

July, 2020

Justice Committee  
Scottish Parliament  
Edinburgh  
justicecommittee@parliament.scot

Dear Justice Committee Members

## **Hate Crime and Public Order (Scotland) Bill Call for Views**

I hope this letter finds you well during these times. I am writing to you in response to the call for views as stated on the Scottish Parliament website <sup>1</sup>.

My position is that this bill should **not** be enacted in its current form.

I've attempted to keep the letter well structured and as such it is broken into multiple sections. In the *Introduction* I discuss terms that I believe are important to be considered in the discussion and more generally critique the broad scope of the objective of the bill. Next, in the *Review* I provide an overview for points within the bill. I then briefly respond to the *Question Responses* section, parted by the recommended structure on the website. I then provide some final remarks in the *Closing* section.

### **1 Introduction**

Here I will attempt to clarify what is defined when discussing terms and ideas within this letter, whilst offering some comment on them.

#### **1.1 Definition of Hate Crime**

The Scottish Government's website defines a hate crime as <sup>2</sup>:

Hate crime can be verbal or physical and has hugely damaging effects on the victims, their families and communities, and we all must play our part to challenge it.

Physical damage is very clearly covered by other laws, hence I will discuss only verbal hate crime in the following.

##### **1.1.1 Hate**

The term "hate" itself is defined in the Merriam-Webster dictionary as <sup>3</sup>:

- (a) intense hostility and aversion usually deriving from fear, anger, or sense of injury
- (b) extreme dislike or disgust
- (c) a systematic and especially politically exploited expression of hatred

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<sup>1</sup>Scottish Government/Parliamentary Business: [URL, Accessed: July, 2020]

<sup>2</sup>Scottish Government/Policies/Crime prevention: [URL, Accessed: July, 2020]

<sup>3</sup>Merriam-Webster/definition of hate: [URL, Accessed: July, 2020]

Specifically of concern is that hate may be the response to a ‘sense of injury’, i.e. a victim of some perceived ill doing. The goal of the Scottish Government may have a negative impact on victims who may need help. For example, it’s not uncommon for a victim to have hate for the characteristics of their attacker, or themselves. I believe there are cases where the expression of hate may be offensive, but forgivable in the context of the scenario.

### **1.1.2 Damage**

We must consider what constitutes as “hugely damaging”. This is greatly left open for interpretation, either as a potential victim to prove has been done upon them or as a potential criminal to disprove has been done upon another and/or others.

### **1.1.3 Expression**

It also must be recognized that this goal will implement a reduction in freedom of expression. Not just the right of a person with offensive views to be heard, but the rights of people to listen to those views and challenge their own. The bill somewhat addresses this, but nonetheless the impact will be to reduce freedom of expression and the consequences of this must be considered.

Also consider that the intention of a word or idea may change depending on the context by which it is said. A single word or idea can have many meanings and it’s difficult to discern which was intended, despite the offence it may or may not cause. Freedoms are typically hard fought for and easily given away.

## **2 ‘Hate Crime and Public Order’ Bill Review**

The following references SP Bill 67, Session 5 (2020), introduced by *Humza Yousaf* on 23rd April 2020.

### **2.1 Review**

**Part 1 (1.1.b):** The proposal that there doesn’t have to be a specific victim is troubling. Typically victimless crimes are either historical in nature and likely outdated or have a wider societal impact. The victimless crime in this case would likely be verbal in nature and therefore easily dismissed by person or group of sound mind. It’s not clear how the punishment of a victimless crime in this case benefits wider society.

**Part 1 (1.2):** Characteristics that a person has and is outside of their control is clearly unfair to be used against a person (such as age and disability), although there should still be room for comedy, debate and criticism. Ideologies that are chosen (such as religion), should not be afforded the same protection. Some persons for example believe in their political values almost religiously, but to restrict political discussion would effectively end modern democracy. We all hold our ideals closely, but it is only when we are able to have them challenged are they tested and improved.

**Part 1 (1.3):** The exclusion of any other factor when considering the offence

irradiates the possibility of comedy, debate and criticism of the given characteristics.

**Part 2 (3.1 & 3.2):** Specifically troubling is the wording: “is likely that hatred will be stirred up against such a group”. A person whom does not intend to commit a hate crime, does not cause anybody to become a victim of a hate crime, can still be convicted of a hate crime for how their communications could possibly be perceived, despite that not occurring, as allowed in the bill’s current form. This seems open to abuse, specifically to those of differing (and sometimes unpleasant) political opinion.

**Part 2 (3.7):** It should be explicitly stated that a person cannot be a victim of some communicated material unless they are in either direct receipt of it or the material was distributed in a public space. Likewise, it should not be possible to suggest that a group would likely be offended by some given material if they are unable to access it.

It should also be added that it cannot reasonably be the fault of the proposed offender if the distribution of the communicated material causes offence once distributed by another person.

For example, consider a scenario where person A privately communicates offensive material to person B. Person B is not a victim of this material, but copies the material and distributes it publicly. Person B should be said to have distributed the offensive material, despite it originating from person A, as person A did not take the action which ultimately caused a hate crime to be committed.

**Part 2 (3.8):** A potential punishment of prison time for a verbal hate crime seems unjust and should be revised. Despite a person having a perceived repulsive ideology, a person who poses no immediate affect to society should not be imprisoned.

**Part 2 (4):** Fictional material (such as a public performance) should not be subject to hate crimes. For example, it should be possible to distribute and consume fictional material educating persons on what hate is from a historical, current tense or comedic perspective.

**Part 2 (6):** Powers of entry by force is excessive for the purpose of preventing potentially offensive material from being distributed. This will very likely be abused to silence differing political opinions.

**Part 2 (11 & 12):** The protection of freedom of expression should include comedy and parody. There also appears no reason as to why the same protections cannot be extended to all characteristics. An example could be a fruitful discussion about why a given group of a characteristic exhibits some statistical anomaly, a discussion which may offend some but with good intentions.

## **2.2 Recommendations**

Additional to the previous points, I would like to add these additional points:

- *The law is not retro-actively applied.* Existing hate crimes committed before the enactment of this bill should not have this bill applied to them.
- *A timeout on when the law can be used.* It shouldn't be possible for example to find communications from 10 years ago and claim to be a victim of them. It's unclear what a reasonable time window would be. A person should not live in fear that some views they once held or publicly apologized for are grounds for legal action long-time after expressing them.

### 3 Question Responses

In the following I respond to the questions raised by the call:

#### 3.1 (1) General

Do you think there is a need for this Bill and, if so, why?

I don't believe there is an immediate need for this bill and I'm very concerned about the bill in its current form. I believe in general we need more discussion, not less, and some of that discussion will not be pleasant, but it will be necessary.

Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures?

I believe a much more fundamental question needs to be asked: *Do people have a right to not be not exposed to hate?* There are people that may hate myself for the contents of this letter, but justified or unjustified they have the right to be so. I'm not entirely sure if society will be better off if offensive persons are unable to express themselves (verbally) and potential victims are completely oblivious to the extreme views a small vocal minority have.

Please also consider that removing these discussions from the public space does not remove them from the individual expressing them. In fact, this can only be done so through open and honest discussions without the threat of legal action. There are many documented cases of de-radicalization through this method.

Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?

Please see the *Review* section, specifically *Recommendations*.

#### 3.2 (2) Consolidation

The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

Generally, there is merit in simplifying the law where possible, both in length and complexity. You cannot reasonably expect the average person to follow the law if they are unable to read it. If this bill is introduced on the grounds of simplification, duplicity should be removed from existing legal documents.

### 3.3 (3) How To Prosecute Hate Crime

Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland?

The main issue with aggravation is providing evidence that the offender was motivated by a given characteristic. For example, other than disability or transgender identity, every living person shares those characteristics. Other than very clear cases where the offender admits their motive, then you have to assume the intentions of the offender. In my opinion, this is dangerous.

Should it be used in all circumstances or are there protected characteristics that should be approached differently and why?

Ideologies, such as religion, should be removed entirely as they are not an immutable characteristic.

For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?

The definition of misogyny is a hatred or prejudice against females. If it is to be included, the law should not preference sexes and should be gender neutral in order to be inclusive.

### 3.4 (4) How To Prosecute Hate Crime (cont)

Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?

No. There has so far not been any evidence for it being required, making it as arbitrary as hair or eye colour.

Would any alternative means be measured effective?  
For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?

Generally, vulnerable persons should not be put in a position where hate crimes can be committed against them. If discussing the internet for example, it's impossible to make the internet safe when interacting with people from abroad who are under different laws. It is therefore logical to protect the specific vulnerable person.

### 3.5 (5) Other Forms Of Crime Not Included In The Bill

Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation?  
For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?

Again, this creeps into ideology, something that should be freely challenged. Persons of different political beliefs for example believe they are superior than one another, it would be near impossible to enforce.

### 3.6 (6) Stirring Up Offences

Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?

Please see the *Review* section.

In general, this part of the bill allows for a person to be found guilty of an offence despite there not being a victim. Also, constructive criticism of a group may also have the unfortunate affect of causing hate, but constructive criticism should not be prevented of any characteristics.

### 3.7 (7) Stirring Up Offences (cont)

Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?

Insulting should most definitely be removed. More generally, being of bad character, i.e. insulting, should not be a criminal offense.

### 3.8 (8) Other Issues

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

Freedom of expression should not cover threats of violence or convincing others to be violent (physical and verbal). Other than this, it should be expanded maximally to give the largest range of possible expression.

### 3.9 (9) Other Issues (cont)

Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?

It should be repealed. Causing 'alarm and distress' has been abused by the courts to limit freedom of expression.

### 3.10 (10) Other Issues (cont)

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

This should have happened many years ago, ideology shouldn't be afforded safe harbour from criticism.

## 4 Closing

As also echoed in my email, I am happy for this letter to be published, but I would **not** like my name or contact details released.