

## **Protection of Freedom of Expression**

### **Current hate crime legislation**

The right to freedom of expression exists under Article 10 of the European Convention on Human Rights ('the Convention') and therefore applies to all current hate crime legislation. As such, hate crime law, in common with all legislation, requires to be interpreted in a way that is compatible with the Convention.

### **What the Hate Crime and Public Order (Scotland) Bill will do**

The Bill includes new offences relating to the stirring up of hatred against a group of persons defined by reference to age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics. The Bill states that a person commits such an offence if a person behaves in a threatening or abusive manner or communicates threatening or abusive material to another person (or possesses it with a view to doing so), and hatred is intended or likely to be stirred up against the group.

The freedom of expression provisions within the Bill clarify that certain expressions of view will not, of themselves, amount to threatening or abusive behaviour or material for the purposes of these new offences. In doing so, they are also intended to provide reassurance that the new offences (which apply in relation to, among other things, the characteristics of religion and sexual orientation) do not unduly interfere with the rights of people to publicly discuss and debate matters relating to religion and sexual conduct or practices.

In respect of religion, the Bill provides that, for these new offences, behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes: discussion or criticism of religions, or religious beliefs or practices; proselytising (e.g. encouraging people to convert to a religion); or urging of persons to cease practising their religions. This is intended to make it clear that these offences do not interfere unduly with people's right to debate and discuss religion or religious beliefs and practices, to advocate or promote religious beliefs or practices, to change their religion, or to urge people to cease practising their religion.

In respect of sexual orientation, the Bill provides that, for these new offences, behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes: discussion or criticism of sexual conduct or practices; or urging of persons to refrain from or modify sexual conduct or practices. This is intended to make it clear that these offences do not interfere unduly with people's right to express their views about whether it is right for people to engage in particular sexual practices and that expressing such views is not to be regarded, in and of itself, to be threatening or abusive.

## **Impact**

The freedom of expression provisions, in clarifying the ambit of the new offences, are also intended to allay concerns about the impact that the new offences might otherwise have been thought to have on both freedom of expression and freedom of thought, conscience and religion.

Where the behaviour or material involves or includes something more than solely the conduct specified in the freedom of expression provisions, any such behaviour or material may, depending on the circumstances or context, still amount to threatening or abusive behaviour. For example, an offence may be committed if the urging of people to cease practicing their religion is done in a threatening or abusive manner or, alternatively, it might be committed if a person were to urge people not to engage in same-sex sexual activity while making abusive comments about people who identify as lesbian, gay or bisexual.

Under Article 10 of the Human Rights Convention, freedom of speech is not an absolute right and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others. The Bill draws a distinction between acceptable and even robust criticism, and illegitimate threatening or abusive behaviour.

## **Further Information**

Further information about the Hate Crime and Public Order (Scotland) Bill can be found on the Scottish Government webpage <https://www.gov.scot/policies/crime-prevention-and-reduction/hate-crime/>.