
BRIEFING:

Hate Crime and Public Order (Scotland) Bill

OVERVIEW

Whist we share the aspiration of building a more equal and inclusive Scotland, we consider aspects of this bill to be excessive and represent an unacceptable erosion of freedom of expression.

All citizens have a responsibility to challenge prejudice in order to ensure Scotland is an inclusive and respectful society. However, criminalising speech is a draconian and ultimately counterproductive means of achieving that aim.

The amendments announced so far by the Justice secretary will go some way towards protecting free speech on religion in Scotland. But further revisions are still necessary to adequately protect freedom of expression.

'STIRRING UP HATRED' OFFENCES

Our primary concerns centre around the creation of new and unnecessary 'stirring up' of hatred offences, which threaten freedom of expression and conscience.

Introducing the bill, Justice Secretary Humza Yousaf remarked: "Stirring up of hatred can contribute to a social atmosphere in which discrimination is accepted as normal." The idea that speech "can contribute to a social atmosphere" is flimsy grounds for prosecuting

those who say it and certainly not enough to reduce a fundamental freedom. Well-established anti-discrimination laws already protect individuals with protected characteristics from discrimination and send the clear signal that such discrimination is unacceptable.

The new law is also unnecessary in that genuine criminal activity that the proposed offences are seeking to address are already captured by Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. The proposed new offence (in Section 3 of the Hate Crime and Public Order (Scotland) Bill) of stirring up hatred makes it an offence for a person to behave in a threatening or abusive manner against a group of persons defined by reference to certain characteristics. However, **existing legislation already outlaws threatening or abusive behaviour against anyone where such behaviour would be likely to "cause a reasonable person to suffer fear or alarm".¹**

THRESHOLDS

We welcome the justice secretary's decision to revise the legislation in light of concerns from a range of stakeholders, including ourselves, to limit the stirring up hatred offences to 'intent'.

However, we remain concerned by proposals to criminalise 'abusive' speech and believe any new stirring up hatred offences should only cover threatening conduct.

The Oxford dictionary defines abusive as "offensive and insulting"². The term is ambiguous, highly

¹ <http://www.legislation.gov.uk/asp/2010/13/section/38>

² <https://www.lexico.com/definition/abusive>

subjective and can quite easily be utilised to stifle robust commentary about religious beliefs and practices. Beliefs should not be protected by law in this way.

We respectfully disagree with the conclusions of Lord Bracadale that the requirement for ‘threatening’ behaviour alone sets the legal threshold too high. On the contrary, the inclusion of “abusive” poses a serious risk to freedom of expression by promoting the idea that there should be a right not to be offended. It risks capturing vast array of robust yet legitimate speech and will create an unreasonable expectation that religious sensibilities are protected by something akin to a blasphemy law.

Where someone is abusive about someone else’s beliefs, the believer can quite reasonably argue that they are abusing them personally too. Therefore, if we wish to apply criminal sanctions to protect people from feeling “abused” when someone criticises or attacks their beliefs, it is obvious that the beliefs themselves as well as the individual who feels insulted or abused are being protected. Some sincerely held religious beliefs and practices – likewise the failure to follow such beliefs or practices – are seen as profoundly irrational and inhumane by others. Rational and liberal critics may reasonably regard some beliefs as ‘hateful’ and deserving of mockery, abuse and hatred. The right to express this must not be restricted by law.

The legislation as drafted risks capturing comedians, performing artists, cartoonists, and all manner of expressions that may subjectively cause offence and be perceived as “abusive”.

Removing “abusive” is necessary to protect free speech in Scotland and would be in alignment with the reasonable threshold applied in English law.

FREE SPEECH PROTECTIONS

We welcome the Cabinet Secretary’s willingness to take on board our concerns and strengthen the free speech clause on religion in the bill to explicitly protect expressions of “antipathy, dislike, ridicule and

insult”, rather than much narrower ‘discussion and criticism’ of different beliefs.

However, the protection of freedom of expression clauses in the bill are still substantially weaker than the more robust equivalent in England and Wales.

The Racial and Religious Hatred Act 2006 explicitly protects “discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents”.³

We are concerned that complainants will be likely to argue that speech relating to religion they dislike is “abusive” and intended to stir up hatred.

We are further concerned by lack of a freedom of expression provisions for other characteristics.

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

PROPOSAL TO ABOLISH BLASPHEMY LAW

We welcome the proposal to abolish of the common law offence of blasphemy. Religious ideas should not enjoy privileged legal protection.

However, this long overdue advancement for human rights will be fundamentally undermined by the introduction of vague ‘stirring up’ of hatred offences, unless more robust freedom of expression protections are put in place.

³ 29J Protection of freedom of expression
<http://www.legislation.gov.uk/ukpga/2006/1/schedule>