

Briefing: Hate Crime and Public Order (Scotland) Bill



The National Secular Society (NSS) is a non-profit organisation campaigning for the separation of religion and state, and equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. We regard secularism and freedom of expression as essential features of a liberal democracy.

What is the Hate Crime and Public Order (Scotland) Bill?

According to the Scottish Government, the Hate Crime and Public Order (Scotland) Bill¹ provides for the modernising, consolidating and extending of hate crime legislation in Scotland. Its effects include:

- Creating new offences relating to 'stirring up hatred' that will apply in relation to all listed characteristics: age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics. Currently these offences only relate to race.
- Removing the necessity of proving intent or recklessness in 'stirring up' offences.
- Criminalising "abusive" in addition to "threatening" behaviour.
- Abolishing the common law offence of blasphemy.

Why are secularists concerned about this Bill?

Whilst we share the aspiration of building a more equal and inclusive Scotland, the NSS believes the Bill is excessive and represents an unacceptable erosion of freedom of expression. All citizens have a responsibility to challenge prejudice in order to ensure Scotland is an inclusive and respectful society. However, criminalising speech is a draconian and ultimately counterproductive means of achieving that aim.

The 'stirring up hatred' offenses

Our primary concerns centre around the creation of new and wholly unnecessary 'stirring up' of hatred offences, which threaten freedom of expression and conscience:

- The new law is **unnecessary**. Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 already outlaws threatening or abusive behaviour against anyone where such behaviour would be likely to "cause a reasonable person to suffer fear or alarm".
- Comparable laws outlawing 'stirring up of religious hatred' in England and Wales only criminalise "threatening" behaviour. But under this Bill, "abusive" (i.e. offensive and insulting) behaviour would also be criminalised. This poses a serious risk to freedom of expression by promoting the idea that there should be a right not to be offended.
- Where someone is abusive about someone else's beliefs, the believer can quite reasonably argue that they are abusing them personally too. Some religious people are so committed to their beliefs that nothing more than a robust assertion that their beliefs are false will be taken as abusive. Therefore, if we wish to apply criminal sanctions to protect people from feeling "abused" when someone criticises or attacks their beliefs, it is obvious that the beliefs themselves, as well as the individual who feels insulted or abused, are being protected. People should be protected by law, but beliefs should not.
- Some sincerely held religious beliefs and practices are seen as profoundly irrational and inhumane by others. Rational and liberal critics may reasonably regard some beliefs as 'hateful' and deserving of mockery, abuse

¹ The full Bill is available at <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/bill-as-introduced-hate-crime-and-public-order-bill.pdf>

and hatred. The right to express this must not be restricted by law.

- **Removing “abusive” is necessary to protect free speech in Scotland and would be in alignment with the reasonable threshold applied in English law.**
- We are also concerned that a **prosecution under the new offences requires no intent**. Because of the potential adverse impact on freedom of expression, including the chilling effects of the new offences in encouraging self-censorship, and because the offences are punishable by up to seven years imprisonment, **we believe it necessary for the prosecution to prove criminal intent**.

Free speech protections

The protection of freedom of expression sections in the Bill are substantially weaker than the much more robust equivalent in England and Wales. The Racial and Religious Hatred Act 2006 explicitly says the law doesn't restrict "discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents".

In Scotland, by contrast, proposed legislation simply states that **“Behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes discussion or criticism of religion, religious beliefs or practices.”** Complainants will be likely to argue that any speech they dislike or find offensive is “abusive”. A free speech protection that only protects polite discussion or criticism offers no meaningful protection at all.

If stirring up offences are introduced the protection clause must be strengthened to avoid seriously chilling freedom of expression.

Are there alternative methods to tackle hate speech and hate crime?

Yes. The NSS proposes alternative measures to support Scotland’s goal of protecting people from hate crime and building a more tolerant and inclusive society for all:

- The Scottish education system must be reformed to make sure children from a diverse range of backgrounds are educated together. At present, Scotland’s schools are largely divided along sectarian lines, with parents’ religious backgrounds frequently determining what school their child attends.
- Scotland’s schools should also place more emphasis on citizenship education, based on shared values including democracy, the rule of law, individual liberty and tolerance. Citizenship education should also aim to foster intercultural understanding, equality, kindness, and other personal characteristics and interpersonal skills to prepare young people for life in 21st century Scotland.
- Many organisations that promote intolerance and hatred, especially towards LGBT+ people, are registered charities. Because charities must provide a public benefit and not cause harm, charities that promote messages contrary to the public benefit should lose their charitable status and be de-registered.

Is there anything in the Bill that secularists welcome?

Yes. **We very much welcome the proposal to abolish the common law offence of blasphemy.** Religious ideas should not enjoy privileged legal protection.

It would be deeply regrettable if this advancement for human rights is fundamentally undermined by the introduction of vague ‘stirring up’ of hatred offences without much more robust freedom of expression protections.

How can I voice my concerns?

The Scottish Government's Justice Committee will scrutinise the Bill in the coming months, and is asking for views from the public.

- **Please write to the Justice Committee to let them know your views by emailing justicecommittee@parliament.scot.**

Please tell them that while you welcome the proposal to abolish the blasphemy law, other aspects of the Bill pose such a great threat to free speech on matters of religion that they may bring back the offence of blasphemy under the name of 'hate crime'. Free speech is a fundamental human right, and there are many other ways of challenging hate and intolerance without criminalising speech.

- **The closing date for receipt of submissions is [24 July 2020](#).** Please make sure you email the Justice Committee before this date.
- **More information about this call for views can be found here:**
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115038.aspx>