

Bill has improved, but concerns remain

The Scottish Government's original Hate Crime Bill was a major threat to free speech, including evangelism and Christian comment on sexual ethics. After a huge public backlash, Justice Secretary Humza Yousaf has made significant concessions. The Bill is less dangerous. But the Government still needs to go further to make sure freedom of speech and expression is not undermined.

CRUCIAL SAFEGUARDS SECURED

The Scottish Government has firmly committed to amendments to ensure:


INTENTION TO STIR UP HATRED MUST BE SHOWN

The Bill originally caught anything deemed 'likely' to stir up hatred. A person's innocent actions can be described as 'stirring up hatred' just because someone disagrees with them.

 *The Scottish Government has agreed to limit the offence to 'intentionally' stirring up hatred.*

PROTECTION FOR RELIGIOUS DEBATE

A free speech clause covering religion only protected "discussion or criticism". This did not go far enough to protect robust religious debate.

 *The Scottish Government has agreed to make the religious free speech clause more like the English equivalent, which protects expressions of antipathy, dislike, ridicule and insult.¹*

POSSESSION OF A BIBLE WILL NOT BE A CRIME

The original Bill outlawed 'possession of inflammatory material'. The wording was so vague it could have included the Bible.

 *The Scottish Government has agreed to remove the inflammatory material offence completely.²*




KEY PROTECTION PROMISED

The Scottish Government has promised an amendment on:

PROTECTION FOR TRANS CRITICS

The original Bill did not contain any free speech clause at all on transgender identity.

 *The Scottish Government has agreed to add a free speech protection, which will reportedly cover expressions of antipathy, dislike, ridicule and insult.³ We still need confirmation that the wording of the protection is robust enough.*



MORE IMPROVEMENTS NEEDED



In the following areas there have been some positive signs, but much more needs to be done:

THE TERM ABUSIVE IS TOO VAGUE

The Bill criminalises “threatening or abusive” words or behaviour. “Threatening” carries implications of violence, and is an appropriate, well-understood threshold. But “abusive” is open to wide interpretation, including “rude”, “insulting” and “offensive”. This is too subjective.



The Scottish Government has said it will add to the explanatory notes attached to the Bill to clarify that abusive is an objective not a subjective test.⁴ But this does not go far enough. It would be better for “abusive” to be dropped from the Bill completely. The equivalent offence in England and Wales only covers threatening behaviour.

NO PROTECTION FOR DISAGREEING WITH SAME-SEX MARRIAGE

The clause on sexual orientation protects “discussion or criticism” of sexual conduct or practices. However, Scotland will become the only part of the UK where there is no specific protection for views about marriage.



Humza Yousaf has said he will give “careful consideration” to whether or not the sexual orientation free speech clause should be strengthened, but is “not convinced” this is necessary.⁵



NO PROGRESS SO FAR



The Scottish Government has refused to give any ground on this issue:

CRIMINALISING DISCUSSIONS IN THE HOME

The Bill catches words spoken in the privacy of the home. Hate crime offences throughout the UK, including existing offences in Scotland, contain a ‘dwelling defence’ so that words spoken in the home and not heard outside cannot be criminalised. Critics have pointed out that investigating discussion in the home would be reminiscent of a police state.⁶ Lord Bracadale, whose review of hate crime led to the Bill, has said that concerns about removing the dwelling defence are “well founded”.⁷



Humza Yousaf insists that he disagrees “in terms of principle and of policy” with including a defence for speech in the home.⁸

References are available at: the.ci/hate-crime-scot-ref