

Amend hate crime bill to protect free speech, Scottish government told

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A group of MSPs has said Scotland's current hate crime bill should be amended to better protect freedom of expression, after taking evidence from groups including the National Secular Society.

The Scottish parliament's Justice Committee made recommendations on the future of the bill in a [report published on Thursday](#), following a period of scrutiny.

Part of the bill would criminalise 'stirring up hatred' on a variety of grounds, including religion, if behaviour was deemed "threatening or abusive" and intended to stir up hatred.

The NSS has warned that the 'stirring up hatred' offences pose a threat to freedom of expression, including when it [gave evidence to the committee](#) last month.

Committee's recommendations

The committee said the bill should make clear that behaviour should only be judged as "abusive" if "a reasonable person" would consider it so.

It said this would "allay the concerns that people are going to be investigated or prosecuted because one person said that they found something offensive".

During its evidence, the NSS warned that the bill's vague wording on 'abuse' would encourage vexatious accusations of 'stirring up hatred'.

The committee's report also recommended further clarification over:

- The impact of a defence that someone's behaviour was reasonable.
- Whether someone could be prosecuted if their behaviour did not have a "public element".
- A provision which would criminalise the possession of "inflammatory" material with intent to stir up hatred.

The committee's report explicitly referred to the NSS's evidence on issues including the bill's protection of freedom of expression on religion.

Free speech clause on religion

Last month the justice secretary Humza Yousaf announced plans to [strengthen that free speech clause](#), shortly after the NSS gave its evidence.

The committee's report welcomed this amendment. The NSS recently gave it a qualified welcome, noting that it remained weaker than a protection in equivalent legislation in England and Wales.

The committee also said safeguards for free expression on sexual orientation and gender recognition should be clearer.

NSS comment

NSS chief executive Stephen Evans said the committee's report represented "another step in the right direction" but the bill would "remain a threat to freedom of expression".

"The committee has rightly nudged ministers to go further to protect freedom of expression. But even if its recommendations are enacted there will be ongoing cause for concern.

"Its recommendation of a higher threshold for 'abusive' behaviour is welcome, but asking what a 'reasonable person' would consider to be 'abusive' behaviour would still be too vague a test.

"MSPs should remember that genuine criminal activity that the proposed 'stirring up hatred' offences are seeking to address is already captured by existing criminal law. We welcome efforts to soften the bill's impact, but these offences aren't necessary."

Previous amendment on intent

In September the justice secretary announced an amendment which would make [intent to 'stir up hatred' a prerequisite to a conviction](#).

Before then someone could have been convicted if the prosecution could show that it was "likely" hatred would be stirred up.

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