

Scottish Government hate crime consultation

The Scottish Government is consulting on amending hate crime legislation. It follows Lord Bracadale's review of hate crime legislation, published last year. This latest consultation is the Government's response to his recommendations.

Hate crime laws give special treatment to particular categories of victim (known as 'protected characteristics'). This undermines the basic principle of equality before the law. Hate crime laws can also threaten free speech and religious liberty.

Types of 'hate crime':

'Aggravated' crimes – existing crimes that can be given a tougher penalty when they are deemed to be motivated by hatred on the grounds of religion, race, sexual orientation, trans status, or disability. The Government is planning to add new categories, including sex and age.

'Incitement' laws – where words alone can be criminal if they are deemed to 'stir up hatred'. In Scotland, race is already covered by this type of offence. But just because an approach has been used for race, for understandable reasons, does not mean it should be extended to other characteristics. For example, a person's religion can be debated in a way their race never can. The Government is considering extending stirring up hatred offences to all the protected characteristics, including sexual orientation, religion and trans status. This could restrict our freedom to proclaim the uniqueness of Christ or to call people to repent of sinful behaviour.

Implications for Christians

Communicating truth in love is at the heart of what Christians are called to do. But in today's secularised society, disagreement can be misrepresented as hatred. Hate crime laws have been used against Christians both in the UK and internationally, including:

- In 2003 Ake Green, a Pentecostal pastor in Sweden, was sentenced to one month in prison. He was found guilty of "hate speech against homosexuals" for preaching a sermon. Only after an appeal to the Swedish Supreme Court was his conviction overturned.
- A Scottish street preacher was arrested for citing the Bible in response to a question on homosexuality. He was held overnight and charged with abusive behaviour 'aggravated by prejudice relating to sexual orientation'. At trial the charge was dismissed in an hour.
- Ben and Sharon Vogelenzang were prosecuted for a 'religiously aggravated' public order offence after answering hostile questions about their Christian

faith from a Muslim guest in their Liverpool hotel. A judge threw out the case against them.

- In 2002 in the Australian state of Victoria, Daniel Scot criticised fundamentalist Islam at a church seminar. A legal complaint was made and a judge ruled him guilty of 'religious vilification'. Daniel was ordered to apologise and banned from making any similar comments in the future. It took five years to clear his name.

GUIDE TO RESPONDING

The consultation closes on Sunday 24 February.

The consultation paper is available here:
www.bit.ly/hateconsult19

Responses can be made online, by email or by post.

If you are responding **by post** or **by email**, you will need to send a Respondent Information Form (Annex B of the consultation document). The questionnaire (after the Respondent Information Form in Annex B) contains the questions.

Online responses are made via a web form:
www.bit.ly/haterespond19

It is important to object to the principle of the hate crime approach. **Question 1** is the best place to make these points. A key concern is extending stirring up hatred offences. **Questions 23, 24 and 26** are the most relevant. You can draw on our suggestions below but **please use your own words**. Feel free to answer other questions if you wish.

'Part One – Consolidating and Modernising Hate Crime Legislation'

Question 1

"Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?"

We suggest answering "No".

Use one or two of these ideas to help form your own explanation:

- All victims of crime should be equally protected. Hate crime laws create a situation where some victims are more protected than others.

- Assault is assault regardless of who the victim is.
- There will always be more victim categories that could be added depending on which lobby groups are currently in favour.
- There have been unjust attempts to use hate crime laws against Christian street preachers. This must stop.
- This approach to hate crime seems to change how the law is applied. When someone alleges hatred, action is taken just on their say so, without the usual standard of evidence.
- It is dangerous to use criminal law to make political statements instead of to prevent and punish bad conduct.
- Hate crime laws pit different groups against each other, rather than aiming for a society where healthy disagreement and discussion is encouraged.

'Part Three – New Stirring Up of Hatred Offences'

Stirring up hatred offences covering religion and sexual orientation in England and Wales have not caused problems for free speech because they have three crucial safeguards:

- 1) *only threatening conduct is covered;*
- 2) *it must be intended to stir up hatred;*
- 3) *there are explicit free speech protections.*

Scotland would be better off without these laws. But if they are to be introduced, they must have the same safeguards. Lord Bracadale has recommended free speech protections, but his proposed threshold for the offences is lower than 1) and 2) above.

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?”

We suggest answering “No”.

- Creating offences for protected characteristics other than race is dangerous. There is a serious risk that disagreement will be labelled hatred by politically-motivated complainants.
- The word 'hatred' is too subjective to be used in criminal law, especially for issues like religion. A person's religion can be debated in a way their race can't.
- Hate speech laws can damage free speech, having a chilling effect on debate and religious freedom.

- All people should be protected from threats, not just privileged categories.
- Existing criminal law already covers threatening or abusive behaviour likely to cause fear or alarm – why is any new law needed?
- Offences of stirring up hatred can threaten freedom of religion and belief. They may stop people giving an account of what they believe. This is as true for atheists as it is for religious people.

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’?”

We suggest answering “No”. (*This would be a lower threshold than in England, which is restricted to threatening conduct*).

- Any new stirring up hatred offences should only cover threatening conduct. Abusive behaviour is a more subjective standard and therefore more unpredictable. This would be particularly dangerous within a stirring up hatred offence.
- Any new stirring up hatred offences should only cover conduct that is intended to stir up hatred. Just because something is likely to stir up hatred doesn't mean the person was aware of this. It is very serious to accuse someone of stirring up hatred. It must be clear they were doing so deliberately.

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?”

We suggest answering “Yes”.

- Any new stirring up hatred offences must have strong protection for free speech built in to protect debate.
- Any 'religious hatred' offence must explicitly protect freedom to urge people to change religion, call a religion false, and say that a particular religion is the only true faith.
- An offence covering sexual orientation must explicitly protect freedom to disagree with same-sex marriage, urge people to change their sexual behaviour, and call such behaviour sinful.
- An offence covering transgender identity must explicitly protect freedom to use a person's birth name and pronoun, and to say that someone born a woman is not a man, and vice versa.