

Memorandum to the Public Bill Committee on the Criminal Justice and Immigration Bill

From the Department for Christian Responsibility and Citizenship, Catholic Bishops' Conference of England and Wales, and the Mission & Public Affairs Council of the Church of England

We write concerning the Government's plans to amend the Public Order Act 1986 to create a new offence of incitement to hatred on grounds of sexual orientation.

1. We welcome and support the Government's policy of promoting equality and good relations between different groups in society and protecting people from discrimination, hatred and harassment on account of their particular characteristics. We affirm in particular the importance of protecting people from hate crimes, and recognise that lesbian, gay, bisexual and transgendered people are likely to be victims of such crimes. Legislation is only one means of achieving those aims, however, and any proposed legislation must be assessed in terms of its likely effectiveness.
2. We have some reservations about creating new offences based on the law of incitement when words, behaviour and display of written material which are intended to cause harassment, alarm or distress, or which occur in the hearing or sight of a person likely to be caused harassment, alarm or distress, are already prohibited by the ss.4A and 5 of the Public Order Act 1986. We wonder whether these provisions are being enforced effectively and equitably in order to combat hate crimes.
3. The present proposal has to be seen in the context of the offences of incitement to racial hatred, first enacted in the Race Relations Act 1965, and incitement to religious hatred, in the Racial and Religious Hatred Act 2006. The debates on the latter illustrated the need to balance protection of vulnerable groups with safeguards for freedom of expression, which is particularly difficult to achieve in the field of religion. It was for this reason that we supported the principle of the legislation on incitement to religious hatred but expressed anxieties about the threshold of the offence and its possible inhibiting effects upon freedom of speech.
4. Provisions on incitement to hatred must take account of the similarities and differences between race, religion and sexuality. It was argued during the religious hatred debates that whereas race involves characteristics which an individual cannot change, religion is (at least in part) a matter of choice. Issues arising from sexuality raise their own distinctive considerations. The Churches draw a clear distinction between sexual orientation and behaviour based on that orientation.
5. In the religious hatred debates, both supporters and opponents of the Bill maintained a distinction between protection of people from personal attack, which was agreed to be desirable, and protection of their beliefs and practices from criticism or satire, which was generally thought to be undesirable. A similar distinction should be maintained in the field of sexuality. Sexual activity and lifestyle, as distinct from sexual orientation, are matters of choice and impinge upon the public sphere. As such they are subject to evaluation and criticism, and freedom to discuss them must be preserved.
6. The Christian churches hold a set of beliefs about human sexuality, marriage and family which represents a strong consensus through time and space. This tradition

teaches that human sexuality is a gift of God which finds its proper expression in marriage, the exclusive, freely-accepted and permanent bond between a man and a woman, and that sexual relations outside marriage fall short of God's purpose. Moreover, while Christian tradition recognises the contribution of sexual relations to personal growth and well-being, it does not believe that an active sexual life is necessary for human fulfilment. The single life of chastity is valid and fulfilling in its own way. This tradition forms a coherent and important part of Christian teaching and informs Christian practice. It would be impossible for Christianity to be practised and taught without these convictions being widely and freely discussed within the churches and in the wider society.

7. Our main concern is that any legislation on incitement to hatred on the grounds of sexual orientation permits the expression of traditional Christian (and other) opinions on sexual behaviour and consequent criticisms of particular forms of behaviour or lifestyle. As with incitement to religious hatred, we believe it is vital that there should be the maximum possible clarity about what is forbidden and what is permitted. Christians engaged in teaching or preaching and those seeking to act in accord with Christian convictions in their daily lives need to be assured that the expression of strong opinions on marriage or sexuality will not be illegal.

8. We also draw attention to the possible "chilling effect" on free speech, which formed part of the debates on religious hatred. Uncertainty in the law has the effect of inhibiting behaviour which may not in fact be illegal. People holding firm opinions on sexuality will generally be reluctant to risk the emotional and financial costs of being challenged by a neighbour or colleague and investigated by the police, even if this does not lead to prosecution or conviction. We are not encouraged by some examples of over-zealous action by the police, apparently under current legislation, against Christians who have publicly expressed traditional views on sexuality. We also fear that uncertainty might provoke divisive attempts to test the law, whether by Christians courting "martyrdom" or anti-Christian groups wishing to restrict the expression of opinions which they find offensive.

Conclusion

This submission was prepared before the publication of the text of the Government amendment in the form of the new Schedule 2. We welcome the narrow focus of the amendment on the use of threatening words or behaviour which are used with the intention of stirring up hatred. This goes a considerable way towards meeting our concerns.

In earlier debates concerning incitement to religious hatred, however, a further safeguard was considered necessary to protect freedom of expression. This is found in the new Section 29J of the Public Order Act 1986:

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

11. We believe it would be helpful for the Committee to explore safeguards along these lines, bearing in mind the differences between religion and sexual orientation. One possible wording, reflecting both 29J above and previous Regulations concerning sexual conduct, would be:

“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion of, criticism of or expressions of antipathy towards, conduct related to a particular sexual orientation, or urging persons of a particular sexual orientation to refrain from or modify conduct related to that orientation.”

This would protect expressions of opinion directed against conduct rather than against the person themselves. We have no fixed or final view on this matter but we believe that such an addition could remove any remaining objections to the provision.

22 November 2007