



SCOTTISH POLICE FEDERATION

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The Convener
Justice Committee
Room T2.60
The Scottish Parliament
EDINBURGH
EH99 1SP

Ref: CS/KB

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By email to: justicecommittee@parliament.scot

Dear Convener

Hate Crime & Public Order (Scotland) Bill

I refer to the above and thank you for inviting the Scottish Police Federation (SPF) to submit evidence on the potential freedom of expression (FoE) clauses notified on the 18th February. Given the time constraints placed upon this limited consultation, it has not proved possible for the SPF to garner views beyond our cadre of permanent officials. We note the consultation is exceptionally narrow in its focus and our comments are constructed accordingly.

As a general observation the SPF notes that the debate on what tests are to be applied to determine criminality have focussed on our courts. That is understandable, but does little to address the inevitable policing challenges we consider present themselves a long time before formal court proceedings.

We reiterate comments given in our initial response, as well as in oral evidence that there is substantial potential for many more people coming to adverse police attention as a consequence of elements of this legislation, regardless of potential FoE provisions under consideration. The potential impact of this should not be understated.

If ever a piece of legislation has demonstrated that opposing views are met with intolerance and all too readily branded as hate, then the Hate Crime and Public Order (Scotland) Bill has done precisely that.

We note Lord Bracadale supported common FoE clauses across all protected characteristics, to avoid any kind of hierarchy of protected characteristics. We support that approach. We consider that any suggestion the options presented do that (with a specific carve out for additional protections covering religion) to be a particularly narrow reading of Lord Bracadale's comments when considered against the totality of his evidence.

We consider that limiting FoE clauses encompassing beliefs, to religion only, to be extremely problematic. In our initial written submission, we commented on the reluctance of individuals to enter the trans debate over fears of being labelled as hateful.

In our oral evidence we expanded on the challenges of applying objective tests to issues that were far from immutable, like religion.

We cannot ignore the elephant in the room and that is that in the trans debate, opposing views are based essentially on irreconcilably different opinions. Even in composing this sentence, the SPF recognises that there are those who will consider their own position on this subject to be immutable.

We therefore consider that limiting FoE clauses to only encapsulate "discussion or criticism" (and not to allow the freedom to extend to "expressions of antipathy, dislike, ridicule or insult towards ... beliefs, not holding of beliefs ..." to be inherently problematic. We consider that entirely contrary to the assurances provided that merely being offensive was not to be criminalised, the likely consequence of the clauses as drafted is that by default, it will be.

Whilst we can all agree that offence is undesirable, even when intended, we consider that parliament either needs to follow the approach of commonality as recommended by Lord Bracadale, or be explicit that merely being offensive will not be considered a criminal act.

As we stated in our initial submission, there are too many people who feel that to be offended is a police matter. Whilst the potential for the offensive to be rebranded as threatening or abusive will not be overcome, a clear legislative position following either of the approaches set out above, will at least give the police service some clear interpretative breathing space in which to be able to practically manage the asks of the Bill.

Yours sincerely



CALUM STEELE
General Secretary