

## Blasphemy Law Q&A



### *What has happened so far?*

The Scottish Government have launched a consultation on reforming Hate Crime laws in Scotland after a review by Lord Bracadale. Before this consultation was launched Humanist Society Scotland asked the government to scrap the common law offence of Blasphemy or at least consult on doing so in the consultation. The Petitions Committee of the Scottish Parliament received information from the Scottish Government that they were considering doing this. However when the consultation launched this issue is not being consulted on.

### *Why is this important?*

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

Campaigners such as the International Humanist and Ethical Union (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 great glee in pointing out the "liberal elite West" have Blasphemy laws of their own as if to undermine the plea with regard to Human Rights.

It is always too easy, not just for politicians but for everyone, to condemn but not take any action on rights abuses that don't impact on them. To us it would seem a small insignificant move 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.

### *Doesn't the Scottish Government support Human Rights?*

The Scottish Government have rightly been praised for taking many pro-active steps to improve Human Rights both at home and abroad. For example in bringing legislation to legalise same-sex marriage. The First Minister in 2017 said with regard to a trip to China and their rights record, "I bow to nobody in my determination to play my part internationally in promoting human rights across the world." Clearly a Government, and a leadership, so committed to protecting and furthering Human Rights at home and abroad can take, what is in effect, one very small step in scrapping the Scottish Blasphemy law.

### *What has happened elsewhere?*

Countries across Europe have recently taken action in scrapping their Blasphemy laws. England & Wales did so in 2008, Iceland and Norway in 2015, Malta in 2016 and Denmark in 2017. The Irish public voted by a landslide earlier this year in a referendum to scrap their Blasphemy law and New Zealand are currently in the process of scrapping the law. Scotland is quickly falling behind.

### *I thought the SNP voted to scrap Blasphemy laws?*

Members of Scottish National Party did pass a vote at one of its recent internal party meetings to scrap law in Scotland which made Blasphemy a criminal offence. However party policy doesn't necessarily result in the Government implementing such policies although often it does. At the moment Scottish Government ministers, who are also members of the SNP, aren't proposing to scrap the Blasphemy law.

*I've heard no-one has been convicted of Blasphemy in a long time, doesn't that mean the law no longer exists?*

Some argue that laws which are in disuse no longer have a legal standing and are, perhaps by accident rather than by design, no longer enforceable.

This assumption that a so called "dead letter law" cannot be reactivated has been shown not to be the case. In fact the law on Blasphemy itself (in England and Wales) was assumed to be such an example of a dead letter law before being reused. In 1949 Lord Denning stated in the House of Lords that Blasphemy was no longer a danger to the fabric of society that needed the state to intervene and that the law had fallen out of use.

Despite this assessment fast forward to 1977 and the publishers of the poem – "The Love That Dares to Speak Its Name" by James Kirkup – found themselves in hot water over Blasphemy. The editor of Gay News, faced a private prosecution for Blasphemy orchestrated by social conservative censor campaigner Mary Whitehouse.

The editor – Denis Lemon – was convicted, fined and given a suspended prison sentence for the publishing of this 'Blasphemous' material. So despite a law being considered by the holders of the highest law offices to be out of use, this still didn't stop a future successful prosecution.

*Doesn't the Human Rights Act trump any Blasphemy proceedings?*

In another legal case that touches on the issue of Blasphemy, *Wingrove Vs UK* in 1996, the courts decided that even within a Human Rights framework, the state were within their rights to restrict blasphemous content within its allowed margin of appreciation.

Therefore the assumption that Scotland's Blasphemy Law is gone for good, could potentially be called into question by courts in the future. Additionally further legal cases at the highest courts in Europe in recent years have shown that the assumption that Human Rights law can trump such a charge is false.

*Shouldn't the Scottish Parliament be spending their time doing more important things than this?*

Clearly the impact of an unused Blasphemy law on individual lives in Scotland is not the biggest ticket item on political agenda today. However the Scottish Government are about to introduce new legislation to Parliament to update Hate Crime laws. As part of this, laws which tackle religiously motivated hate crime will be changed. It would not result in more work for Parliament to scrap the common law offence on Blasphemy at the same time.

*Is there any precedence for this?*

Yes, in 2009 the Scottish Parliament passed a law which scrapped the common law offence against sodomy. Sodomy laws were historically used to persecute homosexuals 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 the other states around the world who actively persecuted LGBT people. This is exactly the same argument that exists for Blasphemy.