

# The Hate Crime and Public Order (Scotland) Bill



The [Hate Crime and Public Order \(Scotland\) Bill](#) seeks to modernise, consolidate and extend Scotland's existing hate crime law – ensuring it is fit for modern Scotland.


Current hate crime legislation has evolved over time in a fragmented manner.

By providing greater clarity, transparency and consistency the new Bill – currently before the Scottish Parliament for consideration – will bring most of Scotland's hate crime legislation into one statute, making the law easier to understand and more user-friendly.

Following considerable public debate about hate crime, and claims about what the new Bill will and will not do, here are some facts about the legislation:

MYTH: The Hate Crime Bill poses a risk to freedom of speech.

## **FACT:**


The Bill will not prevent people expressing controversial, challenging or even offensive views, as long as this is not done in a threatening or abusive way that is intended to stir up hatred or likely to stir up hatred.

The Bill ensures 'stirring up of hatred' offences do not unduly inhibit freedom of expression protections set out in the European Convention of Human Rights.

The Bill actually includes provisions on freedom of expression to ensure the prohibition on stirring up hatred will not unduly restrict people's right to express their faith, or to criticise religious beliefs or practices or sexual practices.

MYTH: Hate crime is not a problem in Scotland.

## **FACT:**

This is not true. The latest reports from Police Scotland show that 6,736 hate crimes were recorded in 2017-2018. 

Behind each of these crimes is a person who has been a victim of unnecessary and damaging prejudice and hatred – this includes physical violence.

We know that a significant number of incidents may go unreported.

We are determined to avoid a culture of acceptance and urge anyone who has experienced hate crime to report it.

MYTH: Hate crime is just harsh words or hurt feelings.

## **FACT:**

No, victims of hate crime face both mental and physical harm. Police Scotland recorded 886 common assaults with a hate crime aggravator in 2017-2018.

MYTH: Most hate crime is online and harmless.

## **FACT :**

The fact that a crime is committed using the internet does not make it 'harmless'. Threats of violence or harm, for example can be just as damaging when they are made online as where they are made in person, causing genuine fear and alarm to the victim.

MYTH: We don't need new Hate Crime legislation.

## **FACT:**

Prejudice has an impact on wider society, with the potential to create a less tolerant society and increase social unrest. If not challenged, behaviour of this kind may become accepted as the norm.


Lord Bracadale's independent review of Scotland's hate crime laws

recommended that these should be consolidated into a single piece of legislation.

The Government is following this recommendation with the aim of modernise, consolidate and extend existing hate crime law ensuring it is fit for the 21st Century.

MYTH: People will be arrested and put in prison for having 'wrong' thoughts.

## **FACT:**

This is completely untrue. People are free to hold whatever views or opinions they like. The Bill does not criminalise a person's thoughts or beliefs. 

What the Bill does is criminalise and hold to account those who express or demonstrate their prejudice in an aggressive or threatening way.

For example, by assaulting someone because of their race, or behaving in a threatening or abusive way with the intention to stir up religious hatred in others.

MYTH: The Bill threatens open debate about religion and people will be prosecuted for honestly expressed views.

## **FACT:**

The Bill does not seek to stifle criticism or rigorous debate in any way. It is important that people are free to express their views and opinions and the Bill does not change that.

For an offence to be committed, the behaviour must be threatening or abusive, with an intent to stir up hatred or a likelihood that hatred will be stirred up. However, the Bill makes it clear that criticism of religious beliefs or practices is not, in itself, threatening or abusive conduct so as to constitute a criminal offence.

MYTH: The Bill will criminalise provocative protest.

## **FACT:**

The European Convention of on Human Rights guarantees all of us the right to protest, and to protest in a way that can offend or annoy those who don't agree with our views.

This right cannot be taken away by the Bill and will continue to apply as it does at the moment.

MYTH: You have added another new characteristic with variations in sex characteristics.

## **FACT:**

Intersexuality is currently included as one element within the existing overarching definition of transgender identity in the existing legislation on statutory aggravations. However, it was felt that it did not sit correctly within that definition and has been removed and termed variations in sex characteristics as this is term is seen as the most inclusive and used more often by stakeholders.

MYTH: The Hate Crime Bill goes radically beyond existing law by reference to insulting behaviour.

## **FACT:**

The Bill does not introduce "insulting" as a new legal threshold. There has been an offence of stirring up racial hatred in Scots law – and the whole of the UK – for decades.

The current stirring up of racial hatred offences are in the Public Order Act 1986. Similar offences existed even earlier, in the Race Relations Act 1965. These both included "insulting" as part of the behaviour that can constitute a criminal offence of stirring up racial hatred. The new Bill therefore retains an already existing threshold for race.

Where the Bill does create new offences of stirring up hatred to cover other characteristics such as religion and sexual orientation, 'insulting' is not included as part of the conduct that may constitute a criminal offence.

Instead, under the Bill it is an offence for someone to behave in a

threatening or abusive manner, or communicate threatening or abusive material to another person where there is an intention or likelihood to stir up hatred in respect of the other characteristics.

**MYTH:** For the stirring up hatred offences in the Bill, 'hatred' is defined by the accuser with no need for the prosecution to prove intent. So if a minority finds something to be 'abusive, threatening (or insulting for race)' then it is, under the new law.

## **FACT:**

None of the stirring up hatred offences define hatred by reference to the 'accuser's' perception of why the accused did what they did. In each case, the prosecution must show there was an intention or likelihood to stir up hatred against people with a listed characteristic, whether or not the victim or victims were members of the perceived group.

The independent court will determine whether hatred is likely to be stirred up or was intended to be stirred up by a person's conduct, on the basis of an independent, objective assessment of the available evidence.

**MYTH:** The Hate Crime Bill will prosecute me for practising my religion and preaching about it.

## **FACT:**

The Bill does not criminalise religious beliefs or practices.

No one can commit a stirring up of religious hatred offence if they do not act in a threatening or abusive manner. And if you do act in that way it will only be an offence in the Bill if a court considers by your actions that you intended to stir up hatred or it is likely that hatred will be stirred up in others.

**MYTH:** I will be prosecuted if someone is offended by my words or controversial views

**FACT:**

The Bill does not criminalise expressing views just because they are offensive or controversial. Only when someone expresses their views in a threatening or abusive way that is either intended or likely to stir up hatred would an offence be committed.

Whether conduct is deemed threatening or abusive is a matter for the courts depending on the individual facts and circumstances of each case.

Let's not forget this is an existing and well-recognised threshold for conduct in Scottish criminal law which the police, prosecutors and courts are familiar with – in the context of stirring up racial hatred.

**MYTH:** This Bill is being brought in so I can't criticise Government Policy

**FACT:**

The Bill provides for the modernisation, consolidation and extension of hate crime legislation in Scotland. It in no way stifles criticism of, opposition to or rigorous debate about government policy and indeed policy of any political party.

People are free to hold whatever views or opinions they like. What the Bill does is criminalise and hold to account those who express or demonstrate prejudice in a certain way, for example, by assaulting someone because of their race, or behaving in a threatening or abusive way with the intention to stir up hatred in others, or where it is likely hatred will be stirred up.

**MYTH:** If somebody claims my behaviour stirs up hatred then I will be prosecuted

**FACT:**

No, that is not correct. The test to be applied is not what someone might claim about behaviour stirring up hatred.

The stirring up hatred offences in the Bill can't be easily committed. You can only commit an offence if two separate things can be proven beyond reasonable doubt, to the

satisfaction of the court.

Firstly, it needs to be proven that you have behaved in a threatening or abusive manner. As regards stirring up hatred on grounds of race, it needs to be proven that you have behaved in a threatening, abusive or insulting manner. These have been existing legal thresholds across the UK for decades.

Secondly, it needs to be proven that by your conduct you intended to stir up hatred in others or it is likely that hatred will be stirred up. This means that the conduct was intended, or likely to, encourage, in other people, the intense emotion of hatred toward a group.

Here, “likely” does not simply mean “possible”. A court will determine whether hatred is likely to be stirred up or was intended to be stirred up by a person’s conduct, on the basis of an independent, objective assessment of the available evidence. The context will be key, including the likely audience.

There is also the defence that your conduct was reasonable in the circumstances. Taken together, this all means that there is a high bar before conduct is criminalised.

## **What is hate crime?**

Hate crime can be verbal or physical and has hugely damaging effects on the victims, their families and communities, and we all must play our part to challenge it.

In Scotland, the law currently recognises hate crimes as motivated by prejudice for based on race, religion, disability, sexual orientation, transgender identity.

More information on the **Hate Crime Bill** can be found online: [Hate Crime Bill: what it will do](#)

The post [The Hate Crime and Public Order \(Scotland\) Bill](#) appeared first on [Justice and Safety](#).