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The Criminal Justice & Immigration Bill: introducing legal protections to protect lesbian and gay people from incitement to hatred.

Background: During the passage of the Criminal Justice & Immigration Bill through the Commons, MPs approved amendments to add a new offence of incitement to homophobic hatred. In effect, this extends existing legal protections against inciting racial and religious hatred to protect lesbian and gay people. The Bill is now progressing through the House of Lords. Some people (parliamentarians and groups outside Parliament) have suggested that this extension would threaten core freedoms such as freedom of belief or freedom of religious expression. For example, they have said that the freedoms of people to express particular religious beliefs opposing same-sex relationships or adoption by gay couples would be infringed. This briefing gives some background information about the fundamental human rights of freedom of belief and freedom of expression; how they work and how they relate to this new offence.

Freedom of thought, conscience and religion and freedom of expression are fundamental human rights, given force in our domestic law via the Human Rights Act 1998. Like most other human rights, they are not absolute and in certain circumstances the state can legitimately restrict them.

Freedom of thought, conscience and religion (often called 'freedom of belief') covers a wide range of views, beliefs, thoughts and positions of conscience as well as adherence to a particular religion. It includes the right to 'manifest' thoughts, positions of conscience (including non-religious beliefs) or religion in public or private. The state can sometimes justify interfering with this right, for example in order to protect the rights and freedoms of others. But it must show that interference is lawful, necessary (not just reasonable) and proportionate. This right may be engaged in situations such as: time off work/school or different rules for clothing for people from different religions; or arrangements for prisoners to practise their religion.

Freedom of expression gives us the right to hold opinions and express our views. It covers activities like speaking aloud; publishing articles or books; giving interviews on radio or television; producing works of art. Like freedom of belief, this right can be restricted in certain circumstances, for example to protect the rights and freedoms of others. Like freedom of belief, the state must satisfy certain criteria for

any interference to be legitimate. For example, the Government has sometimes restricted people's right to freedom of expression where they are inciting racial hatred. And the media commonly has to balance its vital role in independent reporting/analysis with people's right to a private and family life (also protected by the Human Rights Act).

How do freedom of belief and freedom of expression relate to the extension of race/religious incitement of hatred to sexual orientation?

The new protections for lesbians and gay men are aimed at preventing or tackling acts of *serious* hatred. This is reflected in the high threshold for prosecutions that must be approved by the Attorney General and heard before a jury. People making jokes, or 'playground insults' or temperately expressing views against same-sex relationships or same-sex adoption would not risk prosecution under incitement laws. The Joint Committee on Human Rights (a cross-party group of MPs and peers) has said that the provisions are 'sufficiently narrowly defined to allow appropriate protection of freedom of speech'. Existing protections from incitement on other grounds (race and religion) have shown as a society we are already used to balancing fundamental freedoms such as the freedom of speech or religious expression of particular individuals or groups with the need for all people to feel protected from serious verbal or physical harm.