

Wilson J (Jim)

From: Euan Page [Euan.Page@equalityhumanrights.com]
Sent: 12 December 2008 16:37
To: Criminal Justice and Licensing Bill
Subject: Consultation Response
Attachments: Revitalising_Justice_Consultation[1].doc

Please find attached the Equality and Human Rights Commission's comments on the Revitalising Justice consultation.

Regards

Euan Page
Parliamentary & Government Affairs Manager
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We are currently consulting on our three-year strategic plan and equality scheme, and looking at ways we can shape our grants programme in line with our strategic priorities. To find out more visit: www.equalityhumanrights.com/consultations

Our vision

A society built on fairness and respect. People confident in all aspects of their diversity.

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Revitalising Justice Consultation – Response from the Equality and Human Rights Commission in Scotland

Introduction

- 1** The Equality and Human Rights Commission was established by the Equality Act 2006 and came into being on 1 October 2007. We are the independent advocate for equality and human rights across the three nations of Great Britain, and we work to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. We enforce equality legislation on age, disability, gender, gender reassignment, race, religion or belief, and sexual orientation and encourage compliance with the Human Rights Act. In Scotland, we co-locate and work in partnership with the Scottish Commission for Human Rights.
- 2** The Commission welcomes the opportunity to comment on the proposals on the Revitalising Justice consultation. In its first year, the Commission in Scotland has been very active on criminal justice in Scotland, and has given written and oral evidence on both the Sexual Offences (Scotland) Bill and the Offences (Aggravation by Prejudice) (Scotland) Bill. We have also commissioned research on policy responses to gender-based crime in Scotland, which we hope to publish in spring 2009. Our approach in these pieces of work has informed our response to the *Revitalising Justice* consultation.
- 3** The consultation contains a wide range of proposals, some of which will require further discussion with stakeholders before the Commission can arrive at firm conclusions. We will however take this opportunity to flag areas likely to be of interest or concern, and which are likely to feature in our response to next year's Criminal Justice and Licensing (Scotland) Bill.

The Consultation Proposals

- 4** The Commission supports many of the consultation's proposals, including proposals for more appropriate secure accommodation for "unruly" children, reform on antisocial behaviour law to tackle human trafficking and child sexual exploitation, clarification of the law on territorial extent in human trafficking cases, more straightforward procedures for obtaining

criminal Non-Harassment Orders, a new “significant sexual element” criterion for extending sentences, clarifying and tightening the law on indecent images of children, review of the thresholds for application of a Sexual Offences Prevention Order, and moves to address the role alcohol plays in crime as well as in potential mitigating factors. In addition, there are a number of proposals which raise specific concerns.

- 5 **Possession of extreme pornographic material:** the consultation proposes mirroring, with some modifications, Section 63 of the Criminal Justice and Immigration Act 2008. This follows the joint Scottish Executive/Home Office consultation of 2005ⁱ. Many submissions to that consultation raised important questions about how to define “extreme” pornography, and suggested that there are clear links between all pornography and wider gender inequality. Women’s organisations have pointed to studies which implicate pornography at every stage of the sexual abuse cycle, from predisposing men to abuse, to legitimating abuse, to reducing internal and external inhibitions to abuse, and in initiating and carrying out abuseⁱⁱ.
- 6 There is then a strong argument to be made for the objective harm caused by all pornography, and on the disproportionate impact on women and children of crimes where the consumption of pornography was a contributory factor. It has indeed been suggested that pornography should be classified as incitement to gender hatred in a way similar to existing provisions on race hatredⁱⁱⁱ.
- 7 Against these arguments, both the 2005 consultation and the passage of the 2008 Act in England and Wales prompted protests that the criminal law should not intrude into regulating the private sexual activity of consenting adults, however unorthodox or distasteful certain acts may be to others. Parallels have been drawn with the 1957 Wolfenden Report on decriminalising homosexual practices which concluded that

“It is not, in our view, the function of the law to intervene in the private life of citizens, or to seek to enforce any particular pattern of behaviour.”^{iv}

- 8 The consultation's proposals must therefore be seen against the background of a complex and unresolved debates about, on the one hand, the objective harm done to individuals and society by all forms of pornography, and on the other, the limits of state interference in citizens' private lives. The Commission will be seeing further input from our stakeholders in Scotland on these issues, and it will be important to learn from the recent debates at Westminster in developing approaches.
- 9 **A new community supervision sentence:** the Commission believes that there is scope to draw policy links between this proposal and the provisions of the Offences (Aggravation by Prejudice) (Scotland) Bill currently being considered by the Scottish Parliament. The 2004 Report on the Working Group on Hate Crime^v, which led to the Bill, recommends that "sentencers should make greater use of alternative disposals for people convicted of hate crimes" and that ministers "should consider research to identify which alternative disposals are successful" (recommendation 10).
- 10 The Commission believes that community supervision sentences could represent a useful option for a non-custodial alternative, perhaps with a restorative element, for some offences aggravated by the kinds of factors detailed in the Bill. This would also seem to fit with the recommendations of the Scottish Prisons Commission, which stated in its report earlier this year that

"It cannot be beyond our imagination to think of better ways of imposing punishment, of deterring offenders and others, of sending messages about right and wrong, of getting people to payback for their crimes, of repairing harm and of helping troubled people lead law-abiding lives. Some of these approaches can and should involve the offender having to give up something they value (their reputation, their money, their privacy, their free time, their freedom), some of them can and should involve the offender in paying back positively through facing up to what they have done, apologising, compensating the victim, doing unpaid work for the community, or working hard at tackling the problems behind their offending. In some cases, where both victim and offender are willing, restorative justice practices may have an important role to play." [3.4]^{vi}

- 11** The Equality and Human Rights Commission believes strongly that this approach could be particularly effective in addressing the attitudes and values which motivate what is sometimes referred to as “hate crime”, and hopes that ministers will reflect this in their approaches both to the Offences (Aggravation by Prejudice) Bill, and in their response to the Prisons Commission report.
- 12 Recording of racial and religious hate crime aggravations:** this is the final area on which the Commission would like to comment. We welcome proposals to ensure that crime motivated by hostility or ill will towards actual or perceived sexuality, transgender identity or disability will be recorded in the same way as is currently the case for offences covered by Section 96 of the Crime and Disorder Act 1998 or Section 74 of the Criminal Justice (Scotland) Act 2003.
- 13** The Commission believes that robust recording mechanisms are an essential component to the successful use of statutory aggravations, not least because recording is central to identifying patterns of offending behaviour and consequent tailored interventions to deal with the underlying causes.

Equality and Human Rights Commission
December 2008

For further information, please contact **Euan Page, Parliamentary & Government Affairs Manager**: 0141 228 5971;
euane.page@equalityhumanrights.com

Refeneces/Endnotes

ⁱ Home Office/Scottish Executive, *Consultation: On the possession of extreme pornographic material*, August 2005

ⁱⁱ Scottish Women's Convention, response to Home Office/Scottish Executive Consultation, November 2005:

www.scotland.gov.uk/Resource/Doc/1099/0021439.pdf

ⁱⁱⁱ See Scottish Women Against Pornography (SWAP), Spring 2005 Newsletter, www.swapcampaign.co.uk/Newsletter_2005.doc

^{iv} Cited in Scottish Executive Justice Department, *Analysis of the Scottish Responses to the joint Scottish Executive and Home Office consultation on the possession of extreme pornographic material*, June 2006, www.scotland.gov.uk/Topics/Justice/criminal/17543/ExtremePornographicMaterial

^v Scottish Executive, *Working Group on Hate Crime Report*, September 2004, www.scotland.gov.uk/Resource/Doc/26350/0025008.pdf

^{vi} Scottish Government, *Scotland's Choice: Report of the Scottish Prisons Commission*, July 2008
www.scotland.gov.uk/Resource/Doc/230180/0062359.pdf

Wilson J (Jim)

From: Wilson J (Jim)
Sent: 15 December 2008 15:56
To: 'Euan Page'
Subject: RE: Consultation Response

Euan,

Many thanks for your response. As your paper covers quite a few separate topics, I have forwarded on your response to the respective policy areas for consideration. I thought it would be useful to provide you with some contacts details.

Ann Oxley from our Sexual Offences Branch covers possession of extreme pornography material
Brian Cole from our Community Justice Services Branch covers new community supervision sentence
Sara Stewart from our Sentencing policy unit covers recording of racial and religious hate crime aggravations

Should you need to get in touch, happy for you to use me as a contact point, I can then liaise accordingly with the appropriate policy lead.

Regards,

Jim

0131 244 7050

Jim Wilson

Scottish Government

Criminal Law and Licensing Division

Criminal Justice Directorate

Scotland's licensing laws are changing. To access important information on the Licensing (Scotland) Act 2005 please click on the licensing micro site at:

<http://www.infoscotland.com/licensingact/>

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