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Scottish Hate Crime Legislation: NSS consultation response

1. The National Secular Society (NSS) works for the separation of religion and state, and for 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 fair and open society.
2. We welcome the opportunity to respond to the Scottish Government's consultation on hate crime legislation. We believe that principles of secularism can provide a framework for countering hate crime and minimising the harm that hate crimes can inflict upon society.
3. Our response omits answers to questions we consider to be beyond our remit and area of expertise.

Question 3: Do you think changing the language of the thresholds for the statutory aggravations from 'evincing malice and ill will' to 'demonstrating hostility' would change how the thresholds are applied?

4. Any new legislation should be as clear and simple to understand as possible. Our principle concern is that 'demonstrating hostility' is open to greater misapplication than 'evincing malice and ill will'.
5. Whereas 'malice and ill will' imply a sense of maliciousness and hatred, the term 'hostility' is broader and more neutral in terms of implied maliciousness. A person who criticises Christianity could be considered as "demonstrating hostility" towards Christianity; a person who criticises same-sex relationships could "demonstrating hostility" towards homosexuality. Yet neither expression, in and of itself, should be considered a hate crime.
6. We suggest 'demonstrating malice' as a possible alternative that is both easy to understand and more limited in its meaning than 'demonstrating hostility'.

Question 12: Do you think there is a need for sectarianism to be specifically addressed and criminalised in hate crime legislation?

7. No. Hate crime legislation that covers race and religion or belief could be applied to sectarian issues. Adding sectarianism would merely add more complexity, and the potential for misuse to legislation.

Question 16: If you disagree with the Working Group's proposed definition of sectarianism, what do you believe should be included in a legal definition of sectarianism?

8. The definition as it stands is too narrow. The proposal to limit the definition of sectarianism to Protestant/Catholic conflict is short-sighted and inadequate for dealing with Scotland's growing religious diversity. For example, sectarianism within different Muslim groups is a serious problem, as demonstrated by the murder of Ahmadi Muslim Asad Shah by Sunni Muslim Tanveer Ahmed (an incident which is referenced in Lord Bracadale's report). Failing to address sectarianism outside Protestant/Catholic conflict downplays the seriousness of sectarian-related offences, and therefore fails in the goal of hate crime laws to send a message to victims, offenders and wider society that such offences are unacceptable.
9. Scotland's leading anti-sectarian charity Nil By Mouth define sectarianism as "narrow-minded beliefs that lead to prejudice, discrimination, malice and ill-will towards members, or presumed members, of a religious denomination". This definition rightly recognises that sectarianism goes well beyond the Catholic/Protestant variant.
10. Questions over the definition of sectarianism demonstrates that this phenomenon is complex, and therefore best tackled without the addition of new laws, but existing laws related to hate crimes based on race and/or religion or belief.

Question 17: The Scottish Government recognises that legislation on its own will not end sectarianism. What else do you feel could be done to address sectarianism?

11. The Government is right to recognise that legislation on its own will not end sectarianism. A vibrant civil-society with robust freedom of expression is best placed to challenge hatred, discrimination and sectarian bigotry. Much needs to be done to break down division and promote tolerance, equality and integration of all individuals in Scotland. The best means of doing this is to adopt a secularist approach to policy and law.
12. It is deeply regrettable that Scottish schools continue to entrench and sustain sectarianism. Social cohesion is best served by educational settings being inclusive environments where students are able to mix and build positive relations with those from different backgrounds. Scotland's longstanding commitment to state funded denominational education is inimical to this and should be urgently reconsidered.
13. Any serious attempt to tackle sectarianism must include a move towards an inclusive and secular education system where children of all faith backgrounds and none are educated together.

Question 18: Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?

14. No. We fear this would add unnecessary complexity to hate crime legislation and be highly likely to impede free speech. Criticism of political entities is a fundamental democratic right and one of our most important freedoms, and as such must be protected.

15. Including political entities as a new group or characteristic in hate crime legislation would be a dangerous move against this protection. Any changes to Hate Crime Legislation must continue to respect the right for citizens to enjoy the freedom of expression where it is not threatening in nature.

Question 20: Do you think that the religious statutory aggravation in Scottish hate crime legislation should be extended to include religious or other beliefs held by an individual?

16. It strikes us as unnecessarily limiting to only recognise hate crime in relation to being a member of a group with a protected characteristic. The religiously motivated murder of Asad Shah for ‘disrespecting the Prophet Muhammad’ is a case in point. We would therefore support the law recognising an individual’s manifestations rather than purely membership of a group.

Question 23 Do you agree with Lord Bracadale’s recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?’

17. No. We believe the introduction of new ‘stirring up hatred offences’ poses a potential threat to freedom of expression.

Question 24: Do you agree with Lord Bracadale’s recommendation that any new stirring up hatred offences should require that the conduct is ‘threatening or abusive’?

18. Any offence related to the stirring up of hatred must at least require that the conduct is ‘threatening or abusive’ and ideally be framed towards that of incitement – establishing a clear and causal link between speech and the criminal action that the speech encourages.

Question 25: Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences? (This would mean that the offence would apply where the behaviour is ‘threatening or abusive’, but not where it is only ‘insulting’.)

19. We do not believe that mere insults, however unpleasant, are a matter for the police and courts.

Question 26: Do you agree with Lord Bracadale’s recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred? (If you answered yes to this question, do you have any comments on what should be covered by any such ‘protection of freedom of expression’ provision?)

20. Yes. There is merit in clearly and explicitly signalling respect for the right to freedom of expression in legislation.

21. European Council Resolution 1510 on freedom of expression and respect for religious beliefs, states:

“The progress of society and the development of every individual depend 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.”

22. Any ‘protection of freedom of expression’ provision should reflect this.

Question 35: What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?

23. Any attempt to review and update Scottish hate crime legislation should include a commitment to repeal the criminal offences of blasphemy and heresy from Scottish law.

24. The fact that these laws are seldom used only serve to highlight their inapplicability and provides no justification for keeping these archaic offences in statute.

25. Around the world blasphemy laws continue to be used to target religious and political minorities. The existence of Scotland’s blasphemy laws seriously undermines its ability to speak out against human rights abuses under the guise of blasphemy and heresy elsewhere in the world.

26. Abolition would be a powerful declaration of the Government’s willingness to fully protect free expression and comply with international human rights norms.

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