

22 February 2021

A response to the Justice Committee’s call for views on Hate Crime and Public Order (Scotland) Bill – Freedom of Expression Amendments

Summary

1. **The amendment must at least protect “expressions of antipathy, dislike, ridicule or insult” towards religious beliefs or practices.** Whilst we share the aspiration of building a more equal and inclusive Scotland, we have warned from the outset that aspects of this bill are excessive, unnecessary and represent an unacceptable erosion of freedom of expression. The abolition of the common law offence of blasphemy is a long overdue advancement for human rights. It will however be fundamentally undermined by the introduction of vague ‘stirring up’ of hatred offences without appropriate robust freedom of expression protections.

Additional protections for religion

2. Our primary concern regarding the Hate Crime Bill is that freedom of expression around religion or belief is not unduly restricted.
3. We are therefore alarmed that two of the four amendment options fail to include the additional protections for religion **already agreed to** at stage 2.
4. **Any option chosen must include the additional protection to broaden the religion free speech clause to protect “expressions of antipathy, dislike, ridicule or insult” towards religious beliefs or practices.**
5. Given this amendment was already agreed to by the Justice Committee to at Stage 2, we are at a loss to understand why two of four proposed options omit it – reopening, what was, an apparently settled matter.
6. As acknowledged by the Committee, the additional protection is a reasonable response to the overwhelming written and oral evidence received by the Committee from a broad range of religious, non-religious and secularist groups. The consensus of opinion amongst MSPs and virtually all civil society groups is that the additional protection is necessary to protect the fundamental right to free speech. It would also bring the provisions more in line with comparable public order laws concerning stirring up of hatred on grounds of religion in England and Wales.
7. It is vital that the wide consensus and strong support for this approach is reflected in the legislation. A free speech clause covering religion that only protects “discussion or criticism” does not go any near far enough to protect robust debate, comedy and commentary about religion.

8. If stirring up offences are to be introduced, they must be accompanied by a robust protection of freedom of expression clause that make clear that citizens are free to discuss, criticise, mock, lampoon, insult, ridicule and refute all ideas, beliefs and practices in the strongest terms.

Wider freedom of expression concerns

9. More broadly, we remain deeply concerned at the prospect of hate crime laws which do not allow for the most robust protection of free speech – particularly on issues which are highly contentious. People must have a right to speak their mind without fear of prosecution.
10. A free speech protection that protects only “discussion or criticism” offers limited protection and risks have a chilling effect on people’s right to freely discuss and debate controversial ideas.
11. Our vision for an open secular democracy is underpinned by the fundamental human right to free speech. Human flourishing and democracy itself are dependent on the possibility of receiving and imparting information and ideas. This freedom is not only applicable to expressions that are favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of the population, in accordance with Article 10 of the European Convention on Human Rights. Any provision to protect freedom of expression should reflect this. We fear the protections offered here fall short.

Procedure

12. We are alarmed that stakeholders have been given just 96 hours – or two working days – to respond to a consultation on important freedom of expression amendments to a highly contentious piece of legislation.
13. Many stakeholders and members of the public will not have been aware of the call for views or have had any opportunity to respond – and so will have been side-lined and disenfranchised from the democratic process.
14. Given the acknowledged sensitivities and complexities of this area, we are concerned that this piece of legislation is being rushed through to meet a deadline before the Holyrood elections in May. Law made in haste risks having unintended consequences. We therefore suggest it would be prudent to defer scrutiny of the stirring up hatred offences until after the May election.

About the National Secular Society

The National Secular Society is a not-for-profit nongovernmental 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. We promote free speech as a positive value.