



Chorus of concern over hate crime plans

Vague 'stirring up hatred' offences in the Scottish Government's Hate Crime Bill threaten free speech, including evangelism and Christian comment on sexual ethics.

The plans have triggered a huge public backlash. An unprecedented 2,000 submissions were received by Holyrood's Justice Committee in a call for views.

Top lawyers, police officers, actors, academics and others warned that the Bill will undermine freedom of speech and expression (see quotes inside).

The strength of opposition has forced the Scottish Government to limit the offences to behaviour intended to stir up hatred rather than merely being likely to do so.

However, a host of problems remain. The offences still cover "abusive" behaviour – which is not defined. They apply to conversations in the privacy of the home. Vital clauses to protect freedom of expression are either weak or not included at all. This briefing sets out eight remaining problems.

COMICS SAY PLANS NO LAUGHING MATTER

*"...it's disastrous to the creative process... if you're having to edit everything you say before you say it then nothing is going to happen creatively"*¹

JOHN CLEESE

*"the bill could frustrate rational debate and discussion which has a fundamental role in society"*²

ROWAN ATKINSON

POLL

87% of Scots
believe "Free speech
is an important right"

Savanta ComRes poll of 1,008
Scottish adults, August 2020³

One tweak is not enough



In September, Justice Secretary Humza Yousaf announced an important concession.⁴ The offences will only be committed if a person 'intended' to stir up hatred. The original draft would have applied where hatred was 'likely' to be stirred up, regardless of intent.

This climb-down by the Government is welcome, but there are still serious problems. The Faculty of

Advocates, a professional body for lawyers, said the Government has not yet addressed all of its concerns about a "potential impact on freedom of expression".⁵ Media group the Society of Editors said "the legislation still remains a threat to established principles of free speech".⁶ And members of the three main opposition parties in Scotland also stress that more needs to be done.

POLL

69%
of Scots

agree that "For a criminal offence to be committed, there must be a proven intention to stir up hatred"

Savanta ComRes poll of 1,008 Scottish adults, August 2020

PROBLEM 1

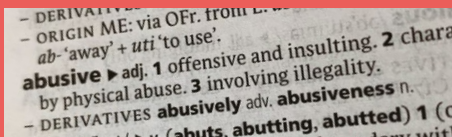
THE TERM "ABUSIVE" IS TOO VAGUE

As drafted, the stirring up hatred offences would criminalise "threatening or abusive" behaviour intended to stir up hatred against certain groups. The punishment could be up to seven years in prison.

The term "threatening" is clearly understood. It carries implications of violence, and creates a well-defined threshold for

offending. However, the term "abusive" is open to wide interpretation. The dictionary definition of abusive includes words like "rude", "insulting" and "offensive". Critics warn that speech or writing which is merely offensive to some people could be caught.⁸ The Law Society of Scotland says that the term 'abusive' is "highly subjective", requiring "judicial clarification on a case by case basis".⁹

The best way to ensure that the stirring up hatred offences do not unduly restrict free speech is to focus the offences on "threatening" behaviour intended to stir up hatred. The vague term "abusive" should be removed.



Inadequate free speech clauses

The 'stirring up' offence has a potential seven year sentence that could be triggered by the words you use. So there is a serious threat to free speech. People want the freedom to disagree on contentious issues like trans rights and same-sex marriage. This is key in a democratic society. Yet some activists use hate crime laws to punish those who disagree with them through false allegations and malicious reports to the police. Robust free speech clauses are vital.

PROBLEM 2

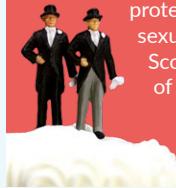
RELIGIOUS DEBATE STIFLED

The free speech clause on religion covers "discussion or criticism". This may protect academic seminars, but not ordinary, vigorous debate. The parallel clause in England and Wales – backed by SNP MPs – protects insult, ridicule and abuse of religious beliefs.

PROBLEM 3

BACK GAY MARRIAGE... ...OR ELSE

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 disagreeing with same-sex marriage.



PROBLEM 4

JAIL TIME FOR TRANS CRITICS?

Trans activists often seem to complain to the police when they are offended. The Bill makes this easier, and no free speech clause on transgender identity has been included. This is staggering considering how high-profile the public debate on this has been. The strongest critics of the trans movement are women who have had 'sex changes' but now regret it. These 'detransitioners' could be prosecuted for speaking out. This problem doesn't arise in the rest of the UK because 'stirring up' offences there don't cover transgender identity.



PROBLEM 5

CRIMINALISING DISCUSSIONS IN THE HOME

The proposals catch words spoken entirely in the privacy of the home. This gives the legislation a dangerously wide reach. There must be a defence

specifying that words spoken in the home and not heard by anyone outside can't be prosecuted. That's true in the rest of the UK, so why not in Scotland?

⚠️ PROBLEM 6

NO PROSECUTION LOCK

Prosecutions do not require the consent of the Lord Advocate. This means that decisions would be made by Procurators Fiscal in individual areas of Scotland.

In practice, this could result in more 'stirring up' prosecutions and create a postcode lottery where more prosecutions occur in some areas than others. A prosecution lock is essential given the threat of a seven year prison sentence just for something you said.

In England and Wales a person can only be taken to court for a stirring up hatred offence with the permission of the Attorney General. In Northern Ireland it is the Director of Public Prosecutions.

This safeguard ensures that prosecutions for 'stirring up' offences are reserved for serious offenders.



⚠️ PROBLEM 7

HATRED NOT DEFINED

The Bill does not define the term 'hatred'. Hatred means very different things to different people. For example, some groups argue that it is 'hateful' for a person to refuse to use a trans person's chosen pronouns.

POLL

75%
of Scots

believe "‘Hatred’ means different things to different people"

Savanta ComRes poll of 1,008 Scottish adults, August 2020¹⁰

⚠️ PROBLEM 8

COULD POSSESSION OF A BIBLE BE A CRIME?

The Hate Crime Bill includes a section on the 'possession of inflammatory material'. The lack of safeguards across the Bill makes this a dangerous threat to free speech. It would criminalise people who possess inflammatory material with "a view" to communicating it to stir up hatred. Given the framework of the Bill it is unclear what the term 'inflammatory material' means.

The Roman

Catholic Church has questioned whether the Bible could be considered 'inflammatory'.¹¹

Other critics have asked whether books and articles by feminists like JK Rowling could be caught.¹² Online sermons could also conceivably be covered by the offence, making it a danger to churches.

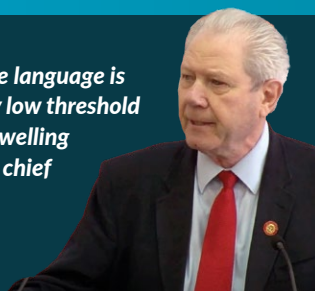
Christians have already been sued and lost their jobs because they were falsely accused of hatred. This trend shows that the Bill is a sinister threat.



What the commentators say

“ There are still serious issues with the ‘stirring up’ proposals: the language is hopelessly vague – the term “abusive” could create a distressingly low threshold for offending; free speech clauses are sorely lacking; there is no ‘dwelling defence’; and prosecutions would not be limited by referral to the chief prosecutor, as in other parts of the United Kingdom.”¹³

Jim Sillars, former Deputy Leader of the SNP



“ While we welcome the minister’s statement, we do still have outstanding concerns around the potential for misinterpretation, appropriate defences and the lack of equity in relation to the freedom of expression provisions.”¹⁴

Roman Catholic Church in Scotland

“ the legislation still remains a threat to established principles of free speech... free speech provisions remain inadequate and there is still too low a threshold for offending.”¹⁵

Ian Murray, Society of Editors

“ the stirring up offences remain unnecessary and excessive. They would unacceptably erode freedom of expression and menace free and open debate.”¹⁶

Stephen Evans, National Secular Society



“ [The Justice Secretary] will have to do much more than tinker with one section of the bill. Without radical reconstruction, Part II [on ‘stirring up hatred’] should be deleted in its entirety. Until it is, freedom of speech will remain under threat in Scotland.”¹⁷

Stephen Daisley, Spectator columnist

“ a mature, democratic and truly tolerant society should be able to negotiate robust and even rude and insulting public and social discourse without recourse to the criminal law”¹⁸

Chief Supt. Stewart Carle,
Association of Scottish
Police Superintendents



“ the Bill presents a significant threat to freedom of expression, with the potential for what may be abusive or insulting to become criminalised”¹⁹

Law Society of
Scotland



“ The language used in the Bill is so difficult to understand that it will be impossible for the man or woman in the street to know when the line is likely to be crossed.”²⁰

Thomas Ross QC

COULD YOU BE ACCUSED OF 'STIRRING UP HATRED'?

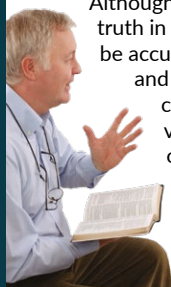
Under the Bill, what matters is not what you think you were doing, but what your accuser, the police, prosecutors and courts think. Given the lack of safeguards, it will be far too easy to make complaints about the routine work of churches and everyday Christian activity.

Preaching in church

A strong sermon commending marriage and celibacy and condemning sexual immorality – including same-sex relations – could be deemed “abusive” by an easily offended visitor. He may allege the preacher was “spouting vitriol” and “knew full well it would stir up anti-gay hate in the congregation”.

Personal evangelism

In one-to-one evangelism, people can ask what we believe about homosexuals, trans people or Muslims. In some cases this could be done to get Christians in trouble.



Although we speak the truth in love, we can be accused of ‘hatred’ and ‘abuse’. Even conversations with visitors in your own home could be investigated (see Problem 5).

Online activity

People frequently complain to the police about “what someone said on Facebook”. Christians are called hateful just because they disagree with same-sex marriage, for example. If someone doesn’t like what you say online, you could get a call from the police.



Christian publishing

A Christian book with strong warnings about the dangers of cults could result in a police investigation. If the author is found guilty of abusive words with intent to stir up hatred against other religions, even possessing the book could get you in trouble.



Public reading of Scripture

Reading aloud from Romans 1, 1 Corinthians 6 or 1 Timothy 1 could lead to a complaint that you are using the Bible abusively to stir up hatred against gay people or atheists. The fact you selected those particular texts, instead of ones people find more palatable, might be used as evidence of your intent.



References available at the.ci/hatecrimescot-ref



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