

Hate Crime and Public Order (Scotland) Bill: Stage 1 questions for the Cabinet Secretary for Justice

MBM Hate Crime Briefing 6

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October 2020

Background

The Scottish Parliament's Justice Committee began consideration of the Hate Crime and Public Order (Scotland) Bill at Stage 1 on Tuesday 27 October, and took [evidence](#) from Cabinet Secretary for Justice. This note sets out twelve questions to which we suggested MSPs seek answers from the Minister.

Extension of stirring up hatred offences

1. Can the Cabinet Secretary provide examples of the types of behaviour or communications that he sees being captured by extending the offence of stirring up hatred beyond race?
2. Evidence presented to the Justice Committee included an incident where stickers with the wording '*Woman: adult human female*' were found around the Edinburgh University campus. These were reported to Police Scotland as a 'hate incident' ([see page 11](#)). Is it the Cabinet Secretary's intention that behaviour such as this would meet the threshold of criminality as defined under Part 2 of the Bill?

Protected characteristics

Sex

3. Part 1 of the Bill establishes a hierarchy between characteristics that enjoy legal protection, and those that do not. The omission of 'sex' sends a strong signal that hatred directed towards women based on their sex matters less than other forms of hatred. The [Faculty of Advocates](#) has stated that the decision-making in this area should be made by elected representatives in the Scottish Parliament. Why has the Cabinet Secretary chosen to delegate this decision to a working group and not MSPs? Will he reconsider the exclusion of 'sex' from this bill?

Transgender identity

4. What is the justification for the inclusion of 'non-binary individuals' and 'cross-dressers' under the definition of 'transgender identity'? How does the Scottish Government define both groups?
5. Has the Scottish Government considered redefining this characteristic to mirror the definition ('gender reassignment') in the 2010 Equality Act? If not, why not?

Variations in sex characteristics

6. The inclusion of 'variation in sex characteristics' appears to be based only on its inclusion in the 2009 Act, where it is wrongly classified as an identity characteristic. The [submission](#) from the main charity supporting those with such conditions has argued strongly against its inclusion. What evidence does the Scottish Government have that people are subject to hate crimes specifically on the basis of these rare biological conditions?
7. Why has the Scottish Government adopted the term 'variations in sex characteristics' when [NHS Scotland clinicians](#) use 'differences of sex development' (DSD)?

Freedom of expression protections

8. Why are the proposed freedom of expression provisions limited only to religion and sexual orientation?
9. Why are the proposed freedom of expression provisions for religion and sexual orientation weaker than those that exist for equivalent legislation in England and Wales? And why is this limited protection generic, and not tailored to the sort of speech that needs to be protected in each specific case, as in the 1986 Act?
10. In a [meeting with Liam McArthur MSP](#) (30 September 2020), the Cabinet Secretary for Justice was recorded as stating that he is 'keen to find a resolution to Freedom of Expression provisions' but that this is 'legally challenging'. In what way would addressing stakeholder concerns in this area be 'legally challenging'?

Cross-border effects

11. Would a person recording or producing material in England, Wales or Northern Ireland commit an offence under the current Bill if the writing or material either appears in or is broadcast in Scotland?
12. What dialogue has the Scottish Government had with the UK and Welsh Governments and the Northern Ireland Executive about the potential cross-border effects of this bill prior to its introduction in the Scottish Parliament