

Hate Crime and Public Order (Scotland) Bill
Meeting with members of the Free Church of Scotland
01 March 2021

Attendees:

Humza Yousaf MSP, Cabinet Secretary for Justice
Kate Forbes MSP, Cabinet Secretary for Finance
James Fraser, Free Church of Scotland
Alasdair Macleod, Free Church of Scotland
Stephen Alison, Free Church of Scotland
[redacted], Scottish Government
[redacted], Scottish Government

The Cabinet Secretary for Justice gave the following update:

- He has been engaging with Ms Forbes since the beginning of the Bill process.
- There has been significant changes to the Bill after its introduction in response to requests for clarity and reassurance that individuals' rights are not compromised.
- The Government is aware that there have been calls from stakeholders and opposition parties to ensure that no characteristic should be singled out with a freedom of expression provision and that all parties are currently working together, in advance of Stage Three, to draft suitable freedom of expression provisions.
- The option favoured by the Cabinet Secretary excludes a freedom of expression provision for stirring up of racial hatred legislation, which has been in operation since 1986 without a freedom of expression provision.
- The option also retains the expanded freedom of expression provision for religion, as approved at Stage Two.

Summary

During discussion, the following points were aired:

- The attendees were pleased to see the significant changes to the Bill since its introduction, especially the move to 'intent', the removal of the 'inflammatory materials' provision and the inclusion of the 'reasonable person' test.
- Welcomed the retention of the expanded religious freedom of expression provision.
- Support the inclusion of 'discussion' and 'criticism' in the catch-all provision.
- The Cabinet Secretary for Justice said that he does not wish Ministers and their congregations to 'self-censor' but stated that the move to 'intent' only has created a very high threshold in the criminality test of threatening or abusive behaviour that is also intended to stir up hatred – the best safeguard is a high legal threshold.
- 'Offensive' is not a word used in the Bill.
- Although the religious freedom of expression provision is more expansive and has gained a lot of support, there is no similar support for expansive freedom of expression provisions for the other characteristics.
- There is a fine balance in providing a freedom of expression provision which can provide reassurance but does not also create discomfort for some.

- The Explanatory Notes, which are created to sit alongside the final Bill after Stage Three, can include good examples and explanations of the freedom of expression provisions.
- Even though complete agreement on all aspects of the legislation may not be possible, there was appreciation of the Cabinet Secretary's comprehensive engagement during the Bill process.
- The Act, if passed, will not come into effect for some time to allow the criminal justice organisations adequate time for training and system changes.
- The Cabinet Secretary was willing to discuss the examples for the Explanatory Notes with the Free Church of Scotland.