

ANNEX A

Meeting with Equality Network 8 December 2020

Notes from discussion:

- Overall the Equality Network, Scottish Trans Alliance and Stonewall Scotland are supportive of one general provision. In terms of the various options for more specific provisions [redacted] made the following comments:
 - Concern that listing more specific behaviour 'throws a bone for homophobe and transphobes' and it send the wrong message to victims.
 - Noted serious concern should SG consider including wording such as 'antipathy, dislike, ridicule or insult' for trans identity or sexual orientation. In particular very specific concerns with the word ridicule.
 - Concern that if ridicule were included that a defence may be 'it was intended as ridicule and not abuse' and gave the example of the anti-Semitic leaflets as could imagine a similar scenario for homophobic or transphobic leaflets and for such behaviour to be described as 'only ridicule'.
 - Was a little reassured that the provision contained the wording 'solely on the basis..' but concern remained.
- Prefers the 4th and most broadest options for both sexual orientation and transgender identity

Sexual orientation

- Concern remains that part (b) *urging of persons to refrain from or modify sexual conduct or practices* in the current FoE provision for sexual orientation in terms of conversion therapy. Unclear why this is needed and wording in broader provision would include this behaviour.
- Noted that there have been no calls to expand FoE for sexual orientation

Transgender identity

- [redacted] strongly opposes all options other than a broad provision (final column in the table)
- Emphasised that trans people are feeling increasingly let down by SG (e.g. with the GRA not progressing) and such provision could further damage that relationship
- Concern that listing specific behaviour is incredibly problematic as it suggests SG is giving permission to express particular views re trans people but it doesn't do this for the other characteristics.
- In addition, language used and the specific examples used cause concerns
 - *'the basis upon which a person should be recognised as being a transman or transwoman'* - the issue for the trans community is not being recognised as a man or a women.
 - *'the nature of what is transgender identity'* – concern as this would not be considered for any other characteristics including sexual orientation. Including it suggests SG does not think of trans identity in the same way as other identity characteristics and plays into the hands of those who say transgender does not exist.

VSC

- Didn't get into much detail but seemed to agree nothing specific was needed. Made a broader point about FoE being considered for some characteristics and not others. While [redacted] understood why they are being considered for some and not others, I think [redacted] was concerned about the message this sends to those impacted by hate crime and the perceived message this may send from SG to those looking for an excuse to attack someone because of their sexuality or transgender identity.

EN, STA and Stonewall would only support section 12 if it was broad – and would give explicit support if it were. They are all also working together on an amendment in this area. They are considering something along the lines of:

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 matters related to a characteristics listed in section x.

[redacted] made the point that by including a broad provision for all other characteristics other than religion, that we are still broadening it out and may satisfy most people. It also ensures consistency and parity. The breadth and depth comments were more in relation to the FoE provision for religion and we are taking that forward.

ANNEX B

Hate Crime and Public Order (Scotland) Bill Cabinet Secretary for Justice Meetings with MSPs January 2021

Meeting with Liam McArthur MSP 13 January 2021

Main Points

- Is developing a 'catchall' Freedom of Expression amendment.
- Happy to comment on SG Freedom of Expression amendments.
- May take forward SG Freedom of Expression amendments as handout amendments.
- Suggested that 'Public Element' would cover a sustained pattern of radicalisation over a period.
- Has a concern about sex characteristic being subject to secondary legislation.
- Suggest that small membership of MHWG may leave it open to criticism.

Meeting with Rhoda Grant MSP 14 January 2021

Main Points

- Useful to see Enabling Power 'super-affirmative' amendments.
- Useful to see Freedom of Expression amendments, however if a Liam McArthur handout amendment it would only be if he was comfortable to share.
- Would like to see a time limit for bringing forward a future SSI to add sex characteristic if recommended by MHWG.

ANNEX C

Hate Crime and Public Order (Scotland) Bill

Cabinet Secretary for Justice Meeting with Equity and Culture Unions 21 January 2021

Attendees:

[redacted], Equity
[redacted], Equity
[redacted], Equity
[redacted], STUC [redacted]
[redacted], STUC
[redacted], Broadcasting, Entertainment, Communications and Theatre Union
[redacted], National Union of Journalists
[redacted], the Musicians Union
[redacted], the Musicians Union
[redacted], Scottish Society of Playwrights
[redacted], Scottish Society of Playwrights
[redacted], the Writers' Guild

Main Points

- Highly supportive of Scottish Government's work on Hate Crime.
- Welcomed the amendment to remove Section 4.
- Welcomed the repeal of provisions of the 1986 Act.
- Would like to see the 'Reasonable Person Test' amendment.
- Concern on how Stirring Up will be policed – suggest that they meet with the Police after Stage Three.
- Don't want to see artists self-censor themselves.
- Suggest jointly drawing up a Q&A following Stage Three.
- Suggest that we engage with the BBC on stirring up and Q&A.

ANNEX D

Hate Crime and Public Order (Scotland) Bill Cabinet Secretary for Justice Meeting with Equality Network and the Scottish Trans Alliance

29 January 2021

Attendees:

Humza Yousaf MSP, Cabinet Secretary for Justice
[redacted]

Summary

During discussion, the following points were aired:

- The reaction to Government and non-Government amendments lodged on freedom of expression protections for the characteristic of transgender identity was acknowledged.
- It was noted that in light of this reaction, SG amendments on freedom of expression (apart from on religion) would not be moved.
- Discussion would be had with opposition MSPs about withdrawing their freedom of expression amendments and asking them to work with the SG to develop something that had broader consensus for Stage Three.
- There was general agreement that there is a need to have freedom of expression provisions in the Bill, however concerns were expressed about transgender identity being 'singled out' through the amendments lodged and the message that this sends to both the trans community and wider communities.
- It was indicated there was a strong preference for a general 'catch all' provision for freedom of expression to cover all characteristics, with an acknowledgment that the reasons for additional protections in respect of religion.
- A catch-all provision would be explored.
- There was discussion about the legal and policy challenges of a freedom of expression protection referring to ECHR articles.
- It was agreed to continue to engage as a provision is developed for Stage Three.
- All present were happy to be involved in discussions as the freedom of expression amendments are developed for Stage Three.

ANNEX E

Meeting with Engender 1 February 2021

From: [redacted]@engender.org.uk>
Sent: 01 February 2021 11:22
To: [redacted]
Cc: [redacted]
Subject: Hate Crime and Freedom of Expression

Hi [redacted],

Lovely to meet you in the meeting this morning, unfortunately I dropped out just at the end of the freedom of expression discussion, which was wasn't ideal timing.

However I've attached the documents I was largely speaking to – firstly our stage 1 evidence to the Committee which outlined our suggested approach to developing a single freedom of expression clause and secondly a joint statement from a number of equality organisations we joined advocating the same sort of approach. If there was anything else raised in that meeting on freedom of expression that I might have missed or be able to help with just let me know.

I'd be very pleased to discuss these further as well as any other thoughts or questions you may have on freedom of expression proposals.

Best wishes,
[redacted]