**The Church of Scotland**

**Hate Crime and Public Order (Scotland) Bill – Freedom of Expression Amendments**

**Call for Views**

**Monday 22 February 2021**

1. The General Assembly and the relevant committees in the Church of Scotland have not had an opportunity to consider the detail of the Freedom of Expression amendments. The subsequent comments are, therefore, simply *a* Church of Scotland view and not *the* formal position of the Church. They are offered to the Committee to provide a general sense of where the Church is at and hope they are helpful to deliberations.
2. There should be no objection from the Church of Scotland if the law were to explicitly state that *discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards religion* is protected under a freedom of expression clause. The repeal of the archaic blasphemy law should not be replaced with a crime of causing offence because people happen to believe different things.
3. The provisions in Options 1 and 2 in respect of religion ((c) proselytising and (d) urging of persons to cease practising their religions) are hugely important. Although this is not always comfortable territory, as a faith group we need to understand and accept that criticism, questions and counter-arguments will come our way – but also that there is freedom for individuals and religions organisations to speak and act in a way that conforms to their consciences and beliefs. For this reason, Options 1 and 2 are to be preferred over Options 3 and 4.
4. On the inclusion or exclusion of *race, colour, nationality (including citizenship), or ethnic or national origins*: there will be particular sensitivities around this, especially as often in the context of hate crime race and religion are viewed interchangeably or are proxies for one other. In 2019 General Assembly of the Church of Scotland expressed its concern about the rise in far-right populism, xenophobia and hate speech, and reaffirmed its view in 2020 that racism is a sin. It is therefore reasonable to conclude race hate crime is a greater concern for the Church of Scotland than for the other protected characteristics. And so, there should be careful consideration of the benefits of amendment Option 2.
5. In his Independent Review of Hate Crime, Lord Bracadale recommended that, in terms of freedom of expression, not only should a provision cover religion, similar to section 7 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, but to also include a protection in relation to sexual orientation similar to sections 29J and 29JA of the Public Order Act 1986. Current clause 12 mirrors 29JA (1) on special conduct or practices, but there is no inclusion of the points raised in 29JA (2) relating to discussion or criticism of marriage which concerns the sex of the parties to the marriage. Could there be additional consideration of further amendments mirroring section 29JA (2) of the Public Order Act 1986.
6. Noting the specific additional point raised by both the Free Church of Scotland and the Catholic Parliamentary Office of the Bishops’ Conference of Scotlandin relation to transgender identity; we concur; if religion has a freedom of expression protection then it should be clear that other contested areas of public policy are protected. However unpopular such views may be in the rest of society, legislation should not be used to prosecute people for expression of their opinions or beliefs; the threat of prosecution may well create a chilling effect on free speech.
7. Recognising the desire of the Scottish Government and no doubt the Committee to complete their work on the Bill in the next few weeks prior to the election, there is merit in the argument put forward by the Free Church of Scotland to withdraw the stirring up hatred offence in Part 2 of the Bill and for further public debate, consultation and scrutiny to take place without the immediate time pressure. Given the need for this extraordinary ‘Before Stage 3’ proceedings, it is clear that the issues remain contested; it is probable that there will never be a unanimous opinion but if delay means more chance for better legislation then it should be seriously considered.