, the idea that words hurt, literally, has become an accepted outlook, a ‘good’ outlook, held by those who are said to be ‘aware’ and as such unpleasant words are being turned into a new form of crime in the name of protecting groups and individuals from this ‘harm’.

This approach not only destroys the framework for freedom of expression but undermines the important legal distinction between words and action. One possible result will be that those who experience words that ‘hurt’ could increasingly feel justified to use violence as a response. Unfortunately, this response is likely to received muted opposition by those in authority who are creating and supporting these laws – it may even be justified by them, just as violence on the Black Lives Matters demonstration was brushed under the carpet: See for example the BBC headline about ‘27 police officers injured during largely peaceful protests’ or the police inaction to the destruction of the Edward Colston statue in Bristol.

Blurring the distinction between words and actions risks undermining the civilised understanding of being tolerant towards other people whose ideas you dislike or even hate, and could create a more reactive and violent society, one the authorities turn a blind eye to.

Coming back to the distinction between discussion and criticism and comments that show antipathy, dislike, ridicule or insult we find an incredible narrowing of what free expression means. Heated exchanges, polemical articles and arguments, forms of humour, angry outbursts or even simply an honest expression of what you think, could all contain comments that offend because they ridicule or express dislike of somebody or something. Unless we are going to turn Scotland into a society that only allows the mildest, well behaved, ‘west-end dinner party’ type discussion, this distinction needs to be dropped completely.

Many forms of expression are not carried out in such an idealised environment, in fact the opposite is often the case, as many disagreements come out of passionate argument and disagreements. Some people, particularly less middle-class people sometime use terms that would not fit comfortably in this Holyrood model of correct speech and risk being criminalised for this. Comedians can be cutting and going to
the edge of accepted conventions is a key part of humour. Similarly plays and films can often incorporate all of these dimensions of speech and thought and should be allowed to be aired in what is meant to be a free society.

In the process of determining correct speech this proposal also risks encouraging a ‘culture of complaint’, where legally prescribed ‘groups’, or at least the activists who claim to represent them, compete to claim the mantle of victimhood that this law creates. This approach also encourages a sense that Scottish society is more full of ‘hate’ than is the case – something that can encourage a sense of fear and isolation rather than one of commonality and tolerance.

The law appears to be made with the intention of ridding society of certain prejudiced views but there is little evidence from history that this works. Indeed, the opposite is the case as evidence suggests that freedom of speech has been the greatest of friends to minority groups in society who have fought for their equality.

Moreover, as I noted in my original submission to this bill:

The presumed ‘harm’ from even abusive speech needs far more consideration and discussion than it has received. Indeed, the expanding terrain of harm, with statues, for example, now being talked about as inflicting a form of ‘violence’, is new and appears to reflect a certain political and cultural climate. Even at the level of psychology, it has been noted that the potential for ‘hate speech’ to cause psychic or emotional harms has, ‘not received much empirical investigation’, and that ‘there are wide individual differences regarding what constitutes a hurtful message’. Some psychologists have argued that limiting speech may actually be creating a problem, especially among younger people. Pamela Paresky, for example, is convinced of the importance of educating young people that such speech is not necessarily harmful and that stressful situations can lead to personal growth. Jonathan Haidt and Greg Lukianoff argue that, a dangerous campus culture is being created that encourages a sense of harm that threatens both freedom in society but also the mental toughness of students. Following this line of argument, this new Scottish bill should be understood as something that will fortify the vulnerable subject in society and in law and to undermine the traditional robust legal subject that was the basic for liberal law. In other words, the ‘message’ that the government will send out with this bill is one that is likely to encouraging a sense of vulnerability and harm.

This government proposal is not a defence of freedom of expression it is the opposite, a creation of incredibly narrow parameters for speech and as such is a threat to academic freedom, journalists, artists, comedians, the general public and to the very basis of freedom in Scotland.
Teresa Dufficy

I am wanting to make my views known for the above.

I would overall like to go for option 1 but the extra free speech provision should be extended to ALL characteristics. The govt really needs to state that the Hate Crime Bill does not seek to criminalise scientific or biological facts or Choice of pronouns. In addition it should not seek to criminalise campaigns to retain women’s existing rights as outlined under the Equalities Act.

There has been no clarity (as deemed necessary by the committee) on the definition of transgender identity. Plus there is no clarity from the govt what it means by abusive of criticism so more needs to be done to specify this.

This bill has not been given enough time at all and that is lamentable and will lead to bad laws as a result.

I am also gobsmacked that in this day and age stating matters of scientific fact and dictionary definitions of the word woman - adult human female, could now be construed as transphobic and criminal. What on earth has the world come to?

Plus if women cannot identify themselves as a sex class then how can they fight the sex based violence and discrimination they face?

Also how come you have to be 18 to get a tattoo yet you can get breasts removed and be given puberty blockers and hormones before that?
I appreciate the opportunity to make representations in respect of the options now being suggested by the Cabinet Secretary for a new free speech clause.

As outlined in previous submissions to the Committee, I have made clear that as a practising Christian, I revolt at the very idea of stirring up hatred against anybody. My principal concern is that nothing in this legislation prevents or threatens the continuance of the proclamation of the gospel of salvation based on the teachings of the Holy Bible in our churches or any other suitable venue, or in public where it is appropriate to do so.

It appears that the Cabinet Secretary’s Option 1 and Option 2 would cover my main concerns, my clear preference being for the more comprehensive Option 1.

Nevertheless, we must recognise that freedom of expression is a fundamental human right bestowed on everyone of us and therefore has to be fully protected. So, whilst I revolt at the idea of stirring up hatred, I equally believe that freedom of speech must include the ability to give expression which might offend, disturb or even shock. I strongly recommend, therefore, that an overarching clause be added to the Bill to make this abundantly clear.
Alex McCluskie

There is no doubt that the freedom of expression clause is extremely important and critical not only to the proper functioning of the proposed new legislation but also to the right of free speech and freedom of expression for individuals, religious bodies and society as a whole.

Although it would appear that Options 1 and 2 offer a level of freedom of expression in relation to religion, religious beliefs and practices, and the position of not holding religious beliefs, I am deeply concerned by the apparent lack of similarly strong terms for the protected characteristics of sexual orientation and transgender identity. This appears to be a weakness that is common across all four options.

It would be helpful if the Bill made specific reference to the belief held by many people of religion and those of none, that sex is immutable, that there are and always have been only two sexes or genders. The right to express the view that binary sex does not exist or is fluid, or that there are more than two genders, must be matched with a right to disagree with that view and with protection from prosecution for holding such opposite views.

The beliefs which underpin these characteristics strike at the very essence of the human person and raise moral questions that are hotly disputed in a way similar to religion, and therefore free and open debate must be allowed as must the right to disagree. I strongly believe that no individual or body should face the threat of prosecution for expressing the belief that, for example, there are only two sexes or genders; that a man cannot become a woman and vice versa; or that marriage can only be between one man and one woman. Additionally, no one ought to be criminalised for using a person’s birth name or pronoun. I believe that protection for discussion or criticism of ‘sexual conduct and practices’ and of marriage which ‘concerns the sex of the parties to the marriage’ should be explicitly incorporated into the freedom of expression clause under the protected characteristic of ‘sexual orientation’.

While recognising that transgender identity is a highly contentious and deeply sensitive area of debate where strongly held views are held by both sides, I believe it is important that any framework put into legislation must be one in which open and honest debate is allowed to take place. Any situation in which the views of one party can be freely and openly aired while the views of those with differing opinions is stifled due to the threat of criminalisation surely cannot be allowed to exist in a free and open society.

I trust that in considering the options the committee will not by design or accident create a hierarchy of protected characteristics. As the freedom of expression clause is currently drafted, it would appear that religion is being held to a much higher standard of accountability than any other protected characteristic.
Alan Welsh

I am writing to comment on the consultation on the approach to free speech in the Hate Crime Bill.

The options listed do not give enough protection for beliefs around transgender identity and sexual orientation, the freedom of speech should be closer to those on religion.

It would be a terrible mistake to water down the Bill’s protections regarding discussion around the issue of sexual orientation.

The additional protection in options 1 and 2 must include religious debate.

Politics and morality must be issues that are allowed vigorous debate, sexual orientation and transgender identity both raise moral and political debate, these are matters on which people change their minds and disagree on, the freedom to do so must remain without fear of prosecution.

Free speech clauses are essential to prevent people trying to use the new law against their political opponents, the Scottish Parliament cannot afford to get this wrong.

More options are required, when you look at the four options offered by the Government they all say the same thing when it comes to sexual orientation and transgender identity, yet these are clearly the most controversial issues, we should be given more options before the Government tries to rush this consultation through.
Robert Irwin

The proposed provisions in options 1 and 2 around freedom of expression for religion are very welcome and essential and must be kept in the final bill.

People with traditional views and concerns on issues around human sexuality such as gender identity, sexual orientation, and sexual conduct need to be protected just as much.

Many people have difficulties with the concept of gender as opposed to the straightforward reality of the biological sex that one is born with.

Gender theories are relatively new and controversial and people with traditional views on gender and marriage should not be penalised for having or for expressing them. Identity itself is a very big and topical subject and also a controversial one.

Hamza Yousaf said that transgender people should not be targeted and in the same sense neither should people with traditional views on gender or marriage be targeted, e.g. by activists or ideologues, which is happening a lot at present. We wish to continue living in a pluralistic society where pluralism of ideas is accepted. We are not all the same, either in what we think or do. Therefore there must be specific protections for free discussion in the area of transgender identity and also for marriage.

Otherwise there will be the chilling effect of suppression of legitimate debate as people self censor themselves through fear.

Also, discussion of an idea or practice is not the same as targeting people. There should be no taboo subjects. There is a legitimate view that transitioning is harmful and even dangerous, therefore far from speech on this topic being hateful, it is the opposite. The judge, in the high court in England has already ruled about the use of puberty blockers in young people. Free speech is there to protect people from harmful, ill thought through, even if fashionable or popular, ideas and practices.
Maggie Mellon

The stirring up hatred part of the Bill should be shelved.

All four government options limit the protection for characteristics other than religion to “discussion or criticism”. Therefore I am unable to support any of them.

It is very worrying that members of the parliament discussing a Bill which seeks to define the limits of free speech seem to have been so intimidated by accusations of “transphobia” that they are not fulfilling their responsibilities to employ rational discussion and debate on sex and gender.

It is quite clear that small, vociferous, lobby groups who exist mainly on government funding are set on a course to shut down any freedom of speech in relation to sex and gender. I support the right of these and any other lobby groups to express their views and their demands. They have a right to demand that men should have the right to access women’s spaces and services. They have a right to demand that children are taught that they may have been born in the wrong body. However they have no right to demand that there should be no debate on their ideas, and that anyone who disagrees should be criminalised and hounded out of public life. This is their express intention. If the Scottish Parliament cannot defend my right to disagree with them then it is not doing its job.

It should not be a hate crime to state that a woman is an adult human female, and a man is an adult human male and that children are either male or female. It should never be a crime to say so. I do not want to be reported to the police or to my professional regulator for stating that only human females are women and girls. The threat of being investigated by the state for sincerely held beliefs expressed in fair and robust terms will have a chilling effect on discussion.

The Committee should reflect on the outcry from the lobby groups in response to proposed amendments to the Bill which attempted to make it absolutely clear that there would be no criminalisation of free speech, particularly in relation to sex. Why would these groups object unless their aim is to criminalise free speech on the issue? The demand that there should be “no debate” reveals an intention to silence those of us who disagree.

The First Minister recently responded to opposition to the stirring up provision in her party and in parliament by weighing in on Twitter to tell critics of gender self-ID they are unwelcome in her party, or perhaps not welcome in Scotland. In parliament, Humza Yussuf refused to answer Johan Lamont’s question of whether he believed that there are two sexes. There are of course only two sexes.

How can we have any faith in his assurances that we will be free to disagree, and to campaign as loudly as we like on this or any other issue?

I ask the committee to refuse to support part 2 of the Bill.
Professor Marjory Harper

I wish to express my concern about your ambiguous approach to free speech safeguards in the Hate Crime Bill. None of the options gives sufficiently strong protection for debate around issues of sexual orientation and transgender identity. As you are doubtless aware, these are toxic issues which are currently very much in the public spotlight.

It is crucial that freedom to disagree about these controversial matters is explicitly protected in the new ‘stirring up hatred’ offences created by the Bill, and that those who engage in public debate should not be at risk of criminalisation. Rather than watering down the Bill's protections for such discussions, the safeguards should be strengthened, and the freedom of speech protections should be closer to those on religion. It is disturbing that the proposed free speech clause only addresses discussion or criticism of ‘matters relating to’ sexual orientation, whereas the current wording of the Bill specifically protects discussion or criticism of ‘sexual conduct or practices’.

There is complete opacity about the definition of abuse. The Annex to the Justice Secretary’s letter of 17 January includes the statement: ‘I do believe it is important to give comfort to those concerned about the impact of the Bill on Freedom of Expression, that criticism, including very robust criticism, is in itself not a matter for prosecution under this Bill’. That assurance is meaningless, not least because abuse is not defined. Presumably the courts are to be the arbiters of what is considered abusive? In view of the draconian penalties for anyone convicted under that clause of the Bill, it is imperative that strong and transparent safeguards be set in place. The desire to ‘give comfort’ may be well-meaning, but it is toothless.

In the examples that follow in the Annex, it is stated that if speeches or criticism ‘included comments a reasonable person would consider abusive about [the various protected categories] … it could still amount to behaviour that is threatening or abusive’. What (and who) defines a ‘reasonable person’? Again, presumably this is something to be determined by the courts? There is a serious risk that complainants with spurious or disingenuous motives will label disagreement with their views as hatred in order to attempt to silence their opponents. Police Scotland has stated that free speech clauses are necessary to prevent officers being inundated with malicious complaints.

Scotland has an honourable tradition of free speech, which is in danger of being completely undermined by this Bill. It is imperative to distinguish between legitimate debate and inflammatory rabble-rousing. The Bill fails to make that distinction.
Scott Wortley

1. My name is Scott Wortley. I am a lecturer in law at the University of Edinburgh and have a particular interest in issues relating to legislation and statutory interpretation.

2. I note the proposals which have been put to the committee by the Justice Secretary and just wanted to note some observations on the provisions. I have three general issues for consideration by the committee: (a) thinking about the audience for legislation and the implications that identification of the audience has for what appears in the text of the bill; (b) wider definitions of hate speech used in some context and the implications this has for what appears in the text of the bill; and (c) the application of general principles of statutory interpretation has particular impact on options 1 and 2.

Point (a) – Audience

3. In his introduction to Drafting Matters! the document which publishes the internal guidance of Parliamentary Counsel Office for drafting legislation in Scotland Chief Parliamentary Counsel, Andy Beattie, writes:

“It is now easier than ever to access legislation, with statutes most commonly searched for and read online. There has been an explosion in the numbers and types of people seeking out the law in its raw state and a corresponding onus on drafters to make it easier to navigate and read.”

4. The general accessibility of legislation to the public is something that needs to be borne in mind when considering the wording of legislation. In the past legislation was not readily accessible to the public and a lawyer would often act as a mediator or translator between legislation and the public. As a result some used to argue that legislation should be drafted for lawyers. Legislation used to be published only in paper volumes but is now published on the https://www.legislation.gov.uk/ website with amendments and changes to other legislation given effect on that website. This website is readily accessible to the public. And the increased use of online publication has, as Chief Parliamentary Counsel notes, been accompanied by a move to make the content of legislation itself more accessible.

5. But it has long been the case that the judiciary has been of the view that legislation should not be written for lawyers, or read as if it was written for lawyers. Legislation should be written for those affected by it. And when the legislation creates criminal offences and defences it is important that the legislation clearly sets out the conduct that will be criminal and clearly sets out what is acceptable.

6. The judicial view is summarized by Lord Diplock in Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG [1975] AC 591, at p 638. He said,

“The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. Where those
consequences are regulated by a statute the source of that knowledge is what the statute says. In construing it the court must give effect to what the words of the statute would be reasonably understood to mean by those whose conduct it regulates."

7. In the view of Lord Diplock legislation is interpreted as if drafted in a way in which it is comprehensible to the people that the legislation will actually directly affect, that is the public. This matters in the language of legislation generally, and it matters in particular for the content of the Hate Crime and Public Order (Scotland) Bill which is currently being discussed by the Justice Committee.

8. The Hate Crime and Public Order (Scotland) Bill will when enacted criminalise certain instances of conduct and speech. The provisions being discussed at the meeting on 22nd February provide defences to this. These provisions relate to freedom of expression, which is protected by Article 10 of the European Convention on Human Rights (ECHR). Some may be of the view that given the background position that all legislation applicable in Scotland is to be interpreted in accordance with the ECHR that no provision is necessary. Some may think that a provision should merely replicate the terms of Article 10 of the ECHR on the basis that this will plug in to the case authority from the European Court of Human Rights in Strasbourg. This, though, would undermine the broad objective of accessibility to the public. Given the broad objective of ensuring legislation, particularly criminal legislation, is accessible to the public it would seem reasonable to have clarity in the defence. And that means using language which will be clear to the public.

9. This awareness of the audience for legislation underlies the way in which legislation will be interpreted. The overriding approach to interpretation is that ordinary words will be given their ordinary meaning. This means, in considering the proposed amendments, to think about the ordinary meanings of “criticism” and “discussion”, the common words through the options, Is the use of criticism and discussion intended only to cover reasoned analysis and debate, which would be an ordinary meaning of the words. Does this suggest the defence would only apply where the comments were substantial? Or is it intended that a one line criticism be covered?

(b) – Wider definitions of hatred and implications for the defences

10. The framing of the freedom of expression defence is partly dependent on the nature of the criminal conduct as set out in section 3 of the bill (as amended at stage 2). The offences at the moment refer to stirring up hatred. And this is to be defined by a reasonable person test – which will assess this objectively.

11. One thing which has happened in recent years is the way in which certain examples of speech are characterized as hate speech. The most obvious example relates to certain statements or policies adopted in relation to the protected characteristic of gender reassignment in the Equality Act 2010.

12. For example, the Liberal Democrats adopted a definition of transphobia in the context of objections to reform of the Gender Recognition Act 2004. Breach of this potentially initiates disciplinary proceedings within their party. Various examples of
transphobia are given in their statement including misgendering and the promotion of policies relating to the segregation of facilities. A look at social media would indicate that some view transphobia (so widely defined) as hate speech, and indeed some would support wider definitions. But this wide definition includes examples which the law expressly provides permits. The Equality Act 2010, Sch 3, paras 27 and 28 allow a service to exclude a transperson, even a transperson with a gender recognition certificate, from certain single sex services. The Gender Recognition Act 2004, section 9 (3) provides that a gender recognition certificate does not apply for all purposes and will not apply where legislation provides otherwise (which includes in sports for example – Gender Recognition Act 2004, s 19.and Equality Act 2010, s 195 where a gender recognition certificate for example does not give a transperson an automatic right to compete). These legislative exceptions look like contravening the Liberal Democrats transphobia policy, and supporting the retention of the current law would appear to contravene that policy.

13. A similar document on transphobia which had been published by the University of Edinburgh was recently referred before the House of Commons Women and Equalities Committee Reform of the Gender Recognition Act. During her evidence Naomi Cunningham, a barrister noted,

“There is a worrying trend to define transphobia so widely that it includes any dissent from the view that trans women are literally women and trans men are literally men, et cetera, any defence of the single-sex exceptions, or any opposition to a change in the law to bring in self-identification. These are—obviously, I would suggest—matters that profoundly concern women and their rights, their dignity and their safety, including their article 8 privacy rights. It is very troubling that there is this trend towards giving transphobia a much wider definition than what we would all be opposed to: hatred of, or hostility towards, trans people or people with the protected characteristic of gender reassignment.

“In this context, it is particularly important to remember that the gender critical position is fundamentally a defence of the law as it currently is. It is quite astonishing, and unprecedented in my experience, for it to be seriously suggested that saying, “We shouldn’t change the law; the law as it is is okay,” should be put beyond the pale of civilised conversation and dispute. That is quite an extraordinary state of affairs. I think it is important to notice that. That is the threat to freedom of speech that we are concerned about.

“A case in point is that—I do not know whether any of you noticed—there was a little flurry of controversy recently about the definition of transphobia that Edinburgh University had put on its website, with exactly what status it was not wholly clear. That has now been taken down, but it was that wide. It effectively said that any dissent from the view that “Trans women are women, and trans men are men—this is literally the case,” and any opposition to self-ID and so on was transphobic. That was in a university’s policy. How does that fit with academic freedom or freedom of speech?”

14. Noting that support of the current law is viewed as transphobic by some, and consequently is viewed as hateful by some, is worrying. When that is potentially accompanied with what may be viewed as hateful speech being criminalised it is
chilling. I worry that it is not enough to say that the objective reasonable person test in s 3 is enough to stop the impact on speech. The existence of the criminal element potentially opens provisions to abuse. Therefore, when some are adopting a position that support of the current law is transphobic and in the view of some hateful, or capable of stirring up hatred, this puts a premium on the importance of the defence and its clarity for the public. Is a criticism or discussion defence sufficient to safeguard someone who supports or states existing law?

(c) – principles of statutory interpretation and impact on evaluating the options

15. In the interpretation of legislation it is important to read provisions in context. The context of the provision helps determine meaning. So no individual paragraph within a subsection or subsection within a section, or section within a bill is to be viewed in isolation. Its meaning is informed by the rest of the legislation.

16. And while the background law legislation is made against is relevant in determining context what matters most importantly is what the legislation actually says. Sometimes I am aware that ministers occasionally make statements in the Parliament during the debate on a bill and suggest that a provision may have a particular meaning. While reference to ministerial statements is occasionally permitted in interpreting legislation the instances of the court actually allowing this in Scotland are rare and only arise when the provision is ambiguous and in recent cases even where overturning previous decisions which decided differently the court is loath to decide that legislation is ambiguous requiring reference to ministerial statements. It is important then that the wording of the legislation on the face of the legislation matters. A ministerial assurance given during debate on meaning only has minimal value in determining how the legislation will be interpreted. The wording of the legislation takes priority when legislation ultimately comes before the courts, and in interpreting that wording it is necessary to remember the main principle that ordinary words will be given their natural or ordinary meaning.

17. But as noted the context of the legislation matters and Option 1 and Option 2 give examples where that context sheds light on the meaning of other provisions.

18. In legislation when interpreted it is presumed that all statutory language used in legislation means something, and that language and punctuation is used correctly and exactly. And in the use of language there are certain presumptions which the courts apply.

19. For the purpose of considering these options the key principle of language is referred to by the courts as Expressio unius est exclusio alterius which translates as the mention of one thing is to the exclusion of all others. It is easier to explain this with an illustration. So, where legislation sets out what is included within a provision it is presumed that the omission of others is deliberate and they are not covered. An example can be seen in road traffic law and emergency vehicles. It was provided in section 79 of the Road Traffic Regulation Act 1967 that fire engines and ambulances did not have to abide by the speed limit in an emergency, but no similar exception was provided for traffic lights. So in 1971 when a case came to court it was decided that the omission of emergency vehicles from the rules requiring vehicles to stop when signalled at traffic lights was deliberate, and fire engines and ambulances
required to comply with red lights. Including a provision expressly in one part of the legislation can be read as meaning it is deliberately omitted in another.

20. This has relevance for Option 1 and Option 2 of the proposed amendments put forward. Both options provide a distinct treatment for religion. So while there is a freedom of expression defence to allow discussion and criticism of the majority of characteristics ((i) age, (ii) disability, (iii) race, colour, nationality (including citizenship), or ethnic or national origins, (iv) sexual orientation, (v) transgender identity, (vi) variations in sex characteristics, with (iii) omitted in Option 2) for religion the freedom of expression defence would cover discussion, criticism, as well as expressions of antipathy, dislike, ridicule or insult. The effect of the expressio unius principle is though that this means that the freedom of expression exception as applicable to every other characteristic. Expressions of antipathy, dislike, ridicule, or insult in relation to age, disability, sexual orientation, race, transgender identity or variations in sex characteristics would never amount to a defence under the freedom of expression. Why is religion treated differently? And why is the ability to ridicule excluded in relation to all characteristics?

21. The consequence of Options 1 and 2 would be that the freedom of expression exclusion would not give a defence to stand up comedians performing routines in relation to any protected characteristic apart from religion. This may be the desired outcome for MSPs in relation to these offences. But doing so should be something addressed overtly and explicitly in debate rather than as a consequence of the application of a principle of legislative interpretation based on a rule of language.

22. I note also in each of the options the use of the word solely. As noted above in legislative language the presumption is that words are used deliberately and with precision. This indicates that the freedom of expression defence is limited in its application where there are other factors at issue. Given the potential for abuse of the offence with claims that there is hate speech the use of the word solely therefore gives limited protection with this defence. Would the word primarily or mainly better suit the purpose of protecting free expression?
Emma Bryson, Suzy Angus and Shirley Ross

We write to express our concerns about the potential impact of the Hate Crime Bill upon the right to free speech, in particular for campaigners like ourselves who speak on behalf of victims and survivors of sexual offences who are predominantly women.

We believe that this Bill is being pushed through without sufficient care and forethought for the sex-based rights of women, and in advance of this afternoon’s debate we wish to state that the amendment Option 1, regarding the Protection of Freedom of Expression, is absolutely necessary.

To be clear, we believe that women’s sex-based rights should continue to be upheld and protected, and our concerns stem from the increasingly aggressive tone of the debate around reform of the GRA.
Rev. Stephen Allison, Free Church of Scotland

Having had a chance to consider Justice Secretary’s letter to the Justice Committee dated 17 January 2021 setting out four options in relation to a Freedom of Expression amendment we wish to make a few comments.

Of the four options on the table we favour option 1, however, we are still not convinced this amendment goes far enough.

We welcome the amendments in relation to religion which make clear that, in relation to religious belief, mere expressions of antipathy, dislike, ridicule and insult are not, on their own, criminal behaviour. We also welcome the fact that this is extended to those of no belief as well. We support a robust approach to freedom of expression in relation to religion in the Bill, in accordance with Article 10 of the European Convention on Human Rights and we urge the Scottish Parliament to move forward with these amendments to ensure the rights of everyone in society to freely express their beliefs.

We also welcome the move to extend protection for freedom of expression to other protected characteristics beyond those originally proposed in the bill. In particular, we think it is essential that provision is made to allow debate surrounding issues of Transgender identity. Transgender identity has been subject of extensive and emotional public discussion. Such free discussion and criticism of views is vital as society wrestles with these ideas. While we acknowledge the difficulties and struggles experienced by those with Gender Dysphoria and are acutely aware of the sensitivities involved from our own pastoral care settings, we cannot accept that we would be prevented from stating the belief that sex (or gender) is an immutable biological characteristic. Open and honest debate on the very essence of the human person should never be stifled.

However, we are concerned that a similar robust approach to freedom of expression in relation to religious beliefs has not been taken in relation to other characteristics such as sexual orientation and transgender identity. There is a lack of clarity as to what “discussion and criticism” looks like in practice. We understand that issues surrounding sexual orientation and transgender identity are deeply personal and important to individual’s identity. However, our religious beliefs are also deeply important to us and go to the heart of our identity and yet we welcome rigorous debate and discussion around our religious beliefs including antipathy, dislike, ridicule and insult.

By singling out religious belief for greater free speech protection we are setting a precedent that speech is more free in relation to belief than the other protected characteristics. There is a wide spectrum of issues relating to each protected characteristic. Some protected characteristics such as age, disability and race are not debated issues in society. Whereas, other characteristics like sexual orientation and transgender have been subject to a great deal of public debate, which we fear would be stifled by this bill. Accordingly, we believe more robust protection for freedom of expression in relation to sexual orientation and transgender identity is required.
In relation to Sexual Orientation we are concerned that the proposed amendments amount to a weakening of the protections offered by section 12 of the draft bill. We favour the original language in the draft bill. We are also concerned that the bill does not currently extend freedom of expression protection to allow for discussion and criticism of marriage which concerns the sex of the parties to the marriage. When marriage between parties of the same sex was introduced in Scotland assurance was given that no religious body would be forced to conduct them, implicit in that assurance was protection for those who expressed doctrinal disagreement with such marriages.

In relation to transgender identity we believe a robust clause is essential. The current proposal to allow discussion or criticism of transgender identity is ambiguous and lacks clarity. There are a number of important issues of political debate around transgender identity and it is essential that this debate is allowed to take place. We favour specificity in an amendment protecting freedom of expression in relation to transgender identity and support the previous amendment 82B put forward in the name of Liam Kerr MSP:

**Behaviour or material is not to be taken to be threatening or abusive or as stirring up hatred solely on the basis that it involves or includes—**

(a) discussion, criticism or rejection of any concepts or beliefs relating to transgender identity,

(b) questioning whether any person should undergo, or should have undergone, a process of gender reassignment,

(c) stating that sex is an immutable biological characteristic,

(d) stating that there are only two sexes,

(e) the use of—

(i) “woman” or “man” and equivalent terms,

(ii) third person pronouns in a way other than that which a person prefers, or

(f) reference to any past name used by a person.

Whilst we understand the desire to have one general clause covering Freedom of Expression we are concerned the proposal does not take into account the spectrum of issues surrounding each protected characteristic. As Lord Justice Sir Stephen Sedley said in a 1999 ruling: “Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having”. We do not believe mere discussion or criticism goes far enough in preserving our precious rights of freedom of expression.

We are concerned there is now very little time remaining for Parliament to complete the passage of this bill. Freedom of expression is such a fundamental element of a democratic society that we should take time to ensure that we protect it. We should avoid the risk of inadequate and ill-thought through legislation being passed which
undermines freedom of expression by giving more time to the issue. Accordingly, if no workable solutions to issues of freedom of expression can be found we hope the Parliament will now consider withdrawing the stirring up hatred offences in Part 2 of the bill to allow more detailed consideration and discussion and to ensure freedom of expression provisions, which enshrine free and open debate, are afforded the scrutiny they require.
V. Vukmanovic

It is disappointing that previous amendments were withdrawn. The extent to which the four amendments (which this emergency consultation is limited to) are inadequate is also extremely troubling. Bad, vague drafting of law is the enemy of rule of law and the easy enjoyment of civic freedoms. Difficult-to-understand boundaries for expression, and the potential for malicious and capricious application of the law, are bound to generate a chilling effect. Having an “emergency consultation” on this bill, with limited options, is a further opportunity for law-making to go wrong.

The purpose of freedom of expression sections is to draw a clear line between the criminal and everything else, which should be permitted, in order to allow citizens the right to express themselves freely and on equal terms, and to explore important legal, civic and personal questions without fear, or without interference by the organs of enforcement.

Bad or vague drafting offer opportunities for malicious and capricious use of such a law. This is nowhere (currently) more so than in questions of sex and gender. It is telling that Cabinet Secretary for Justice Humza Yousaf himself was recently unwilling to go on record as to whether there were only two sexes (as implied by the wording “opposite sex”, as opposed to the wording “different sex”, which he said he preferred). Remember that he is himself the author of the hate crime bill and that the bill has not been passed and is not in effect, so he was in no danger of criminalisation. The Scottish Government has failed to define terms such as “transgender identity”, let alone “criticism” or “abusive”, an omission which is already having its effect.

This makes the asymmetry between protections for gender identity and lack of explicit protections for women in the bill particularly troubling. Public discourse has already been weaponised against the definition of sex, and of woman, and this hate crime bill does nothing to address this conflict, let alone redress it. As For Women Scotland points out in its submission, “Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women - which is frequently done in highly vitriolic and abusive terms - yet women are confined to ‘discussion and criticism’. This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.”

Proposed language in these amendments limits free expression protections to “discussion or criticism”, leaving giving offence unprotected. However, giving offence should not be criminalised. That is to bring blasphemy back into law in our modern, multicultural world, where it is bound to criminalise more individuals.

Having said all of that, I am aware of the precedent of intransigence set by “Remainers” in the Brexit debate, which resulted in a much harder Brexit than could have been achieved, so in the spirit of limiting the potential damage this legislation could cause, at this stage, I support option 1 over the others, because it allows for discussion and criticism on all the characteristics and provides some further protection for people to express antipathy, dislike, ridicule or insult on matters
relating to religion. However, extra free speech provision should be extended to all characteristics, and there must be a clear Scottish Government statement that the bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.
Arjette Sakko

I am from the Netherlands and work here now for 1.5 years.

First I have to say that when the bill speaks over "freedom of speech" that is for me always without hate and abuse.

There is a level of anger possible in speech or in right judgement, but Always without hate or abuse.

But it meant also that every person have the right to be protected in their opinion. Specialy in the area of religion and sexuality have people different value’s.

A religious debate must have the protection it needs like it is written in option 1 and 2 and not be watering down. Specialy around sexual orientation people’s mening is coloured by value’s and emotions and they can be in line against each other. Protection and respect is nessecary for everyone’s opinion and in case a other person make that not possible.

So again that needs space not watering down. I think that non of the options who are given, give that nessecary space. People who want to speak out of their religion or belief need more and closer protection. They also may not be discriminated.

The free speech that first was protected, in case of discussion of criticism of sexual behaviour you’re now making it smaller. Why? Is the protection no longer important? We all know that there are big differences in the speeches.

I close to say that I also see that the options are not giving much space to other opinions. To respect every person in ras and believe in Scotland I’ll think there need more space for more options than to every person there is a evident amount of place and protection garanteed.

I hope you will take this in mind when you make your decision. May You make the right decision.
Amy Anderson

I am writing to comment on the proposed amendments to the Hate Crime Bill, to be discussed today by the Justice Committee.

My preferred option is for option 1 to be used, but even this has shortcomings in that it fails to protect women from being able to talk about their rights and protections without fear of prosecution.

This is a debate which has become tainted by hatred and threat of violence, almost exclusively against women by activists claiming to advocate for the transgender community. MSPs themselves have expressed fear at the tone of the debate, and Joanna Cherry has had her safety threatened in action which is now subject to a police investigation.

The proposed amendment creates an undesirable hierarchy in the protected characteristics which will not ensure equality. Even under the best option, Option 1, trans people will be able to express feelings of "antipathy, dislike, ridicule or insult" towards women, something which is often done in violent and abusive terms, yet women are confined to "discussion and criticism". This imbalance needs to be corrected by extending the additional free speech provisions relating to religion to the other characteristics.

There is mounting evidence that individuals and lobby groups are planning to use this legislation against women's groups who are campaigning against changes to the GRA. This cannot be the case in a modern democracy! Women have to be able to speak freely, based on scientific fact, about their rights and protections.

I also note that although the term "transgender identity" is used, this has no clear definition in Scottish law. Similarly, there is no clarity around the terms "abusive" and "criticism".

I remain very concerned that this is a poorly constructed piece of legislation which fails to protect free speech adequately.
Charles Angus Webster

The additional protections in options 1 and 2 are essential.

As they stand the existing options fail to give enough protection for beliefs anent sexual orientation and transgender identity. Freedom of speech protections similar to those of religions would be far preferable.

It is a serious error to dilute the Bill’s protections for discussion anent sexual orientation.
Murray M Herbert

I write in haste as a busy, working GP - to express concern about the latest deliberations about the hate crime legislation, and that I am utterly amazed that such a brief period of public reference has been given (a weekend). This all smacks of a determination to push through legislation without proper accountability and scrutiny and I am dismayed by this approach.

In brief - I have read the proposed amendments and feel that they will not enhance protection against hatred and will further diminish freedom of expression and free speech - which is after all the intention of this legislation.

There is a vast difference between free speech and debate - (offering an opinion and viewpoint) and hatred - (the stirring up of emotion against an individual or a group). The legislation, as proposed, further diminishes the rights of any individual to express a view of their own on gender, race, religion, or by inference any political view or standpoint.

I urge that this legislation is not pushed through before the elections in May and that any proposal for amendments as outlined in this unbelievably brief consultation period are properly and robustly debated in the Parliament.

Otherwise this will be seen as legislation being achieved through the back door without scrutiny - which in itself is an intolerable restriction of the right of free speech.
Dr Madeleine Beveridge

Thank you for opening this consultation re. proposed amendments to be included in the Bill.

It is my understanding that none of these amendments are Scottish Government's preferred options, and none of them was recommended by Lord Bracadale in the review of hate crime laws.

I am concerns about the timetable for pushing this Bill through which does not give adequate opportunity to discuss the nuances of what is such an important and contentious area.

In particular I am concerned that none of the options presented make it clear that someone would be protected from police investigations into transphobia for discussing women's rights. I am particular concerned that the suggested amendments leave open the possibility that stating a belief in biological sex would be considered a hate crime. We can clearly see from social media that a small minority do see a statement of biological sex to be worth harassing people for alleged transphobia. It is deeply unfortunate to be in a position where people are now afraid to state that biological sex exists lest they are accused by a vocal but small minority of "hate speech".

Of the four options my preference would be for option 1, provided that the protections therein are extended to all protected characteristics, including sex (as per Equality Act 2010).

However I again stress my concern at trying to push through such a sensitive Bill with potential far reaching implications in such a short timescale.

Thank you for your time
Caroline McGregor

I have become concerned that the Hate Crime Bill, while seeking to protect citizens from threatening abuse has not given sufficient protection to all the protected characteristics or given sufficient allowance for Freedom of Expression.

All protected characteristics should be protected and protected equally. Surely that is the basis of a free and equal society. Why should one characteristic receive more protection than another? There are certain circumstances in which each characteristic is particularly vulnerable.

Similarly the right to discuss, criticize and analyse any of these protected characteristics - should be preserved - as long as the discussion or criticism does not constitute an intentional effort to "stir up hatred". I understand this phrase has been defined as something that a reasonable person would think of as stirring up hatred. That seems open to interpretation. Accurate statements of statistical data, although true could be construed as "stirring up hatred" eg. the majority of FGM crimes are committed by Muslims. How will courts interpret this imprecise definition?

Given these principles I believe Option 1 is the best Option available but I also believe it should receive further consideration and consultation before being made into Law.
Loretta

I write in regards to the Hate Crime Bill and the further proposed amendment to the aforementioned. I am not convinced on the necessity of a Hate Crime Bill in the first instance. However if the Parliament is of the view and votes to put this through then I would **support Amendment 1** as this allows for discussion and criticism on all characteristics..
Dolores Hughes

It is essential that Religious debate must have the additional protection included in options 1 and 2. There is not enough protection given in the options for differing opinions and beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion. It is a dangerous mistake to water down the Bills protections for discussions around sexual orientations.

Why are we not being given more options? The options provided all say the same thing when it comes to sexual orientation and transgender identity which are the most controversial aspects. Police Scotland and many other well respected bodies have said that free speech clauses are important to prevent malicious and vexatious reports being filed by politically motivated complainants to silence opponents.

I respectfully urge you to take into account all of these valid and important issues today.

Thank you
Gordon Martin, Urray and Strathconon Free Church

So far as I understand it I would like to support option 1.

However may I add that I find the whole process and proposals disagreeable. I cannot help but think there must have been a better way than trying to introduce some kind of police state with thought crime/speech crimes being policed. The government should encourage free exchange of ideas and educate people to be strong enough to defend themselves or let their ideas be regarded as false. People must be protected from fear of prosecution for saying that which others find offensive or hateful.

Thank you
Alasdair Bell

It would appear that the removal of the proposed amendments, to be replaced by Options 1, 2, 3 and 4, water down the right to free speech. While I agree with the principle that everyone should be treated equally, the proposed provisions, I believe, do not protect the fundamental right to disagree with anything and to be able to state your opinion. We need robust protection of free speech and if MSPs from three political parties have expressed their trepidation about the tone of the debate around women's rights and reform of the GRA, then the chilling effect on ordinary citizens to feel able to speak on the issues is surely obvious. There is mounting evidence within the press, whether real or disingenuous to make/spin a point, about sides within the GRA debate crossing boundaries that would lie within the Hate Crime bill. Without a fundamental right to free speech to allow clarity of debate, which quite frankly this government, and in particular Nicola Sturgeon the First Minister, appears to want to shut down. This is evidenced by the complete lack of recorded dialogue on the matter between Womens Rights groups and the government on this matter. It is also evidenced by the extreme behaviour of people on Social Media - which is not called out specifically by this government (that is when high profile campaigners against the government's viewpoint are targeted and this government does not call this out individually but hides behind generalities) who are, after all, first and foremost, elected representatives of the people of Scotland and not mere extensions of the political parties they belong to. It is the collective will of the Scottish people who decide and currently this is being avoided by the refusal of this government, and the cabinet in particular led by the First Minister, to actively and meaningfully discuss with ALL stakeholders.

Secondly, the GRA, in my view needs to take into account evolution and biology. The sole purpose of evolution, from a scientific point of view, is to maintain the species into the future. Evolution's purpose is to take account of this by creating male and female for the purposes of reproduction. It's that simple and it is, indeed, binary. Now nature has allowed many species to evolve to be both male and female for their survival but this has taken many thousands, or even millions, of years. So, at the macro level, that is all it is about - survival of the species. To identify as a different gender group, does not in any shape or form, change the biological composition of an individual. Progress in science does allow suppression of the characteristics of the biological construction one is born with but it does not alter it - that requires surgery. No other species in the world has surgery to undergo such changes to their sex - it evolves over a long period in time. However, if it doesn't assist in reproduction in won't happen. This particular viewpoint will not go down well, I suspect, within the current GRA debate because it highlights the biggest hurdle those in the trans culture have to overcome - science. Will the Hate Crime Bill protect those who speak out on the basis of science rather than social engineering?

The obscene behaviours football act (I paraphrase) was removed because it criminalised people for singing about hatred. The rationale was that the provisions within the existing law were sufficient. What specifically about the existing provisions are not suitable for the "new hate"? Surely, hate is hate?
While Option 1 is a start, it must include extra free speech provision extended to all characteristics, plus a clear government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice or campaigns to retain women's rights in law or to challenge policy change.

This Hate Crime Bill is being "weaponised" by certain parts of society because they shout the loudest and they, for whatever reason, seem to have the government's ear. It is a very slippery slope - see Germany last century - to listen only to those that shout the loudest. History judged them - and history will judge you. Failure to take a balanced view, where ALL are treated fairly, has examples littered throughout history.
Don Gawthorne

The difficulty facing the Scottish Parliament is to know how deeply it should cut into the current protections around freedom of expression for its Hate Crime Bill. I’m glad for the opportunity to give my views on this.

I am extremely concerned about freedom of expression on religious views - these should not lose any of their current protections. For this reason, I can only support Options 1 or 2 being proposed in the current amendment.

For example, the presentation of the good news of the Christian gospel is a core duty of all Christians. At the 2011 census, over 53% of the people of Scotland identified themselves as Christians. This vast portion of the people of Scotland should therefore be allowed to act on their faith, and not be criminalised for proselytisation. To allow either Option 3 or 4 to be passed into law would be shockingly undemocratic and illiberal, as these options remove protections around this core duty of faith. Any reduction in the ability to preach the Christian gospel is in fact a reliable witness to illiberal and totalitarian tendencies in other countries with poor human rights records. For example, both Russia and China have in recent years removed safeguards on the preaching of the Christian gospel. Why would this not signal a similar trend in Scotland as well?

I have read about the proposals for this very legislation in the Czech press (on the server www.seznam.cz), where the claim was made that Scotland was willingly giving up its rights to freedom of expression. Having been subjugated by a foreign power, and having suffered terribly at the hands of oppressors who prevented freedom of expression, they know the value of being able to speak freely.

May we not have to learn through our mistakes in this area, as the Czechs did.

I would have liked to spend more time going through your proposals and considering the amendment, but you have not given me much time to do this. As a result, I’m sending this in haste, so that my voice can be heard at least in some way. It is surprising to me that such important legislation would undergo consultation only over the course of a single weekend.
Samuel Ewan

I am writing on behalf of the above proposed bill as the committee is currently welcoming views from the public.

I have had a look at the amendment options and none of the four amendment options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion.

Morality and politics are matters on which people can have vigorous debate and may change their minds. Sexual orientation and transgender identity undoubtedly raise moral and political issues. People must be allowed to disagree about these things without fear of prosecution otherwise it threatens the very democracy we hold dear. Religious debate must have the additional protection included in options 1 and 2.

There is a serious risk that politically-motivated complainants will label disagreement as hatred to try to silence their opponents. Police Scotland have also stated that free speech clauses are important to prevent officers being inundated with vexatious reports.

Lord Bracadale’s Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. I feel the Bill fails to do this.

None of the options give enough protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those on religion. In conclusion the watering down of the Bill’s protections for discussions around sexual orientation is in my opinion a mistake.
Sarah Atkin

Many will be scratching their heads as to how we arrived at a point where government is scrambling around to see ‘how best freedom of expression provision can be approached’ within a Bill that’s already on its way to becoming law. 96 hours for this last minute consultation does not inspire confidence that what we end up with will make for a good law. ‘Stakeholders’ should surely have extend beyond lobby groups to include a wider and more prolonged consultation with citizens.

However, we are where we are.

The option that provides greatest protection for freedom of expression based upon a deeply flawed Bill is Option 1.

My reasons:

1. It’s broader scope. It includes provision applying to all characteristics in the Bill which provides for consistency of approach and legal clarity. We might find it unpleasant but we have to have the right to insult, discuss, criticise and yes…offend. What appears controversial one day will often inform the mainstream view of the future. This is how free societies evolve.

I have just seen the film ‘One Night in Miami’ (definitely worth a view.) Malcolm X is a featured character. Malcolm X, as you know was a radical preacher and civil rights campaigner who argued for black power and black self-determination. A controversial figure, even within the civil rights movement but from the perspective of the (white) establishment at that time, he was a preacher of hate who condemned the white man as the ‘white devil’ for black oppression. From the establishment perspective, he was “stirring up hatred” amongst his followers.

In a free society rights exist to protect the controversial and the unpalatable from the established view. This is one illustration of the established/majority ‘mindset’ being challenged (i.e. the majority would have considered themselves ‘reasonable people’ of that era. The term ‘reasonable people’ is so subjective that it cannot be the basis for sound law.)

Fast forward to today. Where groups in society feel their rights are being eroded by a new orthodoxy – women and girls, for instance – they too have to be able to make their case freely, without fear or inhibition. (Oddly, though women are not protected under this Hate Crime law. A category of ‘biological sex’ would have protected women who are at the butt end of so much abuse for advancing a view and stating facts. As would the broader term ‘gender’ instead of ‘transgender’. Obviously, I appreciate this is submission is not to re-run previous arguments. That’s for another day.)

2. A broad scope in protecting freedom of expression would help this law work better. The focus would be directed towards clear incidents of hate crime that intend to or do incite violence and will evidentially stand up to scrutiny in a court of law. Otherwise, we are in danger of the police being inundated with reports of ‘hate’ incidents and accusations against individuals that could be better resolved in other
ways than through the criminal justice system – dialogue and education, for instance. A person might have uttered something deemed unpalatable or controversial in earshot of another and be liable for investigation under this law. A teacher, for instance. Whether or not this would stack up in court is immaterial. The process of investigation could break somebody and destroy lives (teachers, for instance would be very vulnerable.) Do not underestimate the impact of a police investigation on an individual or a community. Far from protecting people, this law could engender conflict and division. Clarity for freedom of expression is therefore vital. We’re in danger of potentially criminalising people for having an opinion if there’s any ambiguity regarding provisions for freedom of expression for this Bill.

3. The additional provision with respect of religion provides safeguards for the freedom of expression that we take for granted in a free society. I was raised a Roman Catholic but we’d happily sit down every week to watch Dave Allen on BBC1 ridiculing many aspects of our faith. Allen provoked a great deal of anger and rage in many though (especially in his native Ireland.) To many, much of what he made fun of was deemed insulting and offensive. To others he was doing what great comedy always does: illuminate the absurdities of life and the hypocrisy of those who wield power over us.

There are many similar examples that illustrate why freedom of expression matters in a free society. Sometimes, obviously, boundaries are pushed too far to what society deems acceptable at any particular moment. However, these ‘boundaries’ are often better regulated from within the culture itself, via dialogue and debate than by official diktat of the state. When the State becomes the arbiter of all that is deemed inoffensive or ‘acceptable’ then we are in trouble.

To conclude, Option 1 best protects freedom of expression
Rosalyn Goodfellow

I am deeply concerned about the implications of the above Bill for free speech generally and for freedom of religious expression especially. I would like to highlight the following points:

1. The proposed additional protections for religious debate are to be welcomed and are fundamental in a free society which respects the religious convictions of its citizens.

2. It is not possible to separate sexual orientation and transgender identity from religious belief. A religious worldview speaks on all areas of life including the nature of people and their sexual identity. Christians should be free to explore these matters in the context of their personal religious beliefs and the historic traditions of their faith, without fear of prosecution.

3. Morality and sexual ethics generally are areas in which people can have spirited debate and where they may change their minds. The right to disagree about aspects of sexual orientation and transgender identity and to hold religious positions on these matters should be preserved. The respectful expression of religious convictions should not be constrained through fear of criminal prosecution.

4. Gratuitous criticism and insult are clearly not acceptable, but neither is legislation which constrains proper religious discussion and teaching on the matters considered above.

The very short time frame provided for responding to these amendments makes a detailed and carefully reasoned response impossible. Please postpone final decisions until proper consideration can be given to the profound implications for freedom of religion and free speech.
Peter and Fran Hutchison

We agree that we should live in, promote and encourage a society in which hate crimes are severely punished and in which inclusion, peace and harmony are fundamental and immovable principles. However, that cannot truly be achieved without also practicing tolerance and encouraging resilience in the face of contrary views. Our society is what it is today because we have sought to permit free speech whilst also encouraging people to respect and honour others. This is sometimes abused but the ability to express a criticism or to engage in honest and open discussion on vital topics such as gender should not be prejudiced by the criminal law simply to avoid “insult”. Vulnerable groups must be protected. Free speech must be protected. It is sometimes a difficult balance. Our concern is that these laws are so close to (if not essentially becoming) a criminalization of certain forms of free speech that the boundaries into which people dare not stray are such that free speech will be completely compromised in our nation – an outcome which would make us all the poorer.

Views on gender can stem from natural inclinations, religious views or simple opinions (all of which can morph and change throughout a person’s lifetime). Our reading of the proposed Bill suggests that it would become difficult to engage in any form of discussion on the vital topic of gender without fearing criminal sanction. It should not become a criminal offence to insult someone by using the wrong pronoun, name or by holding a view which suggests that you do not consider their own views about themselves to be the most healthy or accurate. This could definitely cause insult and may be expressed in the most unhelpful of ways – but is our criminal law here to address these types of societal delicacies? In our view it is not and should not stray into these areas.

In order to avoid this outcome, and the detriment to our society as a whole – the injustices would be felt throughout our society with unjustified investigations (civil and criminal), prosecutions, dismissals, censorship and fear becoming widespread – the Bill absolutely must provide protection for honest and open criticism and discussion on issues of gender. Where violence is incited, of course we must draw a line (and even that line is difficult to find with many shades of grey), but it is our clear view that this Bill criminalises the non-criminal and makes a mockery of our claims to lead a society in which free speech is celebrated and in which honour and respect are foundational principles – that honour and respect, to be truly universally applied, must also apply to those who hold views contrary to our own, even on topics which may cause emotional pain, and even insult, for some.

There must be automatic and additional protection in both Options 1 and 2 which protects criticism and discussion on gender. These “options” do not sufficiently provide “options” which protect against the outcome we’ve discussed above and this must be remedied – the Bill needs a lot more work.

Thank you for the opportunity to register my views (although in my view insufficient time was provided for this consultation which has hindered the level of response possible).
Donald Mackay

It is imperative that religious debate must have the additional protection included in options 1 and 2. It is also the case that there are not enough protections for the expression of sincerely held convictions regarding sexual orientation and transgender identity. It would be preferable if the protections for freedom of speech were modelled against those for religion. The proposals have watered down protections for discussions around sexual orientations which will curb the ability of people to express reasonable opinions about in this area.

People have differing views on matters of morality and politics and these are subjects about which there is and has been much debate. It is wrong to preclude ongoing debate in the areas of sexual orientation and transgenderism which are moral and political issues. It is certainly the case that the science is not settled in either area and as these are matters on which people can change their minds and therefore debate should be protected. People must be allowed to disagree about these things without fear of prosecution.

It must be noted that the Government’s proposed free speech clause only covers discussion or criticism of “matters relating to” sexual orientation. This is does not afford the same level of protection to reasonable speech the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices

Explicit protection for free speech about transgender identity is essential because it is such a controversial subject. It is not reasonable that anyone is required to subordination their understanding of what is objectively and empirically true in terms of sex and identity to someone elses subjective self-expression, regardless of how sincerely held that subjective self-expression is. It must not become criminal to use a sex-fixed pronoun, or to say that someone born a man cannot really become a woman.
Kathryn and Alan Cunningham

We apologise for our last minute and brief response to the consultation on freedom of expression protections in the Hate Crime Bill – we have spent the weekend in hospital thus now have very little time to respond to the consultation. We believe our situation highlights the need to extend the time for stakeholders to offer views to inform the decisions to be made by Parliament on freedom of expression provision – the extremely short time period of this consultation is not in-keeping with the assertion that “Ensuring that stakeholders can offer views to inform the decisions to be made by Parliament on freedom of expression provision is critical”.

We also believe that none of the four proposed options appropriately protects freedom of expression. Debate about contentious issues linked to religion, sexual orientation and transgender identity has to be able to go further than “discussion and criticism”. Some of the proposed options acknowledge this for religion – which we agree with – but not for the other contentious issues. We ask why those issues should be treated differently from religion, particularly when, for many, they are highly intertwined with religion?

We ask that scrutiny of this important aspect of the Bill is not rushed, as seems to be the case currently, and that the time-frame for this is extended appropriately, including delaying it until the next parliament if necessary.
Maurice Howson

I would like to register my concern about the above Bill for which I believe you are inviting comments regarding four options.

I was brought up to believe that it is important to consider differing views before making judgments and decisions on issues, and even after making a decision I have disciplined myself to still listen to differing views. This can at times be difficult, especially when it is regarding personal issues and convictions, but it is surely important in a healthy society to be able to hear and voice differing views. It seems however that this Bill has the potential of silencing some views which I feel need to be heard.

As a Christian I hold to traditional views on marriage and sexuality as well as sanctity of life and amongst my personal contacts are people who are gay as well as those who have had an abortion but I don’t think those people feel any aggression or hatred from me. One person I know who describes themself as trans has phoned me every couple of weeks for years which I think confirms that they don’t feel hatred from me despite knowing my convictions. Jesus taught us to love one another, even those who don’t return the sentiment, so if I became aware of hatred in my own attitudes, I would take steps to change. Surely as I aim to accept a person for who they are so I need to be able to be who I am, and the benefits of my lifestyle, without being accused of hatred. Or indeed if I was concerned about decisions regarding sexuality an individual was making which I believed was not in their best interest surely it should be within the law to make my concerns known.

Having looked at the four options offered Options 1 seems to be the best but I do believe that further protection is needed in regard to sexual orientation, transgender, and variations in sex characteristics.

Thanks for giving an opportunity to contribute.
Caroline McGregor

I have become concerned that the Hate Crime Bill, while seeking to protect citizens from threatening abuse has not given sufficient protection to all the protected characteristics or given sufficient allowance for Freedom of Expression.

All protected characteristics should be protected and protected equally. Surely that is the basis of a free and equal society. Why should one characteristic receive more protection than another? There are certain circumstances in which each characteristic is particularly vulnerable.

Similarly the right to discuss, criticize and analyse any of these protected characteristics - should be preserved - as long as the discussion or criticism does not constitute an intentional effort to "stir up hatred". I understand this phrase has been defined as something that a reasonable person would think of as stirring up hatred. That seems open to interpretation. Accurate statements of statistical data, although true could be construed as "stirring up hatred" eg. the majority of FGM crimes are committed by Muslims. How will courts interpret this imprecise definition?

Given these principles I believe Option 1 is the best Option available but I also believe it should receive further consideration and consultation before being made into Law.
Nicholas Watson

It is to the great credit of our country that such a wide range of people of differing cultures, backgrounds, religious views, and so on have managed to get along much more peacefully than in almost any other country in the world. Much of that success comes from free speech - fiercely protected over the years - and the ability, however strongly views are held, to disagree without resorting to violence. Ultimately it is free speech itself, and the dialogue it enables, which brings people together: its suppression can only bring division.

It is not the intention of the bill to obstruct sensible dialogue. But I have no doubt that if passed, even with amendment, it will nonetheless have that effect.

While I understand that this consultation only covers the suggested amendments, the wording of those amendments goes to the very heart of a widely and very strongly felt concern - the concern that honestly held views will no longer be legally expressible, even at the family dinner table. What I detect among those who oppose the bill is a real dread that a step is being taken to control the thought and speech of citizens. Many horrible regimes around the world have done this for years: it is not such a big step away.

None of the proposed amendments would alleviate such concerns, nor do any of them succeed in giving proper clarity as to what sort of expression falls within the boundaries of the criminal law.

The lack of a definition of hate will potentially lead to unintended consequences. Similarly the subjective nature of the words such as “threatening”, “abusive” and “insulting” is also likely to result in the criminalization of free speech.

There is a huge difference between hating an idea, and hating those who hold to that idea. It is perfectly possible to detest an ideology while at the same time having sincere affection and care towards those who follow or promote it. However, to take a highly pertinent example, transgender activists have routinely tried to eliminate this distinction; referring to criticism of trans ideology as hateful and harmful, and sometimes portraying criticism as violence.

Transgenderism is a massively important topic just now, and it is vital, especially for those experiencing gender dysphoria, that understanding is nurtured: this cannot be achieved when barriers are set up against open and frank debate.

Why is the word “insulting” even included in the legislation? Mr Yousaf has assured us that no-one will be prosecuted just for being insulting, but so long as the word remains in the legislation his assurance is worthless. And where exactly does the distinction between abuse and insult lie? There is no place for such subjective words in this legislation.

In two of the amendments the legislation is “softened” in relation to religion. While in itself this may be welcome, the introduction of “two-tier” legislation is highly problematic, and illustrates the major flaw which lies behind all equalities legislation - All people are equal, but some are more equal than others. Such stratification
should be strongly resisted, and if the legislation is to be passed then the additional provision included in options one and two must be extended to cover all categories.

As a parent of university-aged children I hugely value the very lively debate we often enjoy at meals, and they do too. If my understanding is correct, it is proposed that the ability to urge others to change their sexual behaviour should no longer be protected by the legislation. I am extremely concerned about this. Where does this leave parents who would wish to divert children from what they see as dangerous or immoral sexual behavior? Or children who wish to guide their parents?! An experiment at lunch showed that as a family we could easily get into conversation (without any element of hate), which took us the wrong side of the proposed law. This is highly sinister.

I can well understand the lack of enthusiasm among police, who see this not only as another demand on their resources, but also as something which will get in the way of the good relations which police generally enjoy with the public.

I am most disappointed by the exceptionally rushed nature of this consultation, which gives the impression that getting a “progressive” bill passed before the elections is more important to this government than good legislation. An unusually high volume of interest has been shown in this controversial bill and it is sad that ministers have failed, if not to drop the bill, at least to take a full step backwards to allow proper reconsideration.

Finally, when legislation impinges on freedoms, then it might be expected that frustration and anger be directed towards legislators. Unfortunately, it is often not legislators themselves but groups associated with the legislation who are more usually the subject of frustration and anger: in this case the most likely candidate being the trans community. This is a serious point.

I hope very much that the bill will be withdrawn. If, however, it is progressed, then it is important;

to have a definition of hate,
to remove subjective words such as “threatening”, “abusive” and “insulting”, and to extend the additional provision included in amendment options one and two to cover all categories.

I fear that if this bill is implemented, then the harm caused by those who will employ it to further curb free expression will outweigh any intended benefits. To undermine free speech, which is a foundation of so much that is good in Scotland, would be damaging to our society. It is therefore important that amendments should afford the maximum of protection for free speech. The bill has the potential to mark a turning point in Scotland, away from liberal democracy, towards a totalitarian state.

I am sorry this response appears so grumpy, but I would hate to see Scotland passing bad law, law which could do more harm than good and which would damage the standing of our freedom-loving country.
I am responding to the short timescale call for views on the options proposed by the Cabinet Secretary for Justice for the inclusion of amendments into the Hate Crime and Public Order (Scotland) Bill at Stage 3 on freedom of expression.

Of the four options listed, I find Option 1 to be the most preferable.

At the broadest scale, I agree with the Cabinet Secretary that there is a need to include explicit protections for freedom of speech. This is an area that is increasingly being challenged and restricted and yet it is fundamental to the democratic society that we live in. Without protections for people expressing different opinions we cannot make progress.
Matthew Amer

I am extremely worried about the proposed amendments to the Hate Crime Bill. I am also extremely worried that only a matter of days was given for a public response.

Free speech is the cornerstone of any democracy and liberal society. Religious debate and discussion surrounding sexual orientation and transgender identity will not be proper protection to allow free thought. These issues are highly debated, and silencing opinions deemed subjectively as ‘hate’ will silence any conversation about these issues. This will halt any form of progress or betterment of society. Additionally, the only way to beat hateful views is to debate and expose them openly, not shun them to illegal underground groups. Religious debate must be properly protected. Freedom of religious expression is a fundamental right and options 3 and 4 will severely jeopardise this right.

Furthermore, none of these proposed options offer sufficient protection surrounding discussion around sexual identity. Being a highly debated issue, as evidenced by the recent Tavistock scandal, these issues need freedom of through and expression. The health and wellbeing of our society depends largely on the ability to discuss these issues openly.

I find it shameful that such little time was given to respond to this. I suspect I know the reason why this is the case. I am firmly against any kind of impingement on freedom of speech and will continue to scrutinise any lessening of protections surrounding freedom of expression.
Alasdair Ross (Elder, Free Presbyterian Church of Scotland, Glasgow)

The Independent Review on Hate Crime by Lord Bracadale highlighted how crucial it is to understand the clear difference between legitimate debate and “rabble-rousing.” The proposed Hate Crime Bill does not address this, and for peace loving, law abiding Christian citizens of Scotland there is a great danger in them being criminalised when they speak about how the Bible counsels against views held by other religions or when they state clear, biblical views about homosexual or transgender lifestyles.

All Christians are under obligation to love their neighbour as themselves, and if they are behaving as the Bible teaches them to behave, they will speak truthfully about contentious issues, but they have a duty before God to speak in a patient, tender and compassionate manner that is not motivated by hate, but rather is motivated by love for others, a love for what is good for them and a love for the glory of God. This truthful presentation of what the Bible teaches about sexual orientation and other religions cannot be misinterpreted as being motivated by hate. Of course, it is almost impossible to know what motivates someone, unless we were able to read their thoughts and fully understand the intent of their hearts.

It is essential that free speech clauses are robust and sufficient to protect Christian preachers and all Christians in speaking freely about contentious issues, where a biblical stance can be very unpopular. None of the four options presented give Christians strong enough protection for presenting biblical teaching, having discussions (or legitimate debate) around issues such as false views held by other religions, sexual orientation or transgender identity.

Section 12 of the Bill (Protection of freedom of expression: sexual orientation) is intended to protect free speech such as “urging of persons to refrain from or modify sexual conduct or practices.” The Scottish Government is proposing deleting Section 12. This is unjust and unacceptable as it is essential to protect free speech for Christians, because changing lifestyle or one’s behaviour is at the core of what is taught in the Bible. It is essential that there is clear, unambiguous free speech protection around transgender identity which is such a divisive issue. It can never become criminal to use a person’s birth name or pronoun, or to state that someone born a man cannot really become a woman.

I urge the Scottish Government to significantly strengthen Option 1 and not delete section 12 of the Bill. I plead that you go further and fully protect free speech for the citizens of Scotland and bear in mind the clear difference between presenting biblical teaching and “rabble-rousing.”

I respectfully urge you to remember, that whatever role you take in making weighty decisions about this Hate Crime Bill, you are accountable before God, if you criminalise those that either teach or clearly speak about what He has revealed in the Bible.
Dr Alan N Fish

Thank you for inviting views on the options proposed by the Cabinet Secretary for Justice for the inclusion of amendments into the Hate Crime and Public Order (Scotland) Bill at Stage 3 on freedom of expression.

My view is that only Option 1 is acceptable. This is because:

a) Freedom of expression requires that discussion on any subject should not be taken be to be threatening, abusive or insulting in itself, subject to the “reasonable person” test in relation to threatening or abusive behaviour. There can be no justification for excluding race or religion from the topics which is possible to discuss without the discussion in itself being considered threatening, abusive or insulting.

b) Not applying this principle equally to all topics of discussion would make the Bill very hard to apply, since there are many topics of discussion which involve combinations of the matters listed in section (2). For example, would a discussion on religious attitudes to race be covered by options 2 or 4?

c) The additional provisions in respect of religion are justified. Freedom of expression includes the freedom to discuss or express antipathy, dislike or ridicule towards a religion, since a religion is a set of concepts, not a set of people, and there should be no concepts which are legally exempt from ridicule.
Alan Forrest

I am contacting you in response to the proposed Hate Crime Bill and amendments thereof.

I previously stated to you that I felt that the entire bill was unnecessary as we already have sufficient legislation in place; however, I nevertheless welcome the fact that you have at least agreed to review proposals.

In line with these I would make the following observations:

* Reducing the Bill’s protections for allowing discussion around sexual orientation is a serious mistake and will have on-going consequences.

* None of the proposed options provide adequate protection for beliefs around gender fluidity or sexual orientation/identity. Explicit protection for free speech about transgender identity must be included as it is such a divisive and toxic issue. It must not become a criminal offence to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

* There is a serious risk that anyone who is politically-motivated will use any opportunity to accuse those who disagree with them of being guilty of hatred in order to silence them. Police Scotland have also stated that free speech clauses are important in order to prevent officers from being inundated with vexatious reports. Furthermore, under the Bill, a person could face up to seven years in prison for simply stating an opinion. This is an extremely serious penalty, requiring strong safeguards.

* None of the options offer sufficient protection for beliefs around sexual orientation and transgender identity. The freedom of speech protections should be closer to those proposed on religion.

* Religious debate must have the additional protection included in options 1 and 2

The public reaction to this Bill has already drawn fierce criticism, and given that there will no doubt still be a great number of the general population who are unaware of its demands and consequences, I maintain that the entire Bill should in fact be abandoned...
Alan Wallace

Thank you for the opportunity to respond to the Freedom of Expression Amendment, although the time allowed for this is somewhat constrained given the importance and seriousness of the effects of the Bill.

Four options have been put forward, but I will focus on Option One as this seems to be the more inclusive.

While I welcome the additional protection included in Option One for being able to discuss, criticise, be antipathetic, dislike, ridicule and insult when it comes to religion and religious practice, it does not go far enough in that other expressions seem to be more protected. For example, it must be possible to dislike the lifestyle of an individual who is for example transgender or homosexual, based on personal belief as to the moral correctness of such a lifestyle. This doesn't mean one hates the other person because of their life choices, but one should be able to dislike what they do. If one can dislike another's religion, then this must stretch to these other expressions too. I do agree one should not insult or ridicule, but the issue is this is subjective and one may view a comment as an insult when another may not.

You do mention a ‘reasonable person’ but given the variety of beliefs and opinions in society this may be difficult to truly define. Ask a dozen people and you may get a dozen different responses or definitions. Therefore, the freedom of speech protection, specifically for transgender identity and sexual orientation must be more closely aligned to those of religion. People must be allowed to disagree on all these areas and be able to confidently state their belief, however controversial e.g. to be able to say a man cannot truly become a woman, without fear of prosecution. Such a belief may offend those who disagree but this is the nature of free speech.

In addition, it is noticed that religious debate is missing from the additional protection listed in Option One and this should be included as well as strengthening protection for discussion around sexual orientation.

In general, I would ask the committee to not give way to the loud voices of parliament who want to water down these amendments and call any protection of freedom of expression, specifically in matters of sexuality, homophobic. This attitude in itself is offensive and insulting to those who hold a different view. If parliament truly wants a free and inclusive society then it must respect all opinions, discussion and even, dislike of all parts of life.
I am writing on behalf of South Glasgow Church – a community church based in Glasgow. We are part of a wider network of churches through the West of Scotland Gospel Partnership and the Evangelical Alliance in Scotland.

As a leadership team we responded to the initial consultation regarding the Hate Crime & Public Order (Scotland) Bill in July 2020 and would like to follow up and respond to the current call for evidence regarding the Bill. We are grateful for this follow up consultation and appreciate the opportunity to respond.

With regards to the overview notes provided on the Annex document we welcome the reassurances given by the Justice Secretary that ‘criticism, including very robust criticism, is in itself not a matter for prosecution under this Bill.’

The examples given are also helpful as they flesh out some specific areas relating to this. We are supportive of public and open debate and believe that freedom to express, criticise and discuss matters relating to sexual orientation, transgender identity and religious beliefs as outlined in the examples are important areas to protect.

Of the four options our preference is either option 1 or 2 as options 3 and 4 are limited in detail and run the risk of providing insufficient protections for free speech/expression in light of the proposed Bill. We would therefore like to offer the following comments regarding options 1 and 2.

We are reassured in some measure that these options provide reasonable protections for ‘(c) proselytising, or (d) urging of persons to cease practising their religions’ and would therefore not be considered to be a crime.

However, a previous clause also included protecting ‘discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify sexual conduct or practices’ which we believe should remain in place. This is especially relevant when issues of morality and politics are matters in which people often change their mind in our society. It is also a concern that this is not included for modifying and changing behaviour is central to the Christian faith and one which many churches encourage.

We are also pleased that options 1 and 2 provide protections for discussion and beliefs regarding sexual orientation and transgender identity however these are not as robust as the protections given for debate and discussion about religion.

Due to the sensitivity of these areas and the strong (and sometimes hostile) response toward those who offer criticism or assessment on these issues we believe the protections should be strengthened further. It would also be fair and consistent to apply the same protections to each of these categories.

As public debate is intensifying about these issues there is a need to ensure that open debate and discussion is not hampered. Freedom of speech and speaking the truth is the bedrock of western democracy and whilst there have been periods when viewpoints have been quashed unjustly it is ultimately in the context of open debate that our views are refined and enhanced and society benefits.
Alan Guy, South Glasgow Church

To that end the proposed Bill even with the aforementioned clauses remains a concern from the perspective of a small community church. We believe that it may pave the way for those who are politically motivated to target religious organisations in an attempt to silence views with which they disagree.

Finally we would also like to comment on one aspect of the overview notes provided by the Justice Secretary. In the notes the following comment is made;

‘However, if, for example, the criticism included comments a reasonable person would consider abusive about trans people…..it could still amount to behaviour that is threatening or abusive. It is important to reiterate, the new Stirring Up Offences can only be committed if an individual intended to stir up hatred, and this can be proven beyond reasonable doubt in a Court.’

There is a concern that the protections offered in options 1 and 2 of the Bill will be relegated or bypassed in favour of a subjective interpretation of a given event. In the context of this Bill it is subjective to define a ‘reasonable person’ and subjective to define ‘if an individual intended to stir up hatred.’

It is for reasons like this that we sympathise with those across the spectrum in Scotland (including the mainstream media and the Police) who have criticised the bill and we believe it should not progress at all.

Thank you once again for opening this second consultation and we trust that the exercise will present you with useful information to help the Scottish Government with their decision making.
Mrs Alison Gardner

I just want to take the time to thank you for the work you have put into closely looking at the Hate Crime & Public Order Bill. I however have some grave reservations on the proposed Freedom of Expression provisions with regards to this Bill.

It is commendable that the Scottish Government has already made concessions within this Bill, however I strongly feel that concessions and the Freedom of Expression provisions do not go far enough, and fall well below the necessary safeguards of our democratic freedoms and rights to free speech. For instance in Options 1 and 2, which allow ‘expressions of antipathy, dislike, ridicule and insult’ towards religion and belief, but unfortunately with respect of the other characteristics listed only ‘discussion and criticism’ are permissible. It is good, and there should, be free speech and robust debate permitted in our democracy when it comes to religion and belief; but surely it should also apply to all the other topics too such as age, gender, disability etc?

Please be assured that I wholeheartedly agree that all individuals must never be subjected to harassment and abuse and the protection of individuals is imperative. However, there surely must be in our democratic country of Scotland, a place for people to voice that they disagree with others with regards to beliefs and ideas, no matter that perhaps other parties are offended by what is said about their beliefs?

I am a Christian, but know that there are many others who do not share my beliefs, for example on sex, gender, relationships and marriage; yet I sincerely hope that our laws protect those who would disagree with me on this matter, who would perhaps ridicule my beliefs as outdated nonsense! I do not feel that the wording in the Freedom of Expression provisions does! “Discussion and criticism” may not protect them. What if I am offended? Could they be charged under the present proposed amendments.

In the same vein, if I disagree with a particular person, on for example how many genders there are, could I be charged if someone is offended by what I state are my beliefs? Have I not the freedom of speech to disagree with them? It makes me feel as if we are taking a step back into the times when dictatorial regimes closed down the freedom of speech and free thinking and the ability to debate and have robust discussions on matters the state did not agree with. eg in Nazi Germany to state that Jews were humans like the rest of the German population, risked losing one’s life.

Pity help Scotland for freedom to speak inoffensively is no freedom at all!

I urge you all to please give more careful consideration to these present proposals, so that the people of Scotland are protected properly, and thus are able to go on having the freedom of speech for which many of their Scottish forebears died to protect.
Andrew Procter

I would like to respond to the request for views on the proposed Amendments to the Hate Crime Bill.

Of the four options proposed I consider that Option 1 is preferable.

None of the options go far enough however in defending the right to freedom of speech which is fundamental to the democratic system.

I believe the amendments should be strengthened to ensure greater protection for freedom of speech. The amendments should also ensure that all protected characteristics are treated equally under the law.
Andrew Shrimpton

I am writing concerning the request for views on the proposed amendments to the Hate Crimes Bill on the subject of freedom of expression.

I note that the major difference between the various options proposed is that the first two provide additional protection for criticism relating to religion. There is no difference whatever between the various options on issues relating to sexual orientation and transgender identity; so the Scottish Government is not actually offering any choice on these issues.

This is a serious mistake. These are the most controversial areas in society at present. They therefore need the most robust protections for free expression. There is a need for explicit protection of discussion and criticism of sexual conduct and preferences.

The first two options explicitly permit proselytising or urging a person to cease practising their religion. This is necessary for religious freedom. It is equally necessary to permit urging a person to change their sexual behaviour.

Regarding transgender identity, it must be made absolutely clear that it is legitimate to say (for example) that a man cannot really become a woman. Where someone has adopted a transgender identity, other people should be allowed to choose whether to use personal pronouns relating to that person’s birth sex or assumed identity, without fear of prosecution.

Without very clear provision for free expression, there is a real danger of intimidation and of vexatious litigation being used as a tool to silence unwelcome criticism and disagreement.

One final comment. The whole concept of a hate crime is an attack on equality under the law. It, privileges certain groups at the expense of others. “All animals are equal, but some animals are more equal than others.” Why is it worse to abuse someone because he is gay than to give a person the same abuse because he supports the SNP? The best solution, therefore, would be to abandon the legislation entirely.
Annabel Watson

Thank you for the opportunity to give my thoughts to the proposed Hate Crime Bill.

I am deeply concerned that there is insufficient protection for people to sensitively express their beliefs around the value of marriage being between one man and one woman for life. As a Christian, I see amazing benefits in this model.

The horrible and violent treatment of homosexuals and transgender people is unacceptable, and the courts are already well equipped to deal with such incidents; but reasoned debate, especially in the home should be allowed in Scotland forever. Indeed, in a country such as ours it should be encouraged.

None of the options appear to protect religious belief re transgender or sexual-orientation issues.

A healthy democratic society needs to have debate and there needs to be freedom for people to air their opinions: even unorthodox ones.

As soon as we make certain ideas illegal democracy dies; and we shall fill our courts with people who have committed no crime.

Please ensure that the bill has proper protections for debate around sexual orientation.

Thank you for taking the time to read my letter.
Annemieke de Vries

Thank you very much for the opportunity to express support towards an Amendment into the Hate Crime & Public Order Bill concerning the Freedom of Expression.

With this letter I would like to express my support for Option 1 of the proposed list of options.

Thank you kindly for your attention.
Audrey Gillies

Although I believe the Hate Crime Bill is not fit for purpose I would recommend that the committee select option 1 of the freedom of expression amendments but extend the protections allocated to religion to all protected characteristics.

I oppose the Hate Crime Bill completely. It offers a hierarchy of victimhood, which is in itself, excludes the majority of people within our country.

Misogyny has been a huge burden and a source of discrimination, hate, physical and psychological abuse, violence, rape, torture, sex trafficking and murder for women.

Women have been campaigning for centuries for governments to make laws which would curb this. No government has really taken this on. However, within a few decades, hurt feelings of males identifying as women, cross dressers, drag queens and other self-identified individuals under the stonewall umbrella, have had the government’s ear and have been given an elevated status of victimhood, while women are left by the side lines and ignored. Not only ignored, but silenced.

Many women have gone underground to discuss rights which we had, to single sex spaces, sport and health due to threats of violence from trans activists. We were working towards proportional representation, but that now seems dead in the water, as men identifying as women can take our place. So, in reality, we could, in the future have a government made up entirely of male born people.

The hate crime bill, is misogynistic in its entirety. It leaves women unprotected by silencing their voices of biological reality, and is legislating for compelled speech. Compelled speech which is a lie. Gender is not sex, therefore, misgendering is an ideology not a fact. Dead naming to be made a criminal act is a danger to safeguarding.

We are used to slurs, of being called TERFS, bigots, transphobic etc. We are used to being threatened with online abuse, threats of violence and the prospect of job and career loss as a consequence of speaking truths. Yet, the call for misogyny to be included in the HCB was deemed unimportant because public funded organisations agreed with government policy.

The hate crime bill needs to be scrapped. Until the majority of the population are protected by such a law, you cannot justify, a chosen few to be offered what we are not.
Ben Johnston

I’m writing this letter in response to your request for views on the current Hate Crime and Public Order (Scotland) Bill Amendments. Having read the four options outlined within the supplied Annex document, there are a number of points I would like to express regarding these potential avenues.

Naturally I understand this is a very sensitive topic, one which must spark lively debate on both sides of the political spectrum. Since the outset, this Bill has sparked much controversy within the public eye, creating a wider debate on the use of language and how far the law should reach in limiting its usage.

Prejudice in an ongoing problem within our society at present, causing feeling of fear and distress within the lives of many. It is important that these vulnerable groups should be protected by law from threats of violence and sustained hatred.

Despite this need, we have never before sought to limit free speech in such a significant manner. Indeed, one could argue the modern concept of freedom of expression largely had its roots within the culture and history our country, setting it apart from more authoritarian states, both in the past and in the present. I personally believe that these freedoms should be strongly protected, thus I find the current proposals somewhat disconcerting.

In particular, I feel that religious debate must have the additional protection outlined within options 1 and 2. It is vitally important that those with religious views can express them without fear of retaliation from the law. There are numerous faiths that possess viewpoints very different to current societal trends and this factor must be protected if we are to uphold our commitment to promoting true diversity.

In light of this point, there also doesn’t appear to much protection within the amendments for differing beliefs regarding transgender identity and sexual orientation. I was strongly dismayed to see the large reduction in protections within the Bill for those discussing these topics. These characteristics are still somewhat controversial within the public conscience and it vital that people should be allowed to disagree about these without fear of prosecution.

Ultimately, I feel there are many points within this Bill that should be reconsidered and I would implore you as a committee not to ignore these concerns. Whatever your decision on these matters, I cannot help but reflect on the significant power our words possess and indeed the fruit that we must reap thereof.
Bob Owtram

I am responding to the latest consultation on the Hate Crime Bill.

I am highly concerned that this Bill erodes democratic freedom of speech and creates a culture of fear about voicing opinion. Also, that it will become a way for lobby groups and activists to go about ‘silencing’ or ‘shutting down’ opinions they disagree with, rather than having respectful and democratic debate.

Regarding the justice secretary’s 4 options-

Freedom to discuss and hold all manner of religious and humanistic beliefs must have the additional protection included in options 1 and 2.

These additional protections should extend to protection of beliefs on sexuality and transgender identity.

It is entirely inappropriate to remove or dilute the Bill’s existing protections for freedom of speech.

This Bill makes no distinction between holding and expressing opinions or beliefs and ‘stirring up hatred’ or rabble rousing. This is absurd.

I hope that the Justice Committee will ensure that this Bill does not signify the end of freedom of speech in Scotland.
Carol Thomson

I have previously written to express my concerns on aspects of the Hate Crime Bill, and I continue to feel alarm and deep concern about aspects of the Bill. I appreciate that the Bill is motivated by a genuine attempt to protect vulnerable groups in particular, from abusive and unacceptable comments. However, it is extremely difficult to define hate speech, and there is a danger that the definitions will be drawn too widely. For instance, I earlier used the expression “unacceptable comments”, but one person’s definition of that could be widely different from another’s.

As things stand, of the amendments under consideration Option 1 would at least give some protection to individuals to express criticism, though it does not go far enough to protect freedom of speech. It would be difficult to explain clearly to any ordinary member of the public why it would be legal to ridicule and insult religious beliefs, but illegal where other issues or characteristics are concerned. There is a significant danger if the government fails to make it clear that critics of its proposed policies would be protected, and that the Hate Crime Act, supposing it becomes law in its present state, would not be used to silence those who wish to point out flaws in its proposals.

Wording which is unclear or ambiguous will make bad law. As is law which can be used to target and attack others, and use the legal system to do so, which is a system meant to protect all, rather than enable abuse. As a woman I have encountered abuse on occasions throughout my life, sometimes subtle, sometimes blatant. Most women can say the same. I expect my government to protect me and other women from misogynistic attacks, not to enable perpetrators.

I ask that the committee expands on the protections in Option 1, but if it feels it cannot do that, it does at least support Option 1 as it stands.
I wish to express my concern with the 4 “Options for Freedom of Expression Provision” proposed by Hamza Yousef:

Transgender identity, sexual orientation and same-sex marriage are controversial moral issues. Debate or expressions of opinion on these issues of morality need specific protection against prosecution, similar to those provided for religion in Option 1. Without clear and specific free speech protection for these issues, healthy debate will be stifled by fear of accusations.

Controversial topics such as transgender identity, sexual and same-sex should not be grouped with issues like age, race or disability, on which opinions are not as polarised or debatable.

Without free speech protection, various lobby groups will use the hatred bill to silence all those who disagree with their opinions. Police will potentially be burdened with vexatious accusations of supposed abusive or threatening speech. This will result in further resentment and disunity between those with differing opinions and beliefs.
Charles Walker

While some of the measures in the recent Proposals, appear to give some welcome added protection for Free Speech of religious debate, similar free speech proposals regarding sexual ethics are not yet in place, and need to be.

Morality is a subject which needs to be debated freely, as people often change their minds, and sexual orientation and transgender issues both involve serious moral issues, and people must be able to disagree, civilly, without the risk of prosecution.

The present Section 12 of the Bill protects the ability to urge people to change their sexual behaviour. This is essential to protect free speech for Christians, for whom changing behaviour is a core belief. Yet the Government seems to want to delete it.

Religious debate must have the additional protection included in options 1 and 2. Watering down the Bill's protection for discussion around sexual orientation is a mistake.
Colin Palmer

I would like to express my concerns and views regarding the Freedom of Speech Clause to the Hate Crime Bill that the government has submitted.

As 1 of many practising Christian's in Scotland, It is essential that there is no opportunity given, albeit unwittingly, by the law for the outgoings of the preaching of the word of God and the teaching of the Holy Scriptures to be curtailed or hindered in any way. This is a government responsibility and failure to legislate clearly will lead to further moral decline in society.

Options 3 and 4 of the proposed clause do not give any protection for a law abiding person to express their conscience based on their religious convictions and could leave persons exposed to criminal proceedings by someone who was opposed to their religion, or offended because of a differing religious teaching. Option 1 or 2 does address this to some extent but needs to go further to ensure an individual is protected should their moral convictions, when expressed in a non-threatenning or non-abusive way be taken exception to.

Christianity by its very fundamental principles, reaches out compassionately to all of mankind without prejudice which must have the protection of the law in instances where it may be violently reacted to.
Dace Sondors

Though Option 1 is the better of the 4 options, as it includes provision for the most “types of expression”, it still could have dire consequences to those who could be “accused” of a “hate crime”. This could be especially true if the persons who are ‘accused’ adhere to a religious group or way of thinking, and follow what they consider their “core beliefs”, including strong beliefs about sexuality and behaviours. There needs to be stronger safeguards put in the amendment for the freedom to hold these views and to disagree with others without ANY fear of accusation or reprisal.

Also, if freedom of expression is curtailed in any way then the new law could be used to silence political opponents, as disagreements could quite easily by labeled as hatred (which could have a detrimental effect already on the upcoming elections in May 2021). It doesn’t seem to me that this amendment has enough protection in place to allow complete freedom of expression!

Even though these are already amendments to a proposed bill, I don’t think they go far enough to allow healthy discussions in e.g. schools, universities, on television, among groups or individuals, for the way this amendment is written, many could be silenced and this would be disastrous for free and creative thinking.

Politics, morality and sexuality are among the most debated matters, which can create quite heated discussions. People can also change their minds about certain issues. Healthy debates are part of this. None of the 4 options distinguish between “legitimate debate” and “agitation towards hateful action”.

Furthermore, in the “introductory overview”, the statement, “additional amendments to insert a “reasonable person” test in relation to threatening or abusive behaviour, confirming this is an objective test”, raises considerable concern. Who would be the one deciding what is a “reasonable person” as even the one responsible for deciding could be prejudiced for or against a particular side? What some would see as an “objective” test, others might not – so where are the guidelines or who would be the ones saying what is “objective”?

Also the statement “new Stirring Up Offences can only be committed if an individual intended to stir up hatred, and this can be proven beyond reasonable doubt in a Court” raises great concern as when individuals would be “accused”, then there would already be great impact on their lives – for it can take great time, effort, disruption of family life and expense to “prove” that in a certain instance they were NOT guilty, and for many it could cost them their families, marriages, jobs, finances and even their lives!

People must be allowed to disagree (“we agree to disagree”). Hate crime is wrong, but if we get the legislation wrong, then a DIFFERENT KIND of HATE CRIME and UNRIGHTEOUSNESS will be initiated and perpetuated!!
Any curtailment of the freedom of expression can be viewed as a “road to dictatorship or Communism”, where those who “disagree” with others are criminalized, detained, silenced or imprisoned.

My view is that these proposed options do NOT go far enough to protect freedom of expression and should be taken back to the drawing board or be completely deleted from the proposed Hate Crime Bill and maybe revisited at a later date, since it seems they are currently being proposed under time pressure, which is never a good thing!!
Frank Daubney

I would like to comment on the 4 proposed amendments as follows:

For the freedom of religious debate, the Bill must have the additional protections that are included in options 1 and 2. However none of the options give sufficient protection around transgender identity and sexual orientation. Those who believe that certain behaviours are biblically wrong should have the clearly defined protection to express their views in a non-aggressive or hateful way. Ministers of the Gospel, for example, are duty bound to preach the Word of God. Where that conflicts with the views, opinions, lifestyles and attitudes of others they should not be prevented from doing so. The Christian community has a fear that freedom of expression is being eroded and is in danger of being snuffed out, that they are at risk of being shouted down and that any resistance to non-biblical behaviour will be called a hate crime. We have already seen occasions where the use of the “wrong” personal pronoun has been regarded as hateful. No reasonable person would condone hateful conduct or behaviour towards another person, but we must protect our right to reasonable debate. My right to disagree with another person and their right to disagree with me is one of the hallmarks of a free, and I hope caring, society. Respecting persons’ rights to disagree one with another is essential.

Please legislate to protect freedom of expression in this proposed new bill.
David Gregory

I wish to state my views on the current issue of freedom of expression amendments for the current Hate Crime Bill. I have read through the proposed options and found them quite sinister, particularly those that seem to place elements such as religion beyond any form of criticism. The only option I see as in any way compatible with a democratic society is option 4* - I have been increasingly alarmed at the genuinely Orwellian moves by the current administration to elbow in these changes, beyond all alarm bells raised – from LGBT groups to religious groups to the actual Police Federation themselves. I feel it is clear to anyone with their eyes open that the first 3 options are a mix of the same type of curtailing of freedom of expression. I believe this is nothing more than an attempt to browbeat and kettle people into a narrow band of 'acceptable' speech that may be expressed. By controlling how people express themselves you control what they think, which I never thought I would find in a country who's administration perpetually champions for its own independence and freedom. I am aware the previous statement may be perceived as cheeky but I find it a factually frustrating hypocrisy.

I attach a copy of Option 4 which I believe is the most acceptable simply because it seems to reduce the already curtailed freedom of expression in Scotland by the least amount. I feel this Bill is wrong and only have chosen option 4 as this is the scope of the current draft amendments. No child should grow up having to mentally check if they are 'expressing' themselves 'appropriately' for basic acts of discussion and disagreement which has been hashed out by a Justice minister who seems to be deaf to the whole spectrum of groups in society saying No. If this becomes law then I believe they will. These proposed 'options' are wrong, patronising and have been challenged again and again and again from all angles of society. Freedom of expression is sacrosanct for a free society – this is why countless immigrants and refugees come to such nations as Scotland – for a chance to be free of such oppression. I do not consider that statement hyperbole.

I have lived here for 12 years and ironically fall into several of the 'marginalised' and 'minority' groups that are being drummed up in support of this Bill. I feel like a scapegoat for something that feels at the very least wrong and at the worst – genuinely a framework to control what people say not only outdoors – but also in their own home. Government intrusion into views shared within a home are both unacceptable and totalitarian. It is clear the government will just push ahead with this anyway, but I please ask that the committee record my views to create a document of record to show my opposition to this curtailing of freedom of expression in Scotland.

Thank you for your time,
Doug Henderson

It is essential that the above Bill has the additional robust protections for religious debate included in Options 1 and 2.

However, there is not enough protection in any of the 4 Options for beliefs concerning sexual orientation and transgender identity. The Freedom of Speech protections for these must be as strong as those regarding religious beliefs in Options 1 and 2. These raise moral and political issues which are widely and hotly debated.

It is absolutely fundamental that freedom to disagree about them is protected in the new bill.

The Government is proposing to water down the existing protections for discussion around sexual orientation. This cannot be right. The 4 Options all say the same thing in relation to sexual orientation, in spite of being the most controversial. There should have been more Options.

It is amazing and very disturbing that under the proposals, someone could face up to seven years in prison for spoken words, for instance, in relation to transgender identity, if they used a person's birth name or pronoun; or in relation to sexual orientation, if they disagree with same sex marriage. This is a very serious penalty and needs strong safeguards.

In a free and civilised society, we must be allowed to strongly disagree without fear of prosecution.
Duncan Ryan

Many thanks to your committee for your ongoing work to serve the people of Scotland. I also thank you for this opportunity to respond to the four options for the protection of freedom of expression proposed for inclusion in the Hate Crime and Public Order (Scotland) Bill.

I write as Pastor of a church in rural Aberdeenshire. I am keen for this Bill to protect the rights of all to be open and unapologetic about their personal beliefs and to have the liberty to engage in honest and robust debate without fear of prosecution. Following the progress of the Bill so far, I have serious concerns. Having read through the four options I would make several comments:

The additional protections afforded to religious debate (in Options 1 & 2) are essential. The freedom to critique the views of others (however deeply held) and to honestly seek to persuade someone to change their mind is a fundamental part of human interaction. But I think the committee needs to recognise that this does not only apply to religious beliefs, it applies to all issues of morality and ethics. Therefore, the protections proposed for freedom of expression relating to sexual orientation and transgender identity are not sufficient in any of these 4 options (in fact, no choice is being presented, the provision is the same in each). Similar protections in relation to religion in Options 1 & 2 should also be applied to matters relating to sexual orientation and transgender identity.

The proposed penalties for being found to break this law are severe. I have no issue with that so long as the necessary robust protections are put in place to prevent spurious, or politically motivated, reporting to the Police – or worse, actual prosecution of those whose only ‘crime’ is to have expressed an unpopular view on sexual ethics.

There still remains an opportunity to rescue this Bill and so protect our most fundamental freedom of all – the freedom to think and formulate a belief system, to articulate those beliefs and to persuade others of their merit. I am confident that no one on the committee wants to impinge on that but this Bill, including these proposed options for protecting freedom of expression, fall short.

Thank you for all your hard work as a Committee.
Ella Robertson

Thank you for the call for submissions. I would offer my support for option 1 – it allows for discussion and criticism on all the characteristics and provides some further protection for people to express antipathy, dislike, ridicule or insult on matters relating to religion.

I urge that the Justice Committee seeks to further enshrine protection of free speech into law. The bill should extend the additional free speech provisions relating to religion to the other characteristics.

It is not clear what "criticism" or "abusive" encompass and more could be done to remove the uncertainty and subjectivity.

It is worth reflecting the ongoing debates within the gay and trans communities about the nature of gender and sexual identity – guidance issued by organisations such as Mermaids has dramatically changed in recent months, let alone years, and it is important that debate not be stifled by legislation. For example, it is now deemed incorrect to say that a trans person was “born in the wrong body” whereas in very recent guidance that was the most commonly used explanation by trans organisations. As these debates progress, our legislation must allow for full and frank freedom of speech.

It is also worth noting the current climate of “cancel culture” and “mass offence” which has led to numerous well documented claims about people feeling fearful of having civilized conversations on controversial topics. Our legislation must make clear that freedom of speech includes the license to offend – not to incite violence or trauma – but that free speech, which is a pillar of a democracy, includes subjective offence.
Ernie Shippin

I would like to express my appreciation for the willingness of the Justice Secretary and the Justice Committee to sympathetically consider a clause relating to freedom of expression which covers all cases, not just those currently covered in clauses 11 and 12, which currently relate to (criticism of) religion and sexual orientation. However, I would have to say that the time-scale for commenting on options for protection of free speech is ridiculously short.

I shall assume that it is widely seen as necessary to have some provision for freedom of expression. This is in line with my own view that it is vital that free speech protection is included and is carefully specified to prevent people who may be minded to use the hate crime provisions as a tool to shut down opposing views being able to do so and also to minimise the risk of people “self-censoring” in public discussion of the specified characteristics, i.e. refraining from speaking for fear of becoming involved in police investigations and criminal prosecutions. I do not think that having robust protection for freedom of speech diminishes the policy aim of the Bill, to prohibit hate speech (or hateful speech as I prefer) but helps to provide a balanced piece of legislation.

I am of the view that there should be an “omnibus” clause covering all of the specified characteristics and thus would favour option 1 of the letter from the Cabinet Secretary for Justice (J/S5/21/7/1). It seems to me to be best to include all of the specified characteristics make clear that discussion of these will not automatically “trigger” the legislation.

I note that option 2 is identical to option 1 but without specific protection for expressions relation to race/colour/nationality etc. I assume that this option may be thought appropriate because there can be no legitimate “discussion or criticism” of these characteristics. I also note that the current structure of the Bill separates the characteristic of race/colour/nationality etc from other protected characteristics – clause 3(1) relates to race/colour/nationality and clause 3(2) relates to the other characteristics (and the provisions in these parts of clause 3 are not identical). If the Committee feels that the characteristic of race/colour/nationality requires separate treatment then option 2 may be more attractive although I am not convinced. What is protected is “discussion or criticism” of the characteristics and I would have thought it possible to “discuss” issues to do with race/colour/nationality without anyone considering that to do so is threatening, abusive or insulting. A banal example might be discussion/criticism of a particular national football team. A more substantive example might be discussion/criticism of the actions of a particular nation from a political perspective, or actions of a particular group or faction from within a particular nation. Better to include this characteristic in the freedom of expression clause to make clear that not all discussion, or even criticism is automatically ruled out. This is perhaps especially so when clause 3(1) includes insulting behaviour as well as behaviour which is threatening or abusive, and also includes behaviour which, although not intended to stir up hatred, will fall foul of the law if a reasonable person thinks that it is likely to do so.
Clause 11 expands protection to criticism of religion. This has been added to options 1 and 2 of the CSJ letter. I would suggest that it is best to put all of the protections in one clause (and presumably deleting clause 11). As religious person (Christian) I would hope that expression of my religious views will be protected but have no difficulty seeing protection extended to those who may wish to discuss or even criticise my views, or those of an adherent of any other religion. The alternative in options 3 and 4 is to add a more general reference to religion as a protected characteristic to the protected list but I am of the view that it is much better to have the more detailed, and hopefully stronger, protection as per options 1 and 2 (although the down-side to this is the complexity involved).

I am concerned that the protections mentioned in clause 12 are not replicated in the proposed four options. Unless clause 12 is to remain (which would seem odd if the aim is to consolidate free speech protection in one clause) it would seem appropriate for this provision to be included in the proposed options 1 and 2 at least, in order that the type of discussion/comment mentioned in clause 12 be specifically protected.

Further I would suggest that the Committee consider whether it is appropriate to expand the type of protection offered in paragraph 2(b) of options 1 and 2: “discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards” should be extended to more than religion, e.g. certain philosophical, political or psychological beliefs, such as beliefs relating to transgender identity. If not then there is a risk that such expanded protection as is given in relation to religion will be deemed not to apply to such beliefs. This is perhaps especially important as “religion” and “religious beliefs” are not defined, nor is the word “identity”. What is the relationship between an identity and a belief?

Part of the problem for me is the phrase “antipathy, dislike, ridicule or insult” in paragraph 2(b) of options 1 and 2, which is perhaps an odd mixture, which includes some terms which are prima facie derogatory. In relation to the word “insult” it leads to an odd situation for option 1 as insulting speech in relation to race/colour/nationality is included in the definition of the offence in clause 3(1), but is specifically protected in relation to religion?! More generally I would feel more comfortable if the phrase was limited to “dislike or ridicule” which would hopefully meet the need to allow robust criticism of beliefs of another without the inherently negative personal connotations of “antipathy” and “insult”. Alternatively paragraph 2(b) could be deleted (and religion added to 2(a)) but I am not sure that this solves the problem of protecting (articulation of) beliefs, religious and other.

So in summary I would recommend adopting option 1 but limiting the phrase “…antipathy, dislike, ridicule or insult” in paragraph 2(b) to “…dislike or ridicule” and I would wish the Committee to expand the protection in paragraph 2(b) of options 1 and 2 to include reference to philosophical, political and psychological beliefs. If this is seen as too difficult/vague, I would favour including specific protection in that paragraph for discussion of issues relating to sexuality and/or transgender identity as there are clearly sincerely-held, different views about these, which should be allowed to be articulated without fear of criminal punishment. The protection currently set out in clause 12 should also be included in my view.
Fiona Beveridge

1 really good to include options 1 and 2.

2 in a democracy, I think its citizens should be able to express any point of view – politically correct or otherwise, whether I like it or not. I’d like to see the Bill tighten up on giving people protection for stating their beliefs on anything. In other words, I and everyone else should be legally free to voice my opinion on all LGBT issues.
George Smith

Having considered the options set before us in the above call for views I offer the following:

• Faith groups have been at the core of building good society for centuries, especially in our country of Scotland, and it is imperative that they have the additional protections of Options 1 & 2.

• Whilst individuals should be free and not feel afraid to choose their sexual orientation, equally a wider debate on sexual orientation cannot be stifled, or worse criminalised. The sexual orientation of our population is simply too important for this to happen. Therefore it is a mistake to water down the bill’s protection for discussions around sexual orientation.

Additionally, whilst it is right that the law moves to protect peoples of all sexual orientation, this is an area which is changing quickly and great care needs to be taken to ensure a right balance is achieved between protection of the minority and the free speech of the majority.
Gerard Baxter

I write to express a personal concern that within the amendments of the Hate Crime and Public Order (Scotland) Bill there is scope for preaching the Christian Gospel.

We live in what is nominally a Christian country and indeed it’s generally recognised that St Columba came in 563 AD with the mission of the spreading of Christianity.

Someone passing by a gospel preaching in the street may not agree with or like what is being said but the quotation of Holy Scripture and the gospel message cannot be deemed ‘hate crime’.

I would ask that an amendment is made in line with ‘Option 1’ in the annex to allow this important service to continue and could some provision be made that protects the right of any individual to say things that others might consider disturbing or even offensive, providing these are not said in a threatening or abusive manner and thus not intended to stir up hatred?
Gillian Frew

Thank you for the opportunity to respond. I do think this legislation requires further time to make sure it is fit for purpose and should therefore be delayed.

People should have freedom of expression be able to share, discuss and disagree in a respectful manner as part of an open society. I. Options 1 and 2 use the words discussion and criticism which appear limiting and woolly. Option 1 seems to cover the most areas but I do believe this is or the wording is adequate to allow freedom of expression. For example people should be able to discuss, debate, critique religion whether you are for or against the topic being discussed. Religious beliefs are a fundamental part of many people and should be protected. People should be free to disagree. This does mean you hate someone or are abusive towards them. I think another option should be created instead.
Heidi Hobbs

I am gratified to see amendments thus far to the Bill mean a charge of 'stirring up hatred' now requires intent to be proven, rather than the previous draft’s ominous terms of 'intent or likelihood'.

Briefly, I would like to restate my personal opposition to the concept of 'hate crime' laws, which while perhaps well-intentioned, risk creating a tiered system of justice whereby some victims' suffering is recognised more than others. For example, two identical victims, of identical physical assaults, in identical circumstances, could see their attackers receive different sentences purely on the basis that in one instance a racial or homosexual slur was used during the assault. This creates a hierarchy of victimhood which would justly be resented by those victims whose perpetrators did not receive the 'hate crime' bonus on top of their sentence. It conveys a message of inequality before the law, antithetical to the notion of fairness and justice for all.

Regarding the four possible options outlined in the Annex document dated 17th January 2021, I would strongly vote for Option 1, as this provides for the broadest protection of freedom of expression in relation to the broadest number of characteristics.

I am deeply disturbed by the omission of the protection for "expressions of antipathy, dislike, ridicule or insult towards religious beliefs or practices" from options 3 and 4. The entire purpose of freedom of expression provision is to maintain the right of persons to express objectionable views, not merely polite criticism! As the great progressive thinker Noam Chomsky concluded:

"Goebbels was in favour of free speech for views he liked. So was Stalin. If you’re really in favour of free speech, then you’re in favour of freedom of speech for precisely the views you despise. Otherwise, you’re not in favour of free speech."

On this basis I feel Options 3 and 4 must be excluded from consideration, and any provision adopted must include specific protection of "expressions of antipathy, dislike, ridicule or
insult". Without such, journalistic, artistic, and satirical expression in particular could be seriously imperilled. Examples include the musical 'The Book of Mormon', the film 'Monty Python's Life of Brian' - both full of ridicule and thereby deeply insulting - plus books such as Kittredge Cherry's 'Art That Dares: Gay Jesus, Woman Christ, and More', Dan Brown's 'The Da Vinci Code', and Salman Rushdie's 'The Satanic Verses'.

Further, I would welcome the addition of the "expressions of antipathy, dislike, ridicule or insult" clause to subsection (2) (a) also, so that it read:

(2) The types of expression referred to in subsection (1) are—

(a) discussion or criticism of matters relating to, or expressions of antipathy, dislike, ridicule or insult on the basis of—

(i) age,
(ii) disability,
(iii) race, colour, nationality (including citizenship), or ethnic or national origins,
(iv) sexual orientation,
(v) transgender identity,
(vi) variations in sex characteristics

I imagine the above suggested amendment is unlikely to materialise, as it is so contrary to the general direction of travel. However, as unpleasant as views prejudiced towards the groups listed may be, in a free society where one truly has freedom of expression, one must be able to give voice to such opinions, no matter how ignorant, irrational or indefensible. The boundary of free expression should be threats of violence or discrimination - both of which are already established in other legislation. The absence of the 'antipathy, dislike, ridicule or insult' protection in the wording of subsection (2)(a) effectively criminalises the expression of 'mean' or abusive words, or irrational dislike of a person or group, which in the absence of actual threats or discriminatory practices, should categorically not be the business of criminal law.

The requirement for expressions of the type cited in subsection (2) to amount to "threatening or abusive behaviour" before a prosecution is sought is commendable, but
problematic. In respect of section (2) (b) on religion for example, what is the difference between expressing an 'insult' and 'abuse'? One could argue that to insult a person's religious beliefs is, in itself, abusive. The same could apply to expressions of ridicule. Equally, under (2) (a), a transgender person may regard as abusive the statement that altering the physical body does not alter your sex, which is determined by chromosomes. The fact that this is accepted scientific fact would afford no protection from prosecution in this instance, were it considered to be abusive, and could lead to calls to prosecute people who express inconvenient ideas, irrespective of their veracity.

Concepts such as 'abusive' are highly subjective, and the assertion on page 2 of the Annex document that the inclusion of "... a 'reasonable person' test in relation to threatening or abusive behaviour, confirming this is an objective test" is misguided. Even defining the mythical 'reasonable person' is highly contestable, as what is considered reasonable will differ widely amongst different social, religious, and economic groups.

In summary, if the Bill is to progress, I'd like to strenuously support the adoption of Option 1 with its protection of "expressions of antipathy, dislike, ridicule or insult" - preferably applied to subsection (2)(a) as well as (2)(b). I feel this stipulation must be included in any adopted provision on free speech to avoid the potential erosion of the right to mock, satirise, and challenge authoritative groups and ideas, which is essential to an open and free society.

While I sympathise with the good intentions of those drafting the Bill, seeking to prevent cruelty and distress, this desire must be weighted against the restrictions imposed on the liberty of the population as a whole, and the risk of becoming an intolerant, totalitarian state, in which even the words spoken by its citizens are regulated.
Ian Paynter

I write with the greatest respect as a Christian and a believer that government is ordained by God for the good of all the people.

I have followed the proposal of this bill with interest and concern.

As a Christian, I appreciate living in a country where we have strong protection of freedom of expression that allows me preach publicly and speak about my faith with the good of everyone at heart. There are many others, who like me, have a strong faith and belief and love to speak about it and it is essential that this privilege and freedom is preserved in any changes that are made to legislation.

I am therefore concerned about the 4 options proposed. In my opinion,

• Option 1 is the best of the 4 options proposed.
• Option 2 is not as good as Option 1 in my opinion but still provides better protection of freedom of expression than Options 3 & 4.
• Options 3 & 4 do not provide adequate freedom of expression to individuals and could result in significant confusion.

The topic addresses sensitive subjects and is open to much debate, the further one goes into any specific aspect of it. Allowing mere discussion and criticism is not enough. Definitions of what may be regarded as insulting or abusive are open to subjective interpretation and we clearly need broad protection for individuals to avoid erosion of freedom of expression, speech and religion by the new legislation.

I feel that there is a need for further additional protection and clarification in this bill in addition to what the government proposes. The government is responsible to ensure that everybody is protected and free to express their views, faith or belief. Can some further wording be inserted to protect the rights of individuals in this way?
Jean Culley

I am led to believe that the Justice Committee will meet on Monday 22nd February 2021 to take evidence on proposed amendments on freedom of expression in the Hate Crime and Public Order (Scotland) Bill.

I also note that ‘stakeholders’ can offer views to inform the decisions to be made by Parliament. I am therefore writing to express my concerns about proposed amendments specific to freedom of expression and gender critical views.

My overriding issue is that what probably began as well intentioned reform to promote equality and protect the rights of minority groups has in my opinion, led to a situation where women’s hard fought sex based rights will be threatened, lost in woolly, unspecific, legalese. Even stakeholders in the law profession who offered feedback on the draft Bill wrote that ‘where freedom of expression is being affected by legislation, the onus is on those making the changes to explain the justification,’ and that the content of the Bill is sufficiently vague that, ‘the idea of producing example scenarios to illustrate the conduct which would be subject to criminal prosecution’ should be considered.

One needs only look at what is happening across the UK where feminist campaign groups such as Woman’s Place UK is designated a ‘hate group’, where a woman cartoonist had her contract cancelled for producing a cartoon commenting on the loss of women’s single sex spaces (from one anonymous complaint), where Dr Julia Lang, feminist author and researcher was physically ejected from an open event on International Transgender Day by seven police officers and security guards (she had neither spoken nor disrupted the meeting, just her physical presence was seen as a ‘threat’. ) This is the thin end of the wedge.

The police, who are bound by neutrality following only the laws of the land, are in danger of being drawn into the politics of Gender Reform because the proposed Hate Crime Bill is still open to misinterpretation and subjectivity thus free speech/expression in relation to gender critical views whether they appear in journalism, performance art, blogs, or the comments of ordinary citizens can, according to this Bill, be a criminal act.

Taking England and Wales as an example, over 120,000 hate incidents have been recorded in the last five years, none of which were a crime. This is the future for Scotland if this hastily concocted ‘catch all’ Bill is passed where the police spend their hours chasing ghosts and becoming the ‘Thought and Language Police’. Surely their resources could be better employed? Already crime statistics are being skewed by males who have abused children, and raped and sexually assaulted females by being classified by the police as women because they have chosen to self-identify as such. This is a further abuse of victims and the system.

Of the four Options offered by the Justice Secretary the one of least contention is Option 1. I note that Mr Yousaf comments that NONE of the options are preferred by Scottish Government (SG) which I think is very disheartening. Whether intended or not, his choice of language suggests the SG is paying ‘lip service’ to feedback. Also the fact that only three
days were given to voice any objection to the Bill appears to be organised in such a way to limit responses and is indeed a mechanism for the SG to push through its ideologies unopposed. However, it is incumbent upon the SG that if they wish to change laws then they must win the support or at least have the consent of the people on whose authority the law is enforced. Half of our population (biological women and girls) are sleepwalking into a situation where this legislation will deny them their rights of speech, expression and safety. There is already evidence that certain individuals and indeed Trans lobby groups are planning to use this legislation to report women who campaign against changes to the Gender Recognition Act (GRA) with an intent to criminalise them.

As mentioned, Option 1 is flawed as it does not go far enough to protect free speech particularly in the debate around women’s rights and reform of the GRA. When there are existing cross party concerns and the Justice Minister himself cannot explain transgender identity or whether there are in fact only two sexes without incriminating himself as a transphobe or a biology denier then the Bill is insufficient in its detail. Already Tim Hopkins of Equality Network and Cllr Graham Campbell interpret and publicise that using the wrong biological pronoun for someone thus knowingly or unknowingly ‘misgendering’ them, is in their opinion a ‘hate crime’.

In Option 1 ‘Trans’ people will be able to express feelings of “antipathy, dislike, ridicule or insult,” towards women but women are confined to ‘discussion and criticism’. There is voluminous evidence on social media to illustrate that members of the Trans community have used language that is sexually threatening, abusive and degrading towards women. This is an imbalance that needs correcting in the Bill.

Overall, Option 1 should contain the extra free speech provision extended to all characteristics, plus a clear Government statement included that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice or campaigns to retain women’s rights in law or to challenge policy changes.

Brent Haywood, (lawyer, Scottish law firm Lindsays) stated on the ‘Reaction’ blog that lawyers in Scotland who had commented saw the Bill as “Astonishing attack on freedom of expression.” The article continues, “Scottish, English and European lawyers speaking to Reaction believe the bill provides for an alarming expansion of state power...”

The Bill as it stands has failed to deliver on the content of Lord Bracadale’s review by neither offering “clearly defined” laws or “well developed” criminal procedures and is clearly in contravention of Article 10 of the European Convention which protects freedom of speech from unjustified restrictions.
Jim & Elizabeth Robertson

The Scottish Government’s Hate Crime and Public Order (Scotland) Bill intends to criminalise ‘stirring up hatred’ against people on the basis of certain ‘protected characteristics’, including religion, sexuality and transgender identity.

In such an important matter, why is Holyrood’s Justice Committee holding such an extremely short consultation? Why the rush? Especially as a poorly drafted and rushed Bill could lead to innocent people being locked up. People must be allowed to disagree about these things without fear of prosecution.

Justice Secretary Humza Yousaf has put forward four different options for free speech safeguards to be added to the Bill, but there are just a few days for views to be procured. The deadline is Monday (22 February) at 10am. I ask again, Why the rush?

The first two options include robust protections for debate on religion, which is important and welcome.

But none of the options give strong enough protection for discussions around sexual orientation and transgender identity. The Committee even propose watering down existing protection in the Bill for speech about sexual orientation. But everyone knows these are hotly-debated issues.

I have to agree with James Gillies of the Free to Disagree Campaign when he states, “I for one am deeply concerned at the prospect of hate crime laws which do not allow for the most robust protection of free speech – especially on issues which are highly contentious. How would the likes of Joanna Cherry fare when comments about trans rights not only lead to a political demotion but, potentially, a summons from a procurator fiscal? Humza Yousaf’s refusal to answer the question (on the number of sexes) and the shape of his hate crime proposals should worry all of us who value free and open debate.”

Watering down the Bill’s protections for discussions around sexual orientation is a mistake.

Whilst Religious debate has the welcome additional protection included in options 1 and 2, none of the options give enough protection for beliefs around sexual orientation and transgender identity. Indeed, because it is such a toxic issue, explicit protection for free speech about transgender identity is essential.

Why are we not being given more than four options, which are not really options at all when it comes to sexual orientation or transgender identity? They all say the same thing despite relating to the most controversial aspects.

The free speech clauses are essential to prevent people trying to use the new law against people that disagree with them or that they simply just don’t like. There is a great risk that politically-motivated, anti-religion & other individuals & groups will label disagreement as hatred to try to silence their opponents. Police Scotland has said
free speech clauses are important to prevent officers being inundated with vexatious reports.

Lord Bracadale's Independent Review on Hate Crime stressed the need to distinguish between legitimate debate and rabble-rousing. The Bill fails to do this. Parliament cannot afford to get this wrong.

We know that we are not alone in our concern at the potential impact this Bill could have on our freedoms. Indeed, as we stated in previous correspondence, it has brought together opposites, The Christian Institute and the National Secular Society, who have combined in the “Free to Disagree” Campaign.

Therefore, we would ask that you give serious consideration to our concerns. We know that they are shared by many people across Scotland and trust that they are shared by you.

Thank you for the work you do on our behalf.
Alexander Cormack

Firstly let me express my disappointment at the short time period allowed for this particular consultation. It is really not acceptable.

I am involved in public discourse in politics and religion and am therefore very concerned that none of the options listed in this consultation ultimately provide robust enough protections.

While I concede that the first two options do give some protection for debate on religion and that is welcome, none of the options provide sufficient protections on contentious subject areas such as gender identity and sexual orientation.

Issues of morality and politics need to be debated. Often debates can be vigorously contested by both parties but there shouldn’t be fear of prosecution to either party. Freedom to debate must be maintained. Freedom to disagree must be maintained. It is essential that freedom to debate with others, where one party may as a result of good debate change their view, is maintained.

Disagreement is not hatred. As none of these options provide sufficient protection on controversial area such as gender identity and sexual orientation there is a danger that politically motivated complainants will seek to silence voices of opposition.

Safeguards and free speech protections must be absolutely robust. The penalties for those being convicted are very severe. If we are to have a free society free speech must be maintained.

The proposed legislation must be improved or even better scrapped.
John McNicol

Whilst I welcome the protections afforded by options 1 and 2 in respect of religion and religious activity, I believe in all circumstances and all options this should be protected. Those of us who have a religious faith are often times subject to abuse, ridicule and slander, but I would never deny an individual’s rights to express such views. Freedom of expression has to be universal in all circumstances and no view should be subject to greater protection.

As currently drafted, all four options fail to give enough protection for those who hold religious beliefs around sexual orientation and also transgender identity. This has the effect of creating different tiers of freedom of expression depending on the subject that someone is expressing a view on. This is surely wrong in a free democracy such as Scotland. In respect of sexual orientation and transgender identity the freedom of speech protections should be much the same to those on religion.

Under the Bill as drafted, a person could face many years in jail for saying something. Surely this is a regressive step in a democracy such as Scotland. People should be free to say what they want, aside from inciting violence, without fear of imprisonment, or indeed any criminalisation.

All of the four options are silent on sexual behaviour, instead the clause only covers “matters relating to” sexual orientation. Discussion about and regarding sexual behaviour should be added to discussion about sexual orientation as an issue on which there should be absolute freedom of expression.

I believe in a free society where people should be entitled to say what they want even if I disagree with what they are saying. The bill as currently drafted curtails freedom of speech which is a hugely backward step in a country such as Scotland.
John Steven

I am grateful for the opportunity to make representation to the Committee regarding the proposed options for the new Freedom of Speech clause in the Hate Crime Bill.

As having been a practising Christian all my life and having witnessed the benefits that Christianity has bestowed on this country, I see it as vital that nothing that is passed into legislation should impinge on the fundamental right to freedom of speech, expression, announcement or discussion of the Christian truth, including the right to robustly refute other doctrines which may serve to oppose or undermine the Christian faith. For many years I have engaged in bringing the truth of God’s gospel to others, including the regular announcement of the name of Jesus in public places, and have witnessed the comfort and solace resulting from this service. Without a robust freedom of speech provision, this liberty will be undermined.

I would therefore appeal to the committee to adopt Option 1 of the proposed options as providing the best provision to safeguard freedom of speech as affecting these important issues. Additionally, I consider that a further clause would be helpful to remove any doubt as to the right of anyone, in defence of sincerely held truths, to give expression to what may cause shock or even offense without prejudicing the thrust of the Bill to criminalise threatening or abusive behaviour or speech.
Julien Scott

The proposed Hate Crime and Public Order Bill has raised deep concerns for me on a number of levels. However, in relation to this specific consultation I wish to raise three key points.

- Firstly I believe religious discourse must be given the addition protection given in options 1 and 2 of the amendments.
- Secondly I believe watering down the Bill’s protections for open discussion around matters regarding sexual orientation is wrong.
- Thirdly I believe that none of the options presented provide sufficient protection for beliefs held on sexual orientation and transgender identity. These are both moral and political matters and should be open for vigorous debate. People must be able to disagree with the government without fear of prosecution.
Kenny Gillies

As Pastor of Livingston Elim Pentecostal Church, West Lothian, I write with respect to the recent invitation to respond to the options proposed by the Cabinet Secretary for the inclusion of amendments into the Hate Crime and Public Order (Scotland) Bill relating to freedom of expression.

As I have communicated before, I believe there already exists in criminal law sufficient safeguards to cover threatening or abusive behaviour that is likely to cause fear or alarm or stir up hatred. The actual reality is that no new law is needed. As you are well aware, this is a Bill that has generated huge concerns right across Scottish society and beyond from people of both religious and secular backgrounds.

In relation to the four different options put forward as amendments for consultation, whilst it is appropriate that the first two options do include safeguards on freedom of expression on matters of religion, it should also be the case that this applies in particular to matters of sexual orientation / behaviour and transgender identity as well.

It is crucial that in any democracy we have the right to freely debate issues of sexual ethics as well as religious belief and practice without people being potentially accused of stirring up hatred and having the threat of police involvement and criminal prosecution hanging over them.

On behalf of a congregation of Christians who base their religious and sexual ethics upon the revelation of Jesus Christ and the Word of God, the Bible - a book that has served and informed the people of Scotland for hundreds of years - I trust you take on board our serious concerns concerning this Bill.
Lauren Leeman

I am writing to convey my concerns regarding the four options for a freedom of expression provision in the Hate Crime and Public Order (Scotland) Bill.

First and foremost, I do not believe any of these four options are robust enough and I strongly request that scrutiny of this crucial part of the bill should be extended. I do not think any of the provisions provide adequate clarity on what is offensive speech and what is criminal speech. I fear this will have three harmful consequences: individuals and organisations will be fearful of prosecution and then self-censor completely legal speech; law enforcement and the prosecutors would be unclear what should be investigated and prosecuted; and spurious and malicious claims may be made as a result of taking advantage of imprecise language.

I had previously written about my concerns regarding the exclusion of the characteristic of sex which is inexcusable full stop. These four options make me even more concerned about a hierarchy of characteristics. Whereas there is no provision for sex, the debate around the conflict between transgender identity and sex would allow all manner of offensive speech to be made about women based on sex but any critique of transgender identities would be restricted to discussion and criticism.

Even the strongest of the four options, option 1, further extends the hierarchy of characteristics by allowing freedom of expression to include ‘expression of antipathy, dislike, ridicule or insult’ in relation to religious belief or practice. Why shouldn’t ‘expression of antipathy, dislike, ridicule or insult not be protected in terms of the other characteristics?

Freedom of Expression is too important to have such anaemic protection.
Lucia Clark

I consider it vitally important for freedom of speech protections to be as robust as possible, in a functioning democratic society. For that reason, I am deeply concerned about the “stirring up hatred” offences, particularly as there is already separate provision in law for “threatening and abusive” behaviour.

If these are to remain in the Bill, the free speech provisions should be broad enough and clear enough to ensure that free speech, particularly on sensitive issues, is fully protected – and also that individuals are not cowed by the existence of the legislation into not debating or broaching certain issues at all.

I therefore do not consider that any of the proposed free speech provisions go far enough to sufficiently protect freedom of expression. I consider that particularly in relation to issues linked to religion, sexual orientation and transgender identity, where a number of different and opposing views are held within Scotland, there needs to be provision for more than just “discussion and criticism”.

In relation to religion (or lack of religion), people must be free to debate, argue, proselytise or urge change. I would therefore support Option 1 (if the stirring up hatred offence is to remain). I would also however suggest stronger wording in relation to freedom of speech in relation to at least some of the other protected characteristics.

I would ask that given the importance of this bill, scrutiny be extended for an appropriate period.
Margaret Rowbury

The reduction and weakening of the protection of Freedom of Speech included in this Bill is erroneous. Specifically reasonable religious debate needs to be protected in options 1 and 2.

None of these options give adequate protection with regard to the beliefs of many Christians and those of other major faiths around sexual orientation and transgender identity. Such freedom of speech protections should be more in keeping with those concerning religion. It seems like a very retrograde development on the part of the Justice Committee and the Secretary of State.

In fact the four options mentioned seem to offer nothing at all in these matters.

They all appear to be saying the same thing, despite these matters being the most controversial.

Matters concerning morality and politics can engender healthy debate, that opens up opportunities to deepen or change minds, whether they are about sexual orientation, transgender identity, or other matters. Such healthy debate, done in a respectful manner, should allow for disagreement without fear of criminalization.

This has always been an important and treasured part of British democracy and freedom. In fact, in our schools younger generations are encouraged to learn about healthy debating from an early age. Many of these then go on to use such skills in parliament.

Parliament has a democratic duty to further the continuity of Free Speech Clauses so that a new law cannot run the risk of being used against political opponents.
Marianne Pearson

This is a very short comment because the time is so limited. Giving people a single weekend to comment on amendments to such an important piece of legislation is an absolute farce and shows how little you value public opinion.

None of the four amendment options proposed will allow women the freedom of speech we need to discuss the hugely detrimental impact GRA reform leading to gender Self ID will have on the safety and well-being of women and children.

I am a scientist. I believe in the biological, scientific fact that humans can’t change sex. Humans borne with XY chromosomes can present phenotypically as female but remain genotypically male. Transwoman are not women, they are males who have transitioned to a female appearance. This bill will mean that I cannot express those deeply held views without fear of being accused of hate crime. For what? For expressing a belief in scientific fact?

The gender ideology the SNP endorses with GRA reform will have huge consequences for women, it will allow male bodied people to access women's shelters, prisons, toilets, changing rooms and sports. If we can no longer define what a woman is because the definition has become so large it includes anyone who feels a little bit feminine today then we can no longer monitor the negative impacts female bodied people suffer because of their biology. Male on female violence becomes obscured (3 women a week killed by domestic violence during lockdown!), salary and pension inequalities become obscured. Women and children are put at risk if safe spaces can no longer be sex segregated.

We have to be able to discuss this. We have to be able to discuss how trans rights impact women and children but this bill will limit women’s ability to do this without fear of being accused of hate crime. The legislation will be used as a tool to gag women who wish to campaign against GRA reform.

The bill will effectively stop women from being able to voice their opinions on gender self ID while at the same time making no attempt to address the vitriolic abuse that is regularly directed at women. Why is hate speech acceptable when it is directed at women? Why are threats of violence towards women such as, “Die in a fire Terf scum,” not just tolerated but normalized? Rape threats are part of everyday life for women and the “hate crime” bill makes no effort to address this. Why the difference? Why is women’s speech being controlled while no attempt is made to address the vicious misogyny demonstrated everywhere on social media and even in the streets?

This is a bad bill, it will lead to harmful legislation that will do nothing to resolve the gender debate and everything to inflame it. The amendment option 1 is the best of a very bad job but it does not go far enough to protect women’s freedom of speech. The amendment should make clear that this bill will not criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women’s rights in law or to challenge policy changes.
M. Toms

I would like to offer the following response to the four different options for free speech safeguards to be added to the above Bill:

1. Options 1 and 2 offer strong protection for discussion on religion, safeguarding this subject. This is welcome, as these options do not stifle or seek to shut down healthy public, or private debate around the topic of religion.

2. Such robust protection for religion, as in options 1 and 2, is not afforded to discussions around sexual orientation and transgender identity. These topics can similarly be as sensitive, controversial and divisive as religion and it is therefore of equal importance to seek as strong a protection and safeguarding of these subjects for healthy public and private debate.

3. Within these 4 options there absolutely must be the freedom to discuss and debate sensitive and controversial issues, without fear of criminalisation. Attempting to shut down, suppress and criminalise opposing viewpoints does not advance a democracy, but destroys it, preventing truth and promoting falsehood. A democratic society allows its citizens to have free speech, legitimate debate and “the right to be offensive”, to expose falsehoods and reveal truth. Without such a basic human right “to say what you think” and have the freedom to disagree, there is no true democracy.

In accordance with Article 10 of the European Convention on Human Rights I urge the Scottish Parliament to ensure the rights of everyone in society to freely express their beliefs and have the right to freedom of expression.
Michael McLeister

Firstly thank you to the Scottish Parliament Justice Committee for all your hard work with regards to this. I would like to make comments in response to the four options for free speech safeguards in the proposed hate crime and public order bill.

I applaud and welcome the additional protection towards religious debate included in options 1 and 2.

I believe none of the four give enough protection for different beliefs towards sexual orientation and transgender identity. The four options don’t give any different options in this area. Why can the freedom of speech protections not be similar to those around religion in options 1 and 2?

I am concerned that under these options politically motivated complainants can call disagreement hatred when it isn’t hatred. The connotations of this are a worrying thought. Surely the ability to disagree - without hatred of course - is essential for a balanced and healthy society. People must be allowed to disagree on any subject without fear of prosecution.
The Elders of Deeside Christian Fellowship Church

Deeside Christian Fellowship Church is an independent evangelical church in Aberdeen with a membership of over 300 and a normal attendance of around 450 each week.

As the church, we wish to continue to express our grave concern about the Hate Crime and Public Order (Scotland) Bill. We responded to the initial consultation by the Scottish Government and made representations to the Justice Committee during its ‘Stage 1’ consideration. We appreciate the opportunity to respond to the four, alternative, free speech safeguards proposed by the Cabinet Secretary for Justice.

The inclusion of appropriate free speech provisions within the Bill is critical to the preservation of the right to hold and express different views within the context of a modern democracy, provided such views are expressed in a considered and thoughtful manner and not with the intention of stirring up hatred. Not only do the provisions need to achieve the objective of preserving the right to free speech, they must also be constructed so as to minimise the scope for vexatious or politically motivated attempts to suppress the free speech of those who hold different views.

Turning to the draft safeguard provisions themselves, we welcome the explicit protection of religious debate in the first two options. However, we believe that the wording of all of the provisions is deficient in relation to the freedom to express different opinions in relation to sexual orientation and transgender identity. These issues are among the most divisive in modern society and we believe it is imperative that freedom of expression in relation to these be accorded similar protections to those drafted in relation to religion in the first two alternate provisions. In particular, reducing the protections already in the Bill with regard to sexual orientation could result in the Bill failing to strike the appropriate balance between freedom of lifestyle and freedom to express an opinion contrary to that lifestyle. This imbalance would result in greater protection being afforded to some characteristics over others, which is wholly inconsistent with the spirit of the Bill and equality of treatment that it seeks to promote.

It is important in a democratic country that religious, ethical, moral and political issues should be open to vigorous debate and challenge. People must be allowed to disagree with each other without fear of prosecution - even if people find this offensive or it contradicts their own sense of identity. We urge the committee members to support the inclusion of safeguards within the Bill that ensure these fundamental freedoms are preserved.
Moyra Carlyle

Option 1
This is my preferred option, of those offered, however it does not go far enough.

* Option 1 should be extended so that the criteria of –
“discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards” –
apply to all the characteristics named, not only to religion.

* In addition to this amendment, we need a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women's rights in law or to challenge policy changes.

This is because there have already been moves from transgender activists to dictate language and even thoughts.

For example, it has happened in England, that a woman was denied financial compensation despite a transwoman being found guilty of assaulting her. The reason was that she (the victim) referred to her attacker as ‘he’ because that is how the person appeared to her at the time of the attack, which she was describing in court.

For some time, police have been accepting the self-identified gender of criminals as if it is their biological sex. This means that records of ‘women’ committing violent crimes are increasing.

Newspaper reports of crimes now use the pronouns of criminals’ preferred gender which means, similarly, that ‘women’ are being blamed for crimes committed by men.

Those of us who believe these things are wrong have to be able to say so without the risk of becoming law-breakers.

It is essential that we are able correctly to name females and males, and everything connected with biological sex, otherwise any “discussion or criticism” connected with this topic, which includes transgender identity, is meaningless.
Neil and Gena Ross

We are very concerned that while Options 1 and 2 give freedom of expression protection for “expressions of antipathy, dislike, ridicule or insult toward religion”, none of the four options gives the same freedom of expression protection for sexual orientation and transgender identity issues, but allow merely “discussion or criticism of matters” relating to these. In fact, the options weaken what was the Bill’s proposed freedom of speech clause.

Under any of these options, when Christians and those of other religions, who have strong beliefs about “sexual conduct or practices”, will promote and share these beliefs, they will run the risk of being prosecuted. It would be a most unjust curtailing of freedom of expression if people were not allowed to vocally or otherwise argue and disagree about these issues for fear of being criminalised for allegedly stirring up hatred.

Lord Bracadale stated in his review that it is needful to distinguish between legitimate debate and rabble-rousing. As the Committee is aware, there have been incidents when those who merely raised questions about sexual ethics and gender issues have been accused of hateful and abusive conduct. The Bill, in our view, does not give sufficient protection to freedom of speech.

In any case, the proposed freedom of expression provisions in the Bill are so complex that we feel that much more parliamentary time ought to be given to the scrutiny of them to ensure that our hard-won freedom of expression is handed down intact to future generations.
Dr N Thompson.

Only options 1 and 2 offer proper protection for religious beliefs. None of the options give protection for beliefs about sexual orientation or transgenderism. Freedom of speech with regard to these issues should be clearly guaranteed.

As humans we have the freedom to explore for ourselves what is truth and what is false. So even if our opinions or beliefs are wrong we should have the right to express them, and we should be able to do so even if others profess to be offended by them. We are dealing with possible criminal charges carrying very severe penalties and this should only happen if hateful intent is proved and not be subject to subjective feelings of offence.
Norman Wright

None of the options give enough protection for beliefs regarding sexual orientation and transsexual identity.

Religious debate must have the additional protection included in Options 1 and 2.

As a minister of the Christian message I must urge you to protect religious freedom and free speech. No one should encourage or endorse hatred. A difference in opinion expressed in the correct way cannot be equated with hatred.

There is a clash of ideology in sexual ethics, sexual standards and behavior. The proper protection of free speech regarding them is essential.

Expressing a difference of opinion on sexual orientation and transexual identity should not be criminalized.

Thank you for taking note of the above.
Paul Rabey

I am a member of the Scottish Public, a Company Director and Employer, a Registered Marriage Officer, A Charity Trustee and active Charity Worker. I am a practising Christian and preach the Gospel in the street, as and when allowable in law.

I am deeply concerned that the proposed amendments to the above Bill for freedom of speech (and indeed basic common-sense) should include Option 1 at its best and Option 2 at its minimum.

Along with all sober-minded citizens, I along with many other community members do certainly condemn any actions of extreme-minded persons who would destabilise the peaceful living conditions we enjoy in this part of the world, and hence abusive behaviour and actions that are intended to stir up hatred and violence must be adequately dealt with in the proposed Bill.

However, the Bill must contain robust clauses to prevent exploitation of the wording of the Bill by persons who may claim that anyone who expresses views differing to the character of their own morals (or lack of them), their lifestyle or their public behaviour, to be abusive, threatening, or offensive, even though those expressed views are not targeted at a person or persons, but merely a statement of held beliefs.

The English language is a beautiful means of communication, especially as words and expressions can be interpreted very subjectively, hence this Bill must be very carefully constructed to not give occasion to situations which it was not designed to address.

If these issues as mentioned above are not addressed, this Bill could incriminate anyone who voices age-old morals, reads aloud from the Bible or other religious books, or who publicly or privately expresses their religious faith or personal moral beliefs. These are all currently legitimate actions, which we must cherish as an inherent value of our society.

Please ensure that adequate provision for freedom of speech is maintained by supporting Option 1 or 2 of the proposed amendments, so that the police are not handed an unwelcome burden to their already stretched responsibilities in law.
Ramsay Gillies

My response is as follows:

The Hate Crime and Public Order (Scotland) Bill must have regard to the structure and articles of each of the main international rights framework documents and the sections thereof that I consider most relevant to the matter are detailed below.

Universal Declaration of Human Rights
Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
Article 7
Respect for private and family life
Everyone has the right to respect for his or her private and family life, home and communications.

Article 10
Freedom of thought, conscience and religion
Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11
Freedom of expression and information
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Comment
A principle underlying each of the core charters is that no one fundamental right is given priority over another, they are each of equal import.

On the other hand, the proposals from the Cabinet Secretary on behalf of the Scottish Government regarding "protection of freedom of expression" are each discriminatory with regard to specific rights and/or protected characteristics and thus have the effect of promoting, both directly and indirectly, one fundamental right or protected characteristic over another to a greater or lesser degree.

This desire of the Government to create a "hierarchy of rights or characteristics" by statute does not come as a surprise. Unfortunately, it appears to have been a theme
within the Bill from the time it was brought forward by the administration. For example, under 3(1) a person is not permitted to "insult" with reference to race, colour, nationality (including citizenship) or ethnic or national origins, while 3(2) omits "insult" as an offence in respect of age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics. As a direct result, persons will then, by statute (i.e. created “as a result of interference by public authority” [refer Article 11 above]) be free to insult one group of protected characteristics but not another. A result that is, of its own, discriminatory between protected characteristics. In this context;

Option 1.
Permits “expressions of antipathy, dislike, ridicule or insult towards” religion, whilst not in respect of any other fundamental right or characteristic. This lesser protection infers that the right to hold to a religion is a lesser right than any other right.

Option 2
Does not permit discussion or criticism of race, colour, nationality (including citizenship) or ethnic or national origins and thus promotes these characteristics above others -- for example, disability. Option 2, retains the demotion of “religion”, as in Option 1 above.

Option 3
This is the most balanced proposal and applies to all rights and characteristics referred to in the Bill.

Unfortunately, it is too restrictive in terms of what is considered to be a reasonable behaviour and does not give due import to freedom of expression. In highlighting specifically exceptions for “expressions of antipathy, dislike, ridicule or insult” as types of expressions that are “not necessarily merely discussion or criticism”, it is clear that the Scottish Government does not consider “expressions of antipathy, dislike, ridicule or insult” to be part of “discussion or criticism of matters relating to a characteristic” or thus freedom of expression. This gives me continuing cause for concern as to the underlying attitude of this government with regard to the right of freedom of expression – free speech is perceived to be a lesser right than the others.

Option 4
Does not permit any discussion or criticism of race, colour, nationality (including citizenship) or ethnic or national origins, thus promotes these characteristics higher than the others. Does not permit “expressions of antipathy, dislike, ridicule or insult” towards any characteristic noted in the Bill.

Conclusion
None of the options put forward by the administration have sufficient regard to freedom of expression and all seek to create a hierarchy of rights by defining what may or may not be permissible with regard to specific and individual characteristics. If we hold to the concept that all basic rights are equal then it is logical that any definition that seeks to determine the boundaries and thus limit every persons right
of freedom of expression should be applied to all rights and protected characteristics, in order to maintain the principal that all rights are of equal merit.

Proposal
My recommendation is to move forward by taking the various options offered by the Cabinet Secretary and incorporating these into Option 3, thus;

Protection of freedom of expression
(1) For the purposes of sections 3(1) and 3(2), behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards, a characteristic mentioned in subsection (2).
(2) The characteristics referred to in subsection (1) are—
(a) age,
(b) disability,
(c) race, colour, nationality (including citizenship), or ethnic or national origins,
(d) religion, lack of religion or, in the case of a social or cultural group, perceived religious affiliation,
(e) sexual orientation,
(f) transgender identity,
(g) variations in sex characteristics.
[The act of confirming in Options 1 and 2 that “freedom of expression” can include insult does, of course, highlight the error of including “insulting” in 3(1) (a) (i) and 3(1) (a) (ii) as being outside the scope of the right to freedom of expression.]

I believe the aforesaid freedom of expression amendment brings the Bill closer to the principles of the main charters underlying human rights legislation as it does not promote one right or protected characteristic over another but treats all persons equally under the law.
Robert McIntyre

I thank you for this opportunity of expressing my views on the current amendments, Options 1-4, to the Hate Crime Bill, advanced by the Justice Secretary, Humza YOUSAF.

Freedom of expression, whether it be by the spoken or written word, along with freedom of assembly, is the bedrock on which our democracy is built. Our forefathers fought long and hard for such ‘rights,’ and we, their offspring, must jealously guard them, not only for ourselves, but for generations to come.

Should the ‘Hate Crime and Public Order [Scotland] Bill, either in its original form, or with its current proposed amendments, be passed into law, much of that precious freedom of expression will be seriously lost.

That people should be free from being subject to threatening or abusive language or behaviour goes without saying - BUT - without a very clear definition of what does, and does not constitute ‘abusive’ behaviour, then the application of a law intended to reduce incidents of abuse, will become the very vehicle used by some to abuse others. [That is, those who oppose either certain religious or non-religious beliefs, or who hold different views on matters relating to human sexuality.]

Race, religion, and various matters relating to human sexuality, including sexual orientation, transgender identity, and variations in sexual characteristics, are all ‘hot potatoes.’

Such issues produce strong views, and beliefs - on all sides of the debate. As law makers, parliament must engage its best endeavours to get this legislation right. With all this in mind, I make the following observations:

a. It is essential that the right to hold, and express, strong religious views [and indeed anti-religious views] is upheld and protected. Whilst Option 1 goes some way to do that, it does not go far enough. Here, clarity concerning protection must be the order of the day. There is no such clarity in Option 1

b. As with religion, the right, yes, even the necessity to discuss and debate the subjects of sexual orientation and transgender identity, must be upheld and protected. In a democracy, the right to challenge others points of view, is a given. This ‘bill,’ in its present, and amended form will - at the very least remove some of our current freedom of expression [and it will cause some people to self-censor, for fear of falling foul of the law’, or losing their employment. These fears are real!]. Thus our hard won freedom of expression will, over time, wither on the vine. People silenced by fear! Is that what this bill is intended to do; to stifle freedom of expression, under the guise of preventing abuse? Beware of the law of unintended consequences!

The right to discuss, debate, and vigorously express opposing views on the subjects of sexual orientation and transgender identity, etc., must be upheld and protected, if we, as a nation, and you as parliamentarians, are to have any claim to be upholders of democracy. Freedom of speech, free, and open debate, discussion, and yes,
even vehement disagreement is the life blood, the beating heart of democracy. Without it, democracy is dead! Political parties owe their very existence, to free and frank debate, including the right to express disagreement with other parties.

This bill, in its current, and proposed amended form, fails to adequately protect one’s right to freely express one’s views on sexual orientation and transgender identity. Not to provide legitimate, robust protection, in relation to honest, open and frank discussion on matters relating to human sexuality, will, in essence, create a new secular blasphemy law. This is somewhat ironic, when Part 4 of the bill seeks to abolish the offence of religious blasphemy. Here I am reminded of some words written by Lord Alfred DOUGLAS, who wrote in his poem ‘Two Loves’ about ‘a love that dare not speak its name.’ This bill, in its present form, with amendments, will potentially make any public [and not so public] expression of serious disagreement surrounding sexual orientation, transgender identity, etc., ‘a matter that dare not speak its name.’ Another irony, don’t you think?!

Sadly, this bill, as it relates to sexual orientation, etc., is a charter; one might almost say, a licence, given to those who would seek to silence any opposition to their particular point of view on such matters. It is a ‘licence’ that parliament should not grant to them.

The major issue under attack in this bill concerns ‘we, the people,’ and our right to freedom of expression - in general - and in particular, on the issues covered by this bill. This bill does not serve that freedom well. Parliament cannot afford to get this bill wrong. Up to seven [7] years in prison for simply, strongly, expressing a contrary view to another, or others, who do not agree with one’s point of view, is a serious penalty. So, there have to be strong safeguards built into the law to prevent miscarriages of justice. This bill as currently drafted does not do that.

I am aware that, as a committee, you are running up against a very tight time schedule, in seeking to complete the committee stage of the bill, in time for it to be presented and voted on before the dissolution of the present parliament. But, would it be so bad, if the bill, in its present form, was to fold, allowing the new parliament time, and opportunity, to reconsider all the issues involved, including all the submissions to these amendments, plus the original consultation submissions. Better to return to the debate at a later date, than to rush the passing of a bad bill, with all the harm that this will cause, and with the potential embarrassment of maybe having to make major revisions to it, or even rescind it, at a later date.

I thank you for the opportunity of making this submission to you.
Rolf Smith

Many thanks to the Justice Committee for providing this window of opportunity to submit views on the suggested options for freedom of speech amendments at Stage 3 of the Bill.

I am a committed Christian who attends church services several times a week (via video link currently!), sometimes preaching the Gospel myself or contributing to the services. The teachings of the Holy Bible are cherished and upheld by all members of our Church community.

When restrictions are lifted, I also look forward to preaching the Gospel again in public open spaces and streets, something I have done since my youth with a genuine desire to help persons with troubled hearts to find peace and settlement through finding Jesus Christ as their personal Saviour; simply seeking to convey the great truths of Scripture without controversy. This has been done in the UK since the 14th century, and by members of our Church since the mid-1800s.

For these reasons I have been closely following the passage of the Hate Crime Bill through Parliament. I fully support the Government’s efforts to ensure that crimes of hatred are outlawed and punishable, including genuinely threatening and abusive behaviour. However, it is essential that the ability to speak freely and honestly about our religious and moral beliefs is specifically protected by the new legislation. Therefore, Options 1 and 2 on the list you provided are clearly an absolute minimum requirement; Option 1 is preferable as being the most comprehensive. Options 3 and 4, with no additional protection for religious free speech, provide insufficient protection in my opinion.

I can honestly say that, having preached the Gospel of Jesus Christ since early youth, it has never entered my mind to stir up hatred or to come across as threatening or abusive in any way whatsoever. My concern is, given the diversity of society in Scotland today, that something I (or other Church members) might say unintentionally could be considered as upsetting or offensive by someone else with very a different view of Christianity and its morals, and that person could subsequently accuse me of being “abusive”. This could result in an agonising and highly stressful court procedure if the law is not specific enough to ensure this could not happen.

In my opinion therefore, some further wording is still needed in addition to what is currently proposed in Option 1, that clarifies and protects the right of any individual to say things that others might consider shocking or even offensive. Some additional wording to this effect would not weaken the Bill’s main purpose of ensuring that threatening/abusive behaviour, with intent to stir up hatred, is punishable as a crime.

Hopefully this specific protection is something that can be considered at Stage 3 as a further amendment in addition to Option 1 on the Annex you provided.
Rufus Bellamy

I am writing to ask you to include the freedom of expression provision (Option 1) in the new Hate Crime Bill.

As a scientist, husband and father of two daughters, I believe very strongly that we, as a society, should be free to speak openly about women’s rights and any conflict between these rights and certain transgender campaign targets – for example, in respect to single-sex spaces, all female shortlists, female sporting competitions, etc.

I applaud the fact that Option 1 will allow the discussion on social and other media of these vitally important issues – for example, that it will allow fair and informed debate about the fact that biological sex is (from a scientific stand-point) immutable, that women alone have certain organs and perform certain unique functions (breast-feeding, child-birth, etc) and that women should not have to share a safe space or prison with a male-bodied individual.

It seems common sense that such debate should not be characterised as threatening or abusive towards trans-women, but instead should be seen for what it is – pro-women, pro-fair play and pro-equality. It is chilling in the extreme that without Option 1 we may be in a position where science can be dismissed off-hand and women’s rights given second-, if not third-class status.

I strongly believe that, unless good sense prevails, we are in danger in Scotland of undoing much of the valuable gains in gender equality that have been won since the 1970s – improvements that have benefitted the whole of society.

It is appalling that in 2021, women are having to defend themselves from what can only be described as vile and misogynist attacks from those who seem not to value their safety, peace of mind, or even their right to use the words that describe their biological condition (and their historical and contemporary oppression).

I therefore hope that sanity prevails, that Option 1 is included in the new legislation and that ‘discussion and debate’ can steer us away from the edge of madness.
Russell Pillar

With reference to the above, I write to submit my serious concerns regarding the governments Freedom of Speech Clause to the Hate Crime Bill.

I am a practicing Christian based in East Ayrshire and for the past 27 years, on King Street in Kilmarnock, I have preached the Word of God as set out in the Holy Scriptures. My core beliefs in proclaiming the Word of God, have always been based on compassion and kindness to save all mankind and is always expressed with respect to others, and never includes any element of what is considered to be threatening or abusive.

Whilst we do receive sympathetic and positive support for what we preach, it is always possible that an individual disagrees with the view that we hold. Based on the current proposals being put forward in this clause, my deep concern is that I am not protected from criminal prosecution as an individual could claim offence simply because they hold a differing point of view.

I acknowledge that Options 1 and 2 of the proposed clause, do go some way to addressing these concerns, but they need to go further to ensure that any law-abiding individual can express their beliefs based on their moral convictions, without the fear of prosecution.

Options 3 and 4 are simply not acceptable in any way and leave any God-fearing person exposed to criminal proceedings should someone simply take exception to what they express, even although it is expressed without any element of abuse or incitement against persons of a different persuasion.

Christianity has always been protected in this country’s constitution and it is imperative that this is fully maintained and there is no scope given to simple believers being marginalised or criminalised, for their deep-held beliefs.
Ruth Carslaw

This Bill has not been given enough time or due consideration at Stage 2.

If pushed it would be Option 1. With a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts or campaigns to retain women's rights in law or to challenge policy changes.

The Scottish Government has not defined ‘gender identity’ ‘gender’ or ‘transgender identity’.

The Scottish Government has not made clear what "criticism" or "abusive" encompass.

The tone of the debate around women’s rights within this Bill has been very distressing.
Sheila Gunn

1. Introduction

I am responding to the invitation to submit views, in this extremely short period of consultation, much of which has run over a weekend. The shortness of this consultation period, making it difficult to ensure that those with an interest can be made aware of it, is disappointing. It might suggest that there is a failure to appreciate the gravity and potential dangers to freedom of speech and expression posed by this Bill; one might even wonder if it was hoped that many who might wish to express views in this consultation would not be able to do so, due to the very short timescale.

A brief study of Scottish history shows that many good people fought for these freedoms - of speech and expression - and fought for protections against the state having the power to have laws which restricted these fundamental freedoms. Some gave their lives in the fights for these freedoms.

A dismissive approach to the well-founded points raised by those concerned by this proposed legislation would demonstrate a carelessness to the sacrifices of our predecessors, and a reckless disregard for these fundamental freedoms.

2. Issues

The focus of this consultation is free speech. I am a lawyer by background.

Looking at the provisions around freedom of expression – these are divided into two sections:

1. the first deals with the freedom for “discussion or criticism of matters relating to” the listed characteristics (i) age, (ii) disability, (iii) race, colour, nationality (including citizenship), or ethnic or national origins, (iv) sexual orientation, (v) transgender identity, (vi) variations in sex characteristics; and

2. the second deals with the freedom for discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards” basically religion and religious belief.

What is a fundamental flaw in the above?

Let’s look at the example of someone articulating their belief that gender identity is binary - man and woman- and/or that sex is immutable.

Would the words of 1 above – “discussion or criticism of matters relating to…” be adequate to protect the freedom of expression of the person expressing that view?

A Sheriff, faced with testimony by a complainant that they feel desperately upset and insulted because the view expressed denies what they believe they are, could be persuaded that the criticism was in fact “insulting” to that individual; and could very
well rule that while “insult” is allowed against someone on the ground of religion (see 2 above), it is not allowed against someone on the grounds of sexual orientation or gender identity.

And therefore 1 above would not protect the freedom of expression – particularly not since what is being proposed is a step down from the current wording of the Bill which specifically protects discussion or criticism of “sexual conduct or practices”.

While we would never want to enshrine in law that it’s ok to be insulting to anyone who is disabled or old, my example above starkly demonstrates the inadequacy of the wording of 1 above in relation to sexual orientation or transgender identity. More work is needed on the wording of 1.

It is easy to see how a politically-motivated complainant could label any stated disagreement to their views as hate, in their efforts to silence their opponents. The proposed penalty is up to 7 years’ in prison. This is grave and the potential dangers to freedom of speech and expression are stark.

Explicit protection for free speech about transgender identity is essential because it is such a toxic issue. It must not become criminal to use a person’s birth name or pronoun, or to say that someone born a man cannot really become a woman.

3. Conclusion

This legislation as currently drafted could pose a serious threat to fundamental freedom of expression on which our society is based. It must be considered carefully; potential consequences – like the example I outlined above – need to be thought through and fresh wording identified. A form of words must be found for 1 above that will ensure that the freedom of speech and expression is in fact preserved in the scenario I have outlined.

To rush this difficult and sensitive legislation would be foolhardy, have potentially grave consequences if allowed to be enshrined in statute, and will almost certainly face legal challenge in the Supreme Court.

Given the freedoms at stake, it is wrong to press ahead with this legislation before the forthcoming Scottish elections. Careful thought needs to be given to the proposed deletion from the Bill of some of the current provisions, AND to the urgent need to the dangers of the “discussion or criticism of matters relating to” wording in 1 above in relation to matters of sexual orientation and gender identity.

Until this groundwork is done, the four options contained in this ‘consultation’ are not options at all – none of them are workable.
Shirley Otto

I have serious concerns about attacks on women’s rights and safety and on the potential for the Bill and its amendments undermining free speech. Considering these anxieties Option 1 is the best of a worryingly limited range of options. Option 1 at least permits discussion, debate and criticism of all the characteristics.

What is urgently needed is Option 1 plus extra free speech provision extended to all characteristics, and a clear Government statement that the Hate Crime Bill does not seek to criminalise statements of scientific or biological facts, pronoun choice, or campaigns to retain women’s rights in law or to challenge policy changes.

Given the heat and hostility associated with the bill it matters that there has been no clarity on the definition of “transgender identity” from the Scottish Government. Similarly, it is not clear what “criticism” or “abusive” encompass and more could be done to remove the ambiguity and partiality. We really need robust protection of free speech; the tone of the debate and sense people will make of the legislation is terrifying and fundamentally damaging for all of us.

Surely the Bill has not been given enough time or due consideration at Stage 2 of the Parliamentary proceedings.
Rev Dr John B. Sterrett

As a Christian parish minister who regularly preaches from the sacred texts (the books of the Christian Bible) of my faith community, I am concerned about the lack of protections provided for myself and all those in my profession in the Scottish Government’s proposed Hate Crime and Public Order (Scotland) Bill.

The Bible covers a wide range of real life topics and often demonstrates its position on these with illustrations that require subtle and nuanced interpretation and handling when dealing with these in sermons. Often, one of the greatest challenges in dealing with these topics when preaching is avoiding being misunderstood.

Of the four options proposed for the provision of freedom of expression, I prefer Option 1. That said, the provisions in this option still do not seem robust enough to me for my protection, especially should I preach on passages which deal with topics such as those mentioned under section 2 (a) (i-vi).

For instance, 2(a) (iv) lists “sexual orientation.” No provision is made for the distinction between “sexual orientation” and certain behaviours which could, but may not (depending on the decision of the one so oriented) follow from that “orientation.”

In short, the provision does not acknowledge the possibility that a person of a certain orientation can be valued and loved, while behaviour often associated with the same orientation can be criticised on the grounds that it is denounced in sacred texts. There is a difference between denunciation of persons and denunciation of behaviours. In my view, the former is always wrong--and the Bible often says this--while the latter is often justified. The proposed provisions do not acknowledge this distinction and, therefore, do not offer adequate protection for potential situations where such a distinction has to be made.

I can envisage similar distinctions, and therefore protections for these, needing to be made with regard to other topics listed.

I believe more attention needs to be paid to the protections covering all the topics listed in Option 1, section 2(a) (i-vi), so that these become more adequately expanded, similar to the speech protections for religion and related topics listed in section 2 (b-d).

Does current law not adequately protect people (both speakers and listeners) against hatred in such a way that I and other preachers can deal with biblical topics, such as those mentioned above, in a robust and free way?

I also wonder what happens if a preacher is accused of “stirring up hatred” based on a misunderstanding of the listener, or because a listener chooses to be offended when no offense was intended on the part of the preacher?

This Bill could appear to be designed to instil fear in those who preach from the sacred texts of their faith communities and whose job it is to educate robustly the members of their faith communities on the nuances and subtleties of their respective beliefs.
Tim Michel

I write as a Christian with faith in God and beliefs rooted in the Scriptures of the Bible, which believers accept as the Word of God to ourselves, and for the good of all people. It is essential to be able to speak about these things without being misunderstood or our intentions misinterpreted.

Being a moral book, the Bible places moral requirements on us, such as ‘shewing all meekness unto all men’ (Titus 3: 2, KJV) and ‘Love worketh no ill to his neighbour’ (Romans 13: 10). It can therefore never rightly be our intention to ‘stir up hatred’ or be ‘abusive’.

However it is a likely possibility that, given the wide range of moral issues under consideration, someone may express themselves in a way that another might find offensive or be shocked by, for example by quoting a strong tenet of their faith, leading to accusations of hatred towards those of another persuasion.

I submit that, of the amendments offered for consideration by the Justice Secretary, Option1 provides the absolute minimum protection needed, and that further provision is necessary to cover views not expressed in a threatening or abusive tone or manner, so that the inadvertent originator is not subjected to distressing court proceedings simply to prove they had no intention of stirring up hatred.
William Blair

I am writing to express my view on the proposals to amend the Scottish government’s hate crime bill (at very short notice by the way), specifically on the 4 options for a vital clause to protect freedom of expression, proposed by the justice secretary. From my reading it seems that only two of the options (1 and 2) allow for important protections for "expressions of antipathy, dislike, ridicule or insult towards religious beliefs or practices".

This is despite the fact that the minister and the committee had already agreed to this level of protection at a previous stage of proceedings.

The other two options (3 and 4) only say behaviour would not reach the threshold for prosecution "solely on the basis that it involves or includes discussion or criticism" of religion – a far weaker protection.

This to my mind is unacceptable in a 21 Century democratic society. Individuals must be allowed to critique, ridicule and even insult religious beliefs without fear of prosecution. They are after all only beliefs – by definition they have no evidence to back them up, but anyone may choose to accept them as true anyway. However, that does not mean everyone has to. There are thousands of religions in the world (and thousands more that have died out), each one thinking that they alone have the one true faith. In a modern democratic society, they all must tolerate each other, but they do not have to respect each other’s beliefs. It is the right of any individual to believe what they want that is important, not what they believe; individuals human beings have the right to respect, but importantly not the beliefs that they may hold.

Religious beliefs should in this day and age be robust enough to be insulted or ridiculed (we would not afford the same protection to political beliefs for example). Please do not dilute the bill in this way; Scotland needs to move forward in accord with other modern nations on blasphemy law.
Zach Watt

I write regarding the ‘last minute’ request for consultation/feedback on the Hate Crime Bill, part 2.

Firstly it is good that as a nation we seek justice and fairness in our society. I agree that we want people to live free from violence and fear. It seems that progress is being made in the Bill towards having robust and clear safeguards and protections for freedom of speech, particularly in matters that are debatable such as sexuality, gender identity and religion.

However it is disappointing that consultation on amendments to such an important piece of legislation that will significantly affect the lives of all of us in Scotland, is as it were, being done in such short timescales and ‘under the radar’. (Ive not heard or seen one single media story, announcement by Scottish Government that this is happening).

Is this good and wise and fair government? Such short timescales over a weekend, and lack of visibility, suit the activist organisations, who are able to put time and effort over a weekend into such things but not the ordinary member of the public such as myself. It seems to me that the government is being hijacked, pressurised into making rash amendments to suit getting this in place prior to the May elections.

To the matters at hand, I am also dismayed that the Justice Committee is failing to take on board the recommendations made about protections for freedom of speech, especially and particularly in the areas of having and expressing differing opinions on matters such as sexuality and gender.

It is vital that the bill gives strong and clear protections for any and all who may differ in opinion on these ‘debated’ matters. It is absolutely vital that there are protections and freedom for those who may hold different views; for example for those who believe in distinctness of male and female, that a man is a man and a woman is a woman and can be called such) and those who want to change that view. There are people who hold views from a religious, ‘traditional’ or even scientific perspective that would differ from those who want the freedom to make up their own gender. Should those who hold views from scientific, religious or ‘traditional’ be criminalised because those who are progressive believe something different?

To hold different opinion and to express differences of opinion and even debate or declare different opinions, publicly or privately, should not be allowed to be declared ‘stirring up hate’ because someone holds a different view and is ‘offended’ or ‘violated’ by their words.

It is easy to say ‘I am offended’ by whatever someone else says that is contrary to your own view of ‘who I am’. It ought to be much harder to be ‘shut up’ or ‘cancelled’ and even investigated or arrested and criminalised for expressing speech that is contrary to another’s view, even if it is a majority view.

I note in the overview some examples.
“…if, for example, the speeches included comments that a reasonable person would find abusive about people due to their sexual orientation, or threatened them with violence, it could still amount to behaviour that is threatening or abusive.”

“…if, for example, the criticism included comments a reasonable person would consider abusive about trans people, or threatened them with violence, it could still amount to behaviour that is threatening or abusive.

In both cases, any threat of violence would be clear. But the general and vague ‘…if speeches (what does that include – is this only personal formal talks to an audience?) included comments that a reasonable person would find abusive’, would still amount to ‘threatening or abusive’ is not clear. Who defines or decides what is ‘threatening or abusive’? Anyone subjectively can find anything someone says threatening or abusive.

Who or what is a reasonable person? Surely the freedom of speech clauses should be clear and robust to define rather than a vague ‘reasonable person’ test.

Out of all these options, I favour none of them but out of them all, option 1 is the better, but even this option is extremely concerning and does not provide protection for anyone who has a different view about someone’s sexuality or gender.

Focusing on Option 1 let me say this: the issue is that this remains unclear and vague, except in relation to the protected characteristic of religion. For the others set out, how does discussion or criticism get defined? It seems to me that for those issues where there is clear scientific fact of race, disability, age, that there ought to be protections against actions and attitudes of dislike, antipathy, etc.

But the problem is those characteristics that are more subjective. Same sex attraction has not yet been proven to be ‘genetic’ - there is no ‘gay’ gene. The transgender characteristic is also not based on scientific fact. It is a subjective opinion to change gender based on how a person may feel, want or desire. So these characteristics should be treated the same as religion which is also a matter of opinion and is also highly subjective and debatable.

I think we are allowing a dangerous precedent if someone has opposing or different views of the characteristics of sexuality (same sex, transgender) that they are not protected. So if you have antipathy or dislike towards same sex or transgender, are you to be ‘shut down’, ‘cancelled’, ‘stopped’, investigated, criminalised for having such opinions? If you disagree that a person can call themselves ‘male’ when they are actually female, are you to be put in prison because those who want to call themselves whatever gender they like, are offended by such views and opinions?

Overall, none of the options put forward are strong enough, clear enough, robust enough to protect freedom of speech to allow differences of opinions on matters that are debatable. It seems to me that the whole process has been hijacked and the sensible thing is to put part 2 of this bill on hold and come back to this after election when it more fully worked through. It feels extremely rushed.
We have existing laws in Westminster which the SNP were happy to vote for and agree to even as late as 2018. So what has changed since 2018? We should be using the Westminster laws as the basis for our freedom of speech for these areas that are subject to differences of opinion.
Brent Haywood

Introduction

I am a Solicitor Advocate in private practice. I have practised as a Scottish solicitor since 1993. I am also qualified to practice law in New Zealand, and England and Wales. I offered submissions on the Bill at an earlier stage.

I am responding to the Justice Committee’s call for further submissions and make the following comments within the tight timeframe provided.

Comments

May I begin respectfully reminding the Committee of the recognition the Bracadale Report gave to the importance that needs to be given to the right to freedom of expression. When looking at the provisions in the Bill it is vital that a proper balance is struck between the harm that the Bill seeks to address and the long-established protections that the rule of law affords to freedom of expression. I encourage the Committee to remind itself of paragraphs 3.45-3.49 and 5.17-5.29 of the Report. A wise and humble legislator might reread those provisions.

I urge the Committee to consider carefully what is highlighted in respect of the Public Order Act 1989 (‘the 1989 Act’) and in particular the wording of sections 29J and 29JA. (see 5.17 of the Report and footnotes).

If the Scottish Parliament widens the category of characteristics that should be protected by the umbrella provisions of this Bill then, in order to be consistent, any provisions which are designed to protect freedom of expression ought to cover all of the characteristics.

The paper offered by the Cabinet Secretary for Justice and which is contained in the Committee papers (J/S5/21/7/1) puts forward 4 options for consideration. With respect, none of those options adequately address freedom of expression. In my respectful submission none of those options are workable.

Implicit in all 4 options is the assumption that it is appropriate to limit a person’s a right to freedom of expression depending on which characteristic is under consideration. In other words, it is justifiable for a hierarchy to be placed on the extent to which the right might be enjoyed. In some of the options put forward that right is afforded to all characteristics, in others it is selective. I have seen no objective, or even subjective, justification for any differentiation between the characteristics. (Government and/or Parliamentary lawyers ought to be advising on the perils of this approach when it comes to compatibility with article 10 of the ECHR).

In my submission provisions that address freedom of expression ought to cover all the characteristics covered by the Bill. A subjective hierarchy of protections will open any legislation to challenge and in an age of virtue signalling the selection of some characteristics over others will appear to be overtly political. Without a cogent justification for such demarcation it should not be entertained.
An illustration of my point may assist. If, say, an elderly, transgender, disabled, New Zealander was working as a vicar in Scotland and following an incident there were allegations of a hate crime to which s 3 of the Bill might apply. In practical terms how do enforcement agencies address the situation if what was expressed was ‘antipathy, dislike, ridicule or insult’ towards all of the person’s characteristics that I have listed? Looking at the options under consideration by the Committee, in such a situation a provision protecting freedom of expression would apply to some of the characteristics but not others. Why would there be any differentiation in such a situation? A freedom of expression protection would be afforded to some but not all of the characteristics. Such an outcome would be very puzzling.

If this differentiation where introduced into law, in my submission it would lead to unworkable outcomes. How could a police officer hope to enforce such a complicated law? How could a Procurator Fiscal draft a charge and what would a court do with it?

In all the circumstances the best solution, it seems to me, is a provision which offers a blanket freedom of expression protection. As expressed in the Bracadale Report, the courts can then be left to determine the matter by applying existing caselaw to the particular facts and circumstances. This would also ensure that what is enacted is less vulnerable to EHRC challenge.

Summary

The right to freedom of expression has been hard fought for. It is a crucial part of the Scottish and UK Constitution. The right to freedom of expression is protected by the ECHR and it forms part of the law of Scotland. It is not a ‘toy’ which can be turned off and on according to the politics of the day. I am disturbed by the way in which it appears to be juggled about in this Bill and I urge the Committee not to endorse any provision which adopts an arbitrary application of the right to freedom of expression according to whatever characteristic is under consideration.

If a freedom of expression provision is going to be contained within the Bill its terms ought to be wide. If a narrow provision is introduced then this will continue to create controversy, and in due course, if passed into law its provisions will be challenged in the courts.

I implore the Committee to ensure that what results from its deliberations is unambiguous legal right to freedom of expression which extends across all of the characteristics, anything short of that is a boorach.

Thank you for your consideration of this submission.

I commend the Committee for its efforts to advance justice in Scotland and beyond.