

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM HUMANIST SOCIETY SCOTLAND

General Principles

Humanist Society Scotland supports the rationalisation of statutory aggravators and believes these are a proportionate way to tackle hate crime in society.

Humanist Society Scotland believes the current statutory aggravator in relation to religion should be expanded to cover equivalent non-religious beliefs.

Humanist Society Scotland opposes the introduction of new stirring up offences as they are currently drafted. We highlighted in our Government consultation submission that changes in this area needed to be backed up with evidence that supports a need for the new offences. We do not see any sufficient evidence to support the claim that there is a gap in the law that cannot be tackled with statutory aggravations in the first part of this bill.

Humanist Society Scotland is concerned that the threshold relating to stirring up offences does not require a need to prove intent and fears that this will have a serious chilling impact on freedom of expression.

Humanist Society Scotland believes that there is strong evidence that restorative justice programmes have success in tackling repeat offending on hate crime. We believe that the government should set out alongside the bill provisions as to how they will extend the use of such programmes that have been proven to help reduce instances of hate crime.

Humanist Society Scotland is very supportive of the measure to repeal the common law offence of blasphemy, having led the campaign for its repeal for many years.

The above points were made by Humanist Society Scotland to the Lord Bracadale Review, to the Scottish Government's pre-bill consultation and in correspondence with the Justice Secretary.

The first consideration when it is proposed that hate speech should be legally banned must be to safeguard the human right of freedom of expression. Under Article 10 of the European Convention of Human Rights any restriction of free speech must be:

'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

The most relevant words here are "public safety" and "protection of the ... rights of others". Any new legislation on hate speech concerning religion or belief must

therefore be restricted to protecting people as followers of a religion or holders of beliefs, and decidedly not act to protect the religion or belief itself. The Government's proposals seem to us to meet this standard, but the principle needs to be borne in mind in everything that we say below.

Statutory Aggravators

We agree that statutory aggravators should be the main way to tackle hate crime. We agree with the provisions of the bill that will consolidate the law in this area.

We believe the use of statutory aggravators gets the right balance between protecting minorities/protected groups from harassment, violence and other threatening behaviour and protecting the right to freedom of religion/belief and right to free expression. This is because the statutory aggravation model utilises the existing criminal code tackling behaviour which is a criminal offence regardless of motivation, but treats it as a hate crime where the criminal offence has been motivated by prejudice. A 'hate crime' is not a new offence under this model but helps target criminal behaviour which is motivated by prejudice. This ensures that people are protected and that hate crime offences are taken seriously by authorities. This is illustrated by the fact that Police Scotland have made the tackling of hate crime a priority work area – which they do through the use of statutory aggravators.

Defining Beliefs

We have previously highlighted our concerns regarding the width of the statutory aggravator regarding religion/belief. For example, we have highlighted that we disagree with Lord Bracadale when he stated in his review that:

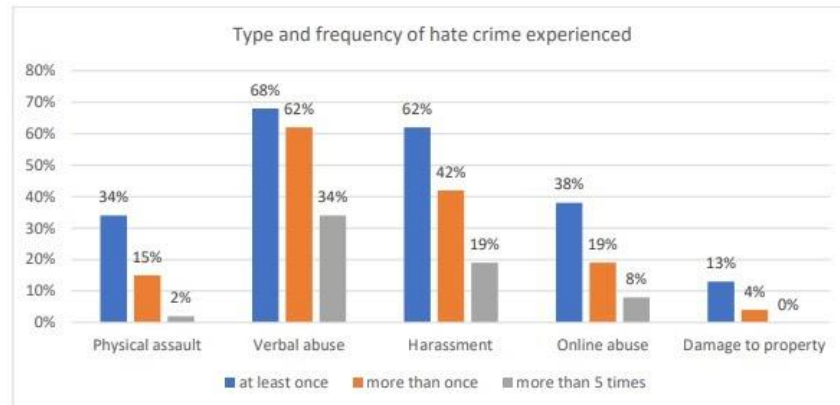
“While in principle I consider that hostility towards members of a group based on non-theistic beliefs could give rise to hate crime, there was no evidence before the review to suggest that such an extension was required.”

(It should be noted here that Humanist Society Scotland offered to meet with Lord Bracadale during his review work to demonstrate the need to protect those who hold non-theistic beliefs – this offer was refused although he did take written evidence that we supplied.) We object to the suggestion that non-religious beliefs should not be protected both on principle and because there is a demonstrable need for protection.

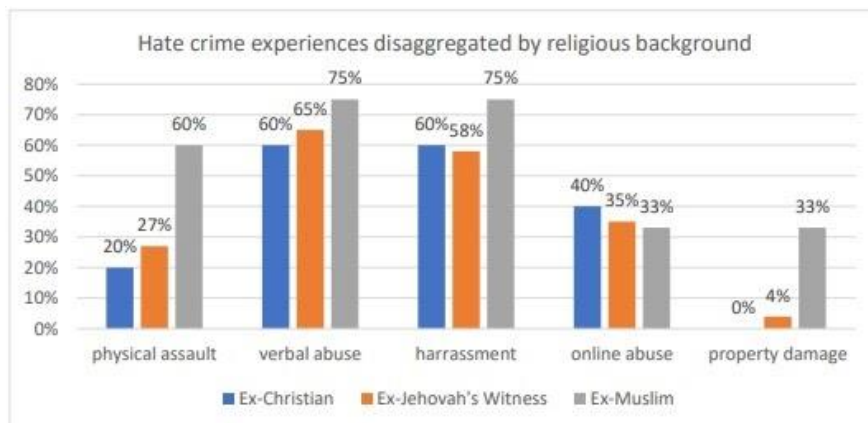
As to the argument from principle, all human rights law, international and domestic, has for long accepted – indeed, asserted – the equivalence of religious and non-religious beliefs. (See further below.) It would be as much a breach of this principle to exclude non-religious beliefs from protection against hate crime as to exclude any named religion on the same grounds of lack of evidence of present need.

And there is, in fact, no lack of such evidence. Although we do not have first-hand evidence from Scotland of hate crime committed against people holding non-theistic beliefs, a recent study conducted by Ellen Johnson at Sheffield Hallam University looked at hate crime experienced by apostates in England and Wales, based on a survey of 77 respondents. This found that 81% of respondents indicated at least one

experience of hate crime, with over 50% experiencing more than two types of hate crime.



The data also revealed a correlation between the religious background of the victim and the type of hate crime that they were subjected to, with ex-Muslims reporting more overt forms of abuse and threats of violence, including kidnap to countries where 'apostasy' is illegal.



The majority of hate crimes committed against so-called apostates are perpetrated either by close family members or by members of their former religious communities, with all respondents to the survey reporting that the motivation for the hate crime was both an individual emotional response to the person's act of apostasy and mandated by the religious organisation involved.

We are pleased that the Scottish Government has clarified the position in relation to individuals who leave a religion and are subsequently targeted for violence/persecution in a fact sheet published alongside the bill. However this fact sheet continues to stipulate that the government sees some beliefs as more worthy of protection than others:

“There may be exceptions in respect of particular individuals who have changed or renounced their beliefs in a more unique way. In particular the concept of a group defined by belief or lack of belief is unlikely to cover individuals with very specific and unusual beliefs. This is a possible exception to the above general position. The position of

individuals with unique beliefs was considered by Lord Bracadale who noted that the concept of a shared protected characteristic is at the heart of the definition of hate crimes. Lord Bracadale noted the case of the murder of Asad Shah as an example of individual belief not being within the scope of hate crime... In a future similar case prosecutors may require to consider whether the motivation for a crime relates to renunciation of a previously held faith, or to specific individual beliefs that have replaced that previous faith. Depending on other circumstances, the provisions of the Bill could apply to the former but not the latter."

It continues to concern Humanist Society Scotland that the government stipulates that statutory aggravators may not apply in instances of religiously motivated violence simply because an individual victim is considered to have "unusual beliefs". It is questionable if this meets Article 9 rights that stipulate:

*"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, **either alone** or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance."*

Furthermore, creating such a hierarchy between beliefs runs counter to the Declaration of Human Rights (UDHR) Article 18 on freedom of thought, conscience and religion, which, in the words of the Human Rights Committee:

'protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.'

Furthermore, it fails to meet the 1995 Framework Convention for the Protection of National Minorities. This stipulates that governments should:

"...take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."

The European Convention requires an individual's religious or belief identity to be protected – not that of a group. This is best shown in the case of *Tanveer Ahmed v. HM Advocate* [2016]. Mr Asad Shah was murdered in a religiously-motivated killing in Glasgow. However, due to the assessment of Mr Shah's individual beliefs as unusual or/and unique it was not characterised as a hate crime. The Bill fails to close the gap in law here – a gap that was highlighted by the Lord Advocate in 2016 to the government – which in part was the motivating factor of the Lord Bracadale review of hate crime law. The then Justice Secretary Michael Matheson said *"as a government we are now going to consider [the Lord Advocate's letter] very carefully and if necessary... bring forward legislation to address this very issue"*. It is therefore

disappointing that this bill takes no steps to close the lacuna.

Philip Glover (2017, Juridical Review, Statutory aggravation by religious prejudice in Scotland: correcting the “Lord Advocate’s lacuna”) backs this interpretation setting out in his conclusion:

“State protection for individuals expressing their personal religious beliefs should be founded on that very basis [individual acts of expression]. On the specific problems of religious prejudice, this protection would be significantly more effective than that currently afforded by the state’s well-intentioned but ultimately flawed policy decision to categorise individual religious practitioners as part of some wider religious, social or cultural group to which victims such as Asad Shah simply did not fit.”

Extending the definition to include non-religious beliefs such as humanism will not in any way weaken or dilute protection for religious groups, only enhance protections for those who hold significant non-religious worldviews. This would bring hate crime in line with the Equality Act 2010 and would closely reflect the wording and scope of the Human Rights Act 1998, which enshrines the European Convention on Human Rights into UK law; they both use the term ‘religion or belief’.

There are several examples in UK case law where it has been determined that either the term ‘religion’ must be ‘read in’ to include positively held non-religious beliefs such as humanism, or it has been explicitly suggested that the law must change to include such an interpretation. In each case, the definition of ‘belief’ has been interpreted narrowly to include beliefs in line with the above definition under the UDHR. We believe that something similar should be adopted in this legislation, which would not only ensure those non-religious worldviews are included on an equal footing, but also would remedy concerns about the legislation becoming too broad or ill-defined.

In the 2015 case *R (Fox) v Secretary of State for Education*, a High Court case concerning whether the religious education syllabuses must include humanism equally alongside religions, it was determined that the law must be interpreted as including non-religious beliefs on an equal basis. Mr Justice Warby said,

‘In carrying out its educational functions the state owes parents a positive duty to respect their religious and philosophical convictions... the state has a duty to take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner... the state must accord equal respect to different religious convictions, and to non-religious beliefs; it is not entitled to discriminate between religions and beliefs on a qualitative basis; its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents’ convictions.’

Similarly, the Communications Act 2003, which uses the term ‘religion or belief’, defines belief narrowly as ‘a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines’.

On protected characteristics, where the draft bill at sn.1(2)(d) lists 'religion or, in the case of a social or cultural group, perceived religious affiliation', Humanist Society Scotland proposes the following redefinition: 'religion or belief or, in the case of a social or cultural group, perceived religious or belief affiliation'. Consequential changes would be required elsewhere.

Stirring-Up

The Government has provided little in the way of evidence that there is a significant gap in the law that requires for a new “stirring up” offence to be introduced for other characteristics beyond race, which is already covered. Bracadale sets out in his review that *“every case which could be prosecuted as a stirring up offence could also be prosecuted using a baseline offence and an aggravation.”* An assessment of the current use of statutory aggravators shows that these are well used for offences that could also be classed as stirring up.

For example, there were 3,031 hate crimes recorded in 2017-18 which involved ‘threatening or abusive behaviour’ (45% of the total hate crimes). ‘Threatening or abusive behaviour’ is defined under Section 38, Criminal Justice and Licensing (Scotland) Act 2010 – a person commits an offence if,

- a) they behave in a threatening or abusive manner,
- b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
- c) the person intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

This applies to:

- a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
- b) behaviour consisting of –
 - i. a single act, or ii. a course of conduct.

There is no evidence-led explanation in the Bill’s accompanying documents that sets out why new stirring up offences are needed, rather than relying on the baseline offence and statutory aggravation – particularly given the breadth of the ‘threatening and abusive behaviour’ example given above which is used in relation to almost half of all currently recorded hate crimes. Indeed recent examples show that Scottish courts already have very broad powers to tackle such crime e.g. *PF vs Myers* (2020).¹ Any new legislative restrictions on an individual’s rights must be balanced with what is proportionate.

In correspondence between Humanist Society Scotland and the Justice Secretary the Cabinet Secretary explained: *“While I accept there may be other ways to prosecute an offender’s behaviour, for example, using a baseline offence accompanied by a statutory aggravation, I think it is very important that a conviction should accurately reflect an offender’s conduct. For stirring up hatred, it is particularly serious and will rightly be a highly significant entry on the record of previous convictions of the offender.”* We agree with the Cabinet Secretary that convictions should accurately reflect an individual’s conduct; however, we don’t accept that a

statutory aggravation conviction fails to do so. Indeed convictions for aggravated 'threatening and abusive behaviour' are in our view very clear as to the actions of the convicted. We also don't agree with the Cabinet Secretary's assessment here that a statutory aggravation conviction would be or should be seen as less significant than any new stirring up offence conviction.

In our response to the Government's consultation, we highlighted that a full analysis of the current sections 18 to 23 of the Public Order Act 1986, how they are used and how often they are used before proceeding to create new offences was required. No detail in this regard has been laid alongside the bill. It is concerning that new stirring up offences are being proposed without full consideration of the use and impact of the existing stirring up offences in relation to race. This analysis would have helped both the government and now Parliamentarians to assess whether such stirring up offences are indeed required, or if the behaviour they aim to address can already be sanctioned under existing law through the use of statutory aggravations. In addition, the publishing by the Government of an updated policy memorandum with some case studies to illustrate the intended differences between an aggravated breach of the peace and a stirring up offence would have been helpful. While the Cabinet Secretary has given some assurances in a written response to us that the police would not assess expressions of antipathy, dislike, ridicule, or insult towards a doctrine of belief in the same way that they would assess such expressions towards an individual believer, solid examples via case studies would help with understanding. To date, a solid analysis/guide has not been produced by the government on these points.

The lack of case studies or other guidance also means questions remain as to the extent of the provisions relating to artistic work set out in the bill (performance of play). Again it would be helpful if policy guidance were published that set out that freedom of artistic expression would not be curtailed by provisions in the bill on stirring up. In particular we find clause 4 of the Bill particularly disturbing for extending even to actors in a play and requiring no proof of intent. We suggest that the safeguards in the law in England and Wales should be the model for Scottish legislation.

Discriminatory actions, incitement to violence or hatred based upon a person's race or religion or belief should not be tolerated. However, all measures to address prejudice and discrimination must be in line with human rights principles, specifically the right to freedom of thought, conscience, religion, or belief (including the right to change your religion or belief), and the right to freedom of expression.

We believe the currently proposed definition of a stirring up offence does not sufficiently differentiate between (i) prejudice and discriminatory actions against people who identify or are identified as being a member of a particular religious group, and (ii) criticism of the beliefs, ideas, and practices that might fall under the umbrella of that religious belief. It, therefore, poses a risk both to freedom of expression and thought and religion or belief. It particularly fails to consider the impact upon former members of those religious groups (apostates).

Freedom of expression is not a luxury that is being abused nor a weapon against the oppressed, but a fundamental right that belongs to all persons in our society,

whether or not you agree with or like what others might have to say. It is not an optional or secondary consideration. Every person has the human right to criticise (say) Islam or Christianity or the ideas, beliefs, and practises of those professing it (or any other religious or non-religious belief system). This freedom is protected by law through Article 10 of the Human Rights Act and internationally by the Universal Declaration of Human Rights. It is within this human rights framework that any definition of religious hatred must be considered, recalling always the dictum of the Strasbourg court that *“Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.”* (Otto-Preminger-Institut v Austria (1994), para. 47).

The Racial and Religious Hatred Act 2006, which applies in England and Wales, strikes a good balance between these two competing rights and could be used as a comparator for what this bill should seek to achieve. It makes it an offence for a person to use ‘threatening words or behaviour, or display any written material which is threatening... if he intends thereby to stir up religious hatred’. Religious hatred is defined as ‘hatred against a group of persons defined by reference to religious belief or lack of religious belief.’ The Act lays out the minimum requirement for what should be considered religious hatred. In addition, the Act provides a useful list of actions that ought not to be considered religious hatred:

‘Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.’

Beyond this baseline, we agree that there may be lawful expression that is nonetheless prejudiced and undesirable and that might be officially discouraged, though it should not become unlawful. In response to HSS, the government has indicated that it is concerned that including such a provision risks ‘providing false reassurance to people who may be considering engaging in abusive behaviour.’ However, there is no evidence from the 14 years of the Act’s operation in England and Wales that there has been an increase of behaviour that would otherwise be an offence were it not for the inclusion of this provision. Thus, the claim that it will offer reassurance to offenders is unsubstantiated. Moreover, by providing a clear distinction between what is and what is not considered religious hatred, it has provided an established boundary that actively discourages behaviour which falls outside of these terms.

This provision was included in the 2006 Act after it was proposed by a broad group of civil society organisations, including English PEN, Index on Censorship, and Humanists UK. This showed that under the similar circumstances surrounding the 2006 Act there was broad support for such an approach from across the human rights and equality sectors. It is likely that the Scottish Government may face a

similar assault from these voices if it fails to create such protections in this Bill.

As the government further stated in its correspondence with us, 'it is worth emphasising more generally the European Convention on Human Rights (ECHR) guarantees all of us freedom of speech and this right cannot be taken away by the Bill... [including] the right to express views even if they shock, offend or disturb others.' This is indeed the case and as these rights already exist, there can be no harm in reaffirming them on the face of this Bill. To do so would not give people the wrong impression about what is and is not acceptable expression, but provide further clarity on the point by corresponding more closely with the ECHR. Failing to do so does not provide reassurance to those who wish to stir up religious hatred, only confusion and inconsistency that may well discourage the legitimate expression of opinion.

In the case of so-called apostates, i.e. those who have left coercive religions, being able to question, criticise, and openly oppose the teachings and all or any manifestations of their former religion is an important aspect of their identity, can help them to come to terms with abuse they have experienced and is a legitimate expression of their new religion or belief. It is an important part of their reconciliation process, akin to 'coming out' for an LGBT individual who was previously part of an anti-LGBT community. In 2017, there were calls by the East London Mosque to ban the Council of Ex-Muslims of Britain from partaking in London Pride because they criticised Islamic-inspired homophobia. This is an example of how the right to free expression and of apostates to express their beliefs can be unfairly chilled by a broad definition of religious hatred.

An analogy has been drawn by the government between race stirring up (which exists) and religious stirring up (proposed), but there are vital differences between race and religion that affect the degree to which freedom of expression can legitimately and proportionately be restricted. Restrictions are far more easily defended in the case of race (and to a large extent gender, sexual orientation and other common grounds of unwarranted discrimination and prejudice) since race is in a sense without content: it has no ideology, teachings or dogma.

The differences between race and religion are many and profound:

- Religions, unlike race, can be chosen or put aside.
- Religions make extensive and often mutually incompatible claims about the nature of life and the world – claims that can legitimately be appraised and argued over. There is no parallel for race.
- Religions, unlike race, set out to and usually do influence their followers' attitudes and behaviour, often in ways which can be similarly controversial.
- Religions are in principle, and often in practice, in competition with each other: evangelists come to our front doors, set up television and radio stations and run campaigns to make converts. This is plainly untrue of race.
- Religions are expressed through organisations that are often wealthy and powerful. They exercise that power in the name of their faith far outside the realm of religion – in influencing social attitudes and national and international policies (e.g. on contraception). This controversial influence

has no parallel in race.

Threshold & Reasonable Defence

Humanist Society Scotland notes that the threshold in relation to stirring up hatred which is set in the bill is ‘intention to’ or ‘likely to’ stir up hatred. We believe that the ‘likely to’ threshold is too wide-reaching, undefined, and open to interpretation. We do not believe it is at all unreasonable to expect an act to reach a threshold of ‘intention’ to secure a conviction. This indeed is one of the six required points detailed in the UN’s Rabat Plan on the balance of freedom of expression and tackling incitement to hatred which we detail later. Indeed if stirring up offences are to be introduced, we believe that this would be an important safeguard in the balance between individual free expression and the intended aims of the bill.

The Scottish Government’s policy memorandum at paragraph 140 rejects this approach for the bill saying:

“The Scottish Government accepts that to confine a stirring up offence to an intention to stir up hatred would be prohibitively restrictive in practice as in real-life cases it may often be very difficult to prove beyond reasonable doubt what the accused’s intent was”

We do not believe that the main motivating factor in this regard should be how easy it can be made to secure a conviction nor is this compatible with the UN Rabat Plan. Indeed Lord Bracadale, in his review, set out that the new stirring up offence would criminalise new behaviour and this was *“a serious step not to be taken lightly”*. Therefore a low threshold as proposed could act as a significant impediment to an individual’s free expression if they fear potentially committing a criminal offence, even where their intention is not to stir up hatred.

For example, if a humanist publicly expressed a legitimate criticism of religious doctrine without intent to stir-up hatred, but a third party (neither the expresser, not a person who by reason of a protected characteristic could be a victim of the expression) interprets the humanist’s legitimate criticism in such a way that it stirs up hatred in themselves, then under the current draft of the Bill, Police Scotland could decide to make an arrest. While we accept that the final prosecution decision will be taken by the procurator nonetheless an individual could be arrested based on the third party’s view. This would be a worrying restriction of freedom of religion or belief and freedom of expression and would absolutely form a chilling effect on the right to free expression.

To state views, such as the example above, is not to subject the individual to abusive or discriminatory treatment. Rather it is to express views that some adherents might disagree with or find offensive. All people have the right to hold religious beliefs or not, and to live free from abuse. But to disagree and even to offend those with religious beliefs is not to be abusive or prejudiced towards the individual nor is it religious hatred in itself. In this regard, the intent of the speaker and the context in which the criticism is made, rather than the perception of the recipient, should form the test and be specified in the definition of religious hatred. This is similar to the way the Racial and Religious Hatred Act 2006 takes into account the intent of the

speaker.

In reviewing the law relating to similar issues in England and Wales the Law Commission endorsed our view that insults relating to religion are an important right to be protected:

“Ridicule has for long been an acceptable means of focussing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context the use of abuse or insults may well be regarded as a legitimate means of expressing a point of view upon the matter at issue.”

International law has made clear that restrictions on displays of lack of respect for religion or belief are incompatible with articles pertaining to the freedoms of religion or belief and expression or opinion. It is for this reason that the UN Rabat Plan of Action encourages states to apply a six-part test, which examines:

- the social and political context
- the status of the speaker
- intent to incite
- content or form of the speech
- the extent of the reach of the speech
- and likelihood of harm occurring, including imminence.

This should be done in order to determine whether the threshold of incitement to hatred is met. We do not believe the proposals brought forward by the Scottish Government with regards to stirring up in relation to religion meet these six stipulations.

It is important to note that the UN Rabat Plan is specifically cited in the European Court of Human Rights decision *Mariya Alekhina and others Vs Russia* (2018). Therefore, if the bill does not meet the Rabat Plan six-part test, it is likely to be challenged by the European Court of Human Rights. Parliamentarians have a responsibility to ensure that all legislation that is passed by the Scottish Parliament is compatible with relevant human rights codes.

Restorative Justice

At the current time, those convicted of aggravated offences may face longer prison sentences on account of the aggravation. Humanists promote rational evidence-based policymaking and, in line with significant evidence, we favour programmes that achieve results by reducing reoffending rates.

For example research by Dr Mark Walter of the University of Sussex (a specialist in Hate Crime criminology) has found in case studies that community-led mediation and restorative practice has led to positive results for the victim by “directly improving their emotional wellbeing” as well as supporting reduced reoffending rates.

We believe that better targeting of proven reform programs, such as diversion and restorative justice programs, that focus on reducing the prejudice felt by these individuals as part of sentencing, would better achieve the aims of reducing hate

crimes, rather than simply additional time in prison which – at least on short sentences – has shown to be ineffective at reducing reoffending.

Blasphemy

Humanist Society Scotland welcomes the introduction of a bill to the Scottish Parliament that will finally repeal the common law offence of blasphemy. The Society has campaigned for a number of years on this issue alongside our international partners as part of the global campaign to end all blasphemy laws around the world. Taking this step is an important one and adds Scotland's voice to the growing community of nations who have recently repealed blasphemy laws in order to add further pressure on the remaining nations who persist in prosecuting 'blasphemy'.

Bans on blasphemy breach the founding principles of the human rights of freedom of expression and freedom of religion or belief. There should be no restriction on an individual's ability to criticise, object or question religious teaching or doctrines.

Other western nations have taken this step and are quickly leaving Scotland behind as one of the last remaining jurisdictions in Europe to have a blasphemy law in place. England & Wales did so in 2008, Iceland and Norway in 2015, France and Malta in 2016, Denmark in 2017, Canada in 2018, and Greece and New Zealand in 2019. The Irish public voted by a landslide in a 2018 referendum to scrap their blasphemy law which was removed from the statute book in 2020. The Spanish Government recently committed to repealing Spain's law. Other countries like Benelux, Switzerland, Sweden, the United States, Mexico, Japan, Korea, the Baltic countries, the Balkan countries, Czechia, Slovakia, Hungary, and Ukraine don't have blasphemy laws either.

Across the world, today people still face live and restrictive blasphemy laws. These laws are not only used to restrict offence to a deity (in the traditional definition of blasphemy) but also to threaten people leaving a religion and political campaigners in a variety of progressive movements including women's rights, challenging ethnic discrimination, and LGBT rights.

Campaigners such as the Humanists International (of which Humanist Society Scotland is a member) report that the existence of dead letter blasphemy laws in Europe makes it more difficult to argue for the repeal of active blasphemy laws at the United Nations and other international bodies. States that actively abuse human rights through blasphemy laws take cover in pointing out in international forums that western nations have blasphemy laws of their own as if to undermine the plea with regard to human rights.

As a Parliament that has a strong record in highlighting and calling out human rights abuses abroad this move to scrap blasphemy in Scotland would be celebrated and lauded around the world. To some Scottish people, it would seem a small and insignificant move that would have little impact on their day-to-day lives, but to others, it offers hope and knowledge that we will stand by them and support the end of blasphemy laws, not just in Scotland, but around the world.

The assumption that the ECHR trumps any successful blasphemy prosecution is itself not understood in case law. For example, in *Wingrove v. the UK* [1996] the

European Court of Human Rights decided that even within a human rights framework, the state was within its rights to restrict blasphemous content within its allowed margin of appreciation. Additionally, the same finding was made in *E.S. v. Austria* [2018] where the margin of appreciation was allowed and therefore a blasphemy prosecution upheld.

There is precedent for common law offences to be scrapped by the Scottish Parliament. In 2009 the Scottish Parliament passed a law which scrapped the common law offence against sodomy. Sodomy laws were historically used to persecute gay men in Scotland. In 2009 the sodomy laws had not been used for some time but the Parliament decided it was right to scrap the law nonetheless. This was partially to close the possibility of future prosecutions, and partly to send a message to other states around the world who actively persecuted LGBT people.

About Humanist Society Scotland & Humanists UK

Humanist Society Scotland is a charity with over 15,000 members across the country. We provide services such as humanist ceremonies, volunteer projects helping the vulnerable and campaign on issues of importance to those who share a humanist outlook on life. We are particularly interested in the right to freedom of religion and belief and the right to freedom of expression. We are part of a global movement of humanists across the world being the only Scottish member of Humanists International and the European Humanist Federation.

This response has been developed with the support and input from Humanists UK, given its experience in relation to similar legislation that has already passed in England and Wales. Humanists UK is the charity working on behalf of non-religious people across England, Northern Ireland, Wales, and the Channel Islands. It also works with the Foreign & Commonwealth Office, Department for International Development, and stakeholders in the UK Parliament in favour of the repeal of blasphemy and apostasy laws around the world. Powered by over 85,000 members and supporters, it advances free thinking and promotes humanism to create a tolerant society where rational thinking and kindness prevail. It provides ceremonies, pastoral care, education, and support services benefitting over a million people every year and its campaigns advance humanist thinking on ethical issues, human rights, and equal treatment for all.

Humanist Society Scotland

23 July 2020