



## Improving the effectiveness of Hate Crime Legislation in Northern Ireland: A Public Consultation and Call for Views NSS response

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### Introduction

The National Secular Society is a not-for-profit, non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture.

More information about our organisation can be found here:

<https://www.secularism.org.uk/about.html>

We welcome the opportunity to respond to the Department of Justice's call for views on hate crime legislation. We have omitted any questions that are beyond our remit.

Question 1: Do you agree / disagree that the threshold for Hate Crime legislation should be of a sufficient high level when criminalising a person for their behaviours/attitudes leading to hate motivated offences and which results in an increased sentence from the basic offence?

### **Agree**

The NSS agrees that hate crime is a serious concern and that it causes egregious harm to society, as well as to the individuals it affects. The NSS welcomes efforts to end hate crime, as well as to eliminate extremist and hateful ideologies that give rise to hate crime. Hateful extremism is corrosive to democracy, liberty, social cohesion and human rights. It has no place in our society.

However, as many other groups and individuals have identified, hate crime laws can sometimes run the risk of interfering with the fundamental human right to freedom of speech, or abused by those who wish to silence criticism by others by accusing them of 'hate crime'. Due to these serious implications for free speech, we agree that the threshold for hate crime legislation should be of a sufficiently high level when criminalising a person for their behaviours/attitudes leading to hate motivated offences and which results in an increased sentence from the basic offence.

Throughout our 150 year history, the NSS has always championed freedom of expression. We campaign for a secular democracy where freedom of expression is not restricted by religious considerations, as

stated in our Secular Charter.<sup>1</sup> We have highlighted our concerns regarding free speech throughout our responses to the questions.

We would also like to suggest other strategies for combatting hate crime. We think an effective approach to tackling hate crime and hateful ideology is to treat it as a form of extremism. The recently established Commission for Countering Extremism has taken a rights-based approach to challenging extremism, which balances the need to protect people from extremism with fundamental human rights, including freedom of expression and freedom of religion or belief. The Commission already recognises “hateful extremism” as being within its remit.<sup>2</sup>

It is also important to crack down on registered charities that promote hate and intolerance. Many organisations that promote intolerance and hatred towards LGBT+ people are registered charities. They include Core Issues Trust, an NI-based charity that promotes forms of ‘conversion therapy’, and in doing so promotes the idea that same-sex attraction is a disorder in need of a cure. 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. This would help ensure organisations promoting hate do not gain access to tax exemptions, gift aid and other benefits given to charities, and disincentivise organisations seeking charitable status from promoting hate.

Finally, we are disappointed that this exercise to ensure hate crime legislation is “effective and appropriate” has not been used as an opportunity to abolish Northern Ireland’s archaic blasphemy laws. All other jurisdictions in the United Kingdom have repealed their blasphemy laws. This includes Scotland, which abolished its blasphemy law last year through the Hate Crime and Public Order (Scotland) Bill. We think it is vital Northern Ireland also repeals its blasphemy laws. We have gone into further detail in our answer to Q11.

Question 2: Do you agree / disagree that the current threshold of hostility is maintained in legislation as that threshold?

We agree that the threshold should not be lowered or broadened.

Question 3: Do you agree / disagree that the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate in subsequent guidance in support of new legislative changes in a Hate Crime Bill?

### **Disagree**

We think the inclusion of “bias, prejudice, bigotry and contempt” as indicators of hate will broaden and lower the threshold of ‘hate crime’ beyond its originally intended scope.

For example, churches are common targets for theft due to their low security, potentially valuable contents and materials used in construction. A person who steals from a church could be said to

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<sup>1</sup> The full charter can be read here: <https://www.secularism.org.uk/the-secular-charter.html>

<sup>2</sup> Commission for Countering Extremism, ‘Independent adviser calls for overhaul of extremism strategy’. Gov.uk, 7 October 2019. <https://www.gov.uk/government/news/independent-advisor-calls-for-overhaul-of-extremism-strategy> Accessed 1 December 2020.

demonstrate “contempt” towards a particular religious group, i.e. Christians. However, in general stealing from a church under these circumstances, deplorable though this crime is, should not be considered a ‘hate crime’.

Diluting the concept of ‘hate crime’ will in turn dilute the effectiveness of the law and the purpose of hate crime legislation – as the consultation puts it, “to protect marginalised groups against a type of crime that seeks to reinforce long-established patterns of discrimination and ideologies of hate”.

Question 4: Do you agree / disagree that a third ‘by reason of’ threshold should not be added to the current thresholds in legislation, which are demonstration of hostility and motivated by hostility?

We **agree** that it should not be added.

As with Q3, we think this will broaden and lower the threshold of ‘hate crime’ beyond its originally intended scope.

Diluting the concept of ‘hate crime’ will in turn dilute the effectiveness of the law in sending a message regarding the seriousness of crimes genuinely motivated by hatred towards particular groups.

Question 5: In supporting the understanding of a statutory sectarian aggravator in hate crime law, do you agree / disagree that ‘sectarian’ should be defined in law?

Given the unique history and ongoing challenges regarding sectarianism in Northern Ireland, we think there is a reasonable case for defining it in law.

However, we think more fundamental changes are needed in NI to end sectarianism. We have long recognised the need to reform its education system, which divides young people along harmful, obsolete sectarian lines.

Over 90% of pupils in NI attend schools which are effectively segregated by religion. There are either no Catholic or no Protestant pupils in about 30% of NI schools. This is not an education system that is conducive to fostering understanding and tolerance between children from different communities.

We believe all publicly funded schools should be equally welcoming to all children, regardless of their religious or nonreligious backgrounds.

As the Executive considers the Integrated Education Bill and the Independent Review of Education, we have made a series of recommendations that would help to end sectarian hate and prejudice, including transitioning towards a fully integrated education system and phasing out religious governance of schools.

Question 6: In supporting a statutory sectarian definition, in relation to hate crime law, do you agree / disagree that the definition should include the following elements?

- membership (or presumed membership) of a Roman Catholic or Protestant denominational group;
- social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation; or
- membership (or presumed membership) of a group based on their Irish or British nationality (including citizenship) or ethnic or national origins

While these elements are a sound starting point, the focus on Catholic or Protestant denominational affiliation may become increasingly limiting as Northern Ireland continues its trend of becoming less religious and more religiously diverse – see our answer to Q9.

Question 7: The suggested definition of sectarianism does not include political opinion. Do you agree / disagree that political opinion should be excluded?

**Agree**

Any definition of sectarianism should not pose a risk to the freedom to express political opinions.

Question 9: Whilst Judge Marrinan has suggested that a sectarian aggravator should be created and defined in a Northern Ireland and Christian context, do you consider any future changes to the hate crime legislation should include future proofing to include different denominations from non-Christian religions/faiths should evidence emerge to show this was required?

**Yes**

It would be worthwhile considering future proofing hate crime legislation to facilitate different denominations from non-Christian religions. There is already considerable evidence that sectarian hatred, discrimination and violence exists among certain non-Christian religious groups in the UK.

One prominent example are Muslims belonging to the Ahmadiyya sect, often known as Ahmadi Muslims. Due to doctrinal differences with other Muslim sects, Ahmadis face widespread oppression, persecution and discrimination throughout the world, including in the UK.

In 2020 the all party parliamentary group (APPG) for the Ahmadiyya Muslim community highlighted anti-Ahmadi discrimination and propaganda in the UK in a report, *Suffocation of the faithful: Persecution of Ahmadi Muslims in Pakistan and the rise of international extremism*<sup>3</sup>.

The report said the murder of Ahmadi Muslim Asad Shah in Glasgow in 2016<sup>4</sup> served as a “stark illustration” of the effects of anti-Ahmadi sentiment.

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<sup>3</sup> <https://appgfreedomofreligionorbelief.org/new-report-on-the-persecution-of-ahmadi-muslims/>

<sup>4</sup> <https://www.secularism.org.uk/news/2017/01/mp-calls-for-urgent-action-after-killer-of-asad-shah-incites-anti-ahmadi-violence-from-prison>

Other incidents detailed in the report included:

- Extremists delivering anti-Ahmadi propaganda through TV, radio, literature and the internet. This included literature displayed at the mosque of a London-based registered charity, Khatme Nubuwwat Centre, calling for the killing of Ahmadi Muslims<sup>5</sup>.
- The resignation of a councillor in Cardiff who was forced to quit her position for defending Ahmadi Muslims in council meetings.
- The refusal of Birmingham's SACRE – a body tasked with promoting religious education in English schools – to let Ahmadi Muslims join unless they agreed not to register themselves as Muslims.
- The termination of a UK Ahmadi Muslim advertising campaign due to demands from local non-Ahmadi Muslims.
- The cancellation of an Ahmadi Muslim exhibition on the Qur'an in Dewsbury following objections from a local Muslim group<sup>6</sup>.

The report said Ahmadi Muslims also face day-to-day discrimination, including unfair dismissals from employment, boycotts of their businesses, and bullying of children from Ahmadi families at school.

It also highlighted the Muslim Council of Britain's track record of not accepting Ahmadis as Muslim.

Another example of sectarianism among non-Christian communities is discrimination and hatred between 'high caste' and 'low caste' sects in religions that have a caste system, particularly Sikhism. For example, there have been incidents of caste-based hostility against the Ravidassia community (a Sikh sect with large numbers of 'low caste' adherents).

In 2011 the National Institute of Economic and Social Research found evidence of caste-based discrimination, harassment and bullying present in employment, education and in the provision of services. In one account, a radio station promoting the Ravidassia community was targeted with telephone threats, apparently motivated by caste-based hatred.<sup>7</sup>

Efforts to tackle caste-based sectarianism have been routinely blocked by 'high caste' groups and the politicians supported by them. 'High caste' groups, by the very nature of caste, are less likely to suffer adversely from discrimination or hatred, and in fact are likely to benefit from the status quo. They also have an interest in protecting Hinduism and Sikhism from negative publicity and criticism.<sup>8</sup>

Question 10: Given the prevalence of online communications that now exist within private dwellings, but have a reach outside those private dwellings, do you agree that the dwelling defence is no longer fit for purpose?

We have more fundamental concerns regarding the Public Order (NI) Order 1987, specifically Part III – please see our answer to Q11.

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<sup>5</sup> <https://www.secularism.org.uk/news/2019/03/nss-questions-public-benefit-of-islamic-anti-ahmadi-charity>

<sup>6</sup> <https://www.mirfieldreporter.co.uk/news/muslim-group-hits-out-quran-exhibition-organisers-2386266>

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85522/caste-discrimination.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf)

<sup>8</sup> For more information, see 'Caste-based discrimination' in our 2020 report *Faith-shaped holes: How religious privilege is undermining equality law* [www.secularism.org.uk/uploads/download-the-full-report.pdf](http://www.secularism.org.uk/uploads/download-the-full-report.pdf)

Question 11: Do you agree that repealing the dwelling defence and replacing it with a specific defence for private conversations would balance the need to protect individuals or groups of persons from accusations of stirring up offences, along with the need to ensure freedom of expression and debate of matters which are not, of themselves, threatening, abusive or insulting?

The criminalisation of private conversations must be avoided. The private dwelling defence is well established, and we see no compelling case for removing it. We would however support the creation of additional protections for other private conversations.

We are concerned that replacing the dwelling defence with a defence for private conversations does not address serious free speech issues in the Public Order (NI) Order 1987 Part III – ‘Stirring up hatred or arousing fear’.

We believe a vibrant civil society with robust freedom of expression is best placed to challenge hateful speech, discrimination and sectarian bigotry. We therefore campaign to protect and preserve freedom of expression, including offensive, critical and shocking speech.

For this reason, we are concerned that some aspects of the Order 1987 risk restricting expression to an unacceptable degree – and this will be exacerbated by expanding its application regarding online content. We do not agree that increased criminalisation of ‘hate speech’ is the appropriate response to tackling hate crime or hateful extremism. Increased criminalisation of speech and expression not only undermines the principle of free speech; it also risks being counter-productive.

Those who are investigated or prosecuted for ‘stirring up’ hatred or other forms of ‘hate speech’ can become ‘martyrs’ to their ideologies, increasing the feelings of resentment, mistrust and aggrievement commonly harboured by hateful extremists. Criminalising speech also drives it ‘underground’, decreasing the likelihood of those with extremist sympathies being exposed to alternative viewpoints. Criminalising speech may also feed common narratives held by hate groups that they are being persecuted, and that it is the group they hate that are the persecutors and oppressors.

Increased criminalisation of hateful expressions also has a chilling effect on wider public discussion. While robust criticism or mockery of certain issues may not result in a prosecution, the threat of a police investigation may be enough to silence artists, journalists, and those who would otherwise speak out on controversial issues. Criminalising increased forms of expression also risks giving those who have poor judgement or taste, including those with learning difficulties, a criminal record when they pose no genuine threat to society.

### **Lack of free speech protection for criticism of religion**

Unlike counterpart legislation in England and Wales (Public Order Act 1986) and Scotland (Hate Crime and Public Order (Scotland) Act 2021), the Public Order (NI) Order 1987 does not contain clauses to protect freedom of expression, except for “discussion or criticism of marriage which concerns the sex of the parties to marriage”. There are no similar free speech provisions for discussion or criticism of religion, which do exist in the above legislation for England, Wales and Scotland. This is a glaring inequity, giving religious people the freedom to criticise same-sex marriage without fear, but not to same-sex couples to criticise religion.

Without a free speech clause, the Public Order (NI) Order 1987 may undermine the ability of people to robustly criticise or ridicule religion. This will be exacerbated if the replacement of the dwelling defence will expand Order 1987 to more broadly cover online material.

This could easily catch criticism or ridicule of religion, particularly online where people routinely use social media and other public places to express what's on their mind. Highly religious people can be extremely defensive of their religion and interpret criticism or ridicule as 'hatred'. Some may attempt to use the Order 1987 to attempt to silence what they regard as 'hate speech' against their religion, and such attempts may increase if the dwelling defence is removed from the Order 1987.

Order 1987 could equally restrict freedoms for religious people to express their beliefs. Aside from same-sex marriage, there are no free speech protections for other controversial issues that may be discussed in religious contexts, including gender roles, gender identity, same-sex relationships outside of marriage, abortion and contraception, caste, and teachings about other religions, sects and beliefs. Order 1987 could censor religious people just as effectively as those who criticise religion.

We strongly disagree with Recommendation 14 of Judge Marrinan's independent review: "there should be no express defences for freedom of expression in relation to religion, sexual orientation or any other of the protected characteristics."

A formal statutory recognition of the importance of freedom of expression Article 10 rights and all other rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms is not sufficient.

Any stirring up of hatred offences must be accompanied by robust and explicit protection of freedom of expression clauses that make clear that citizens are free to discuss, criticise, and refute all ideas, beliefs and practices in the strongest terms. This is the case in England, Scotland and Wales. It should be the case in NI.

Finally, we are concerned by 8.40 in the consultation document: "The dwelling defence ensures that no offence is committed where behaviour or written material is displayed inside a dwelling and not heard by those outside. This has particular relevance to those of religious faith who wish to express their beliefs privately."

We do not understand why religious people have been singled out as having "particular relevance" regarding the dwelling defence. This implies that special consideration must be given to religious people to express ideas. We reject this principle. For example, a person who strongly objects to same-sex relationships on religious grounds should be treated exactly the same in law as a person who equally objects to same-sex relationships for non-religious reasons. We believe all individuals, religious or non-religious, should be equally subject to the law and equally free to express their views.

We are particularly concerned by comments made by Judge Marrinan in Stormont last year, in which he implied that 'abusing' religion (which could be interpreted as mocking religion or criticising it in extremely robust terms, should not be legal. He said:

"If you want to criticise someone else's religion – say that Islam is wrong, idolatrous, whatever you want to say, or make similar criticisms of Christianity – good luck to you. That's what living in a free democratic society means. But to go further and abuse someone

else's religion is too far... and I don't really understand why it's there in the law in England and Wales."<sup>9</sup>

We believe that robust criticism and mockery of religion, which may be considered 'abuse' by some, should be protected as free speech – and this made explicitly clear in the legislation.

### **Lack of intent required**

Furthermore, unlike legislation in England and Wales, Order 1987 does not require intent for a person to be guilty of a stirring up hatred or arousing fear offence. It is sufficient that "hatred is likely to be stirred up or fear is likely to be aroused thereby" by a person who uses, publishes or distributes "threatening, abusive or insulting" words.

This is likely to encourage self-censorship and chill free speech on controversial issues, and will only exacerbate the problem if 'stirring up' offences are expanded in the online sphere by removing the dwelling defence. Highlighting some of the negative aspects of religion could easily be interpreted as 'arousing fear', and so individuals or organisations who do criticise religion without any intent to stir up hatred may find themselves falling foul of the law.

The 'stirring up hatred' offence may even chill the reporting of facts. We are aware that some journalists and government departments have been reluctant to report on issues involving sensitivities around race, religion and other protected characteristics out of fear of being accused of racism, intolerance or inciting hatred.

### **Exclusion of nonreligious**

We share concerns expressed by Northern Ireland Humanists in the Final Report into Hate Crime legislation in Northern Ireland Independent Review that Order 1987 Part III refers exclusively to "religious belief" as one of the groups protected under the law regarding 'stirring up' offences. This excludes the many people who are nonreligious – atheists, humanists, agnostics, and those who are simply apathetic about religion. Both the Public Order Act 1986 and Hate Crime and Public Order (Scotland) Act 2021 do include clauses that specify "lack of" religion is covered by hate crime law. We believe it should be made equally clear in Order 1987 that nonreligious people are equally covered.

### **Existence of 'blasphemy laws'**

The potential threats to free speech regarding religion posed by Order 1987 are compounded by the existence of 'blasphemy' and 'blasphemous libel' offences under Northern Ireland's common law.

Northern Ireland is now the only jurisdiction in the UK to retain blasphemy laws. England and Wales repealed their blasphemy laws in 2008. Scotland repealed theirs in 2021 with the passing of the Hate Crime and Public Order (Scotland) Act 2021. This review of Northern Ireland's hate crime laws and 'stirring up' offences should include an examination of its blasphemy laws. That the blasphemy laws were not considered in the Hate Crime legislation in Northern Ireland Independent Review and the subsequent consultation is an enormous missed opportunity.

We urge the Department of Justice to bring forward provisions to repeal 'blasphemy' and 'blasphemous libel' offences as part of part of any future Hate Crime Bill.

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<sup>9</sup> <https://www.newsletter.co.uk/news/politics/ni-hate-crime-reviewer-people-should-not-be-free-to-abuse-islam-and-christianity-3303895>

Blasphemy laws have no place in any country, and especially 21<sup>st</sup> century Northern Ireland. They are illiberal, anachronistic and incompatible with the fundamental human rights to freedom of expression and freedom of religion or belief.

As long as blasphemy laws remain on the books, there is always the risk that they may be invoked to silence criticism or ridicule of religion. In the Republic of Ireland an attempt to arrest Stephen Fry was made in 2015 under the Defamation Act 2009, which at the time outlawed “utterance of blasphemous matter”, by a person offended by Fry’s comments about religion<sup>10</sup>. While unsuccessful, the attempt wasted valuable police time and gave succor to those who wish to impose their religion’s taboos on others.

And as recently as 2014, Newtownabbey Borough Council banned a play about the Bible on the grounds that it was “blasphemous”<sup>11</sup>. The existence of blasphemy laws sends the dangerous and anti-democratic message that offence-takers have the right to censor that which offends them.

England, Wales and Scotland abolished their blasphemy laws largely in recognition of the human rights abuses they cause throughout the world. The presence of blasphemy laws in Northern Ireland undermines efforts to repeal blasphemy laws worldwide. Blasphemy laws are used to persecute religious minorities, the non-religious, those who leave or change their religion, or simply those who speak their mind. In 12 countries, “blasphemy” and the overlapping ‘crime’ of “apostasy” carry the death penalty<sup>12</sup>.

But until all blasphemy laws across the UK are repealed, we are hamstrung in our efforts to speak out against blasphemy laws in other countries.

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<sup>10</sup> <https://www.theguardian.com/culture/2017/may/07/stephen-fry-investigated-by-irish-police-for-alleged-blasphemy>

<sup>11</sup> <https://www.theguardian.com/uk-news/2014/jan/28/northern-ireland-council-reduced-shakespeare-company>

<sup>12</sup> [https://bridges.monash.edu/articles/report/Killing\\_in\\_the\\_Name\\_of\\_God\\_State-sanctioned\\_Violations\\_of\\_Religious\\_Freedom/16748866](https://bridges.monash.edu/articles/report/Killing_in_the_Name_of_God_State-sanctioned_Violations_of_Religious_Freedom/16748866)