



As organisations that gave evidence to the Scottish Parliament on the Hate Crime and Public Order (Scotland) Act 2021, we call on Siobhian Brown MSP, the Minister for Victims and Community Safety, to stop misrepresenting the law.

Section 4(2) of the Act, which extends “stirring up” offences beyond race to other characteristics, requires the behaviour involved to be “threatening **or** abusive”. That the behaviour may solely be “abusive” is central to concerns about the lack of clarity and the potential for chilling effects in this legislation.

This morning on BBC Radio Scotland, the Minister repeatedly described the legal test as “threatening **and** abusive”, stating for example:

“So when they say it was debated back in 2021, I know there was robust debate and lots of amendments brought in, which was particularly to strengthen the freedom and mix of expression. So it was, as you know, with the exception of the Conservatives, it was voted through through all parties at the Scottish Parliament at the time. Now what it would be to be a crime is to be **threatening and abusive**, with the intent to stir up hatred towards an individual, and that this would cause this individual to have fear or alarm. Now, that is a very, very high threshold for criminality. And also, we've been very, very clear within the Act. This is not about restricting freedom of expression, it is protected, you can say something that may be offensive, but this is particularly about being **threatening and abusive** to cause fear and alarm to individuals who have these protected characteristics. This is where we've got to be very clear. There's a very high threshold for criminality.”

Also, the offence is specifically concerned with “groups” and there is no reference to “fear or alarm” in the Act.

She made the same “and/or” error speaking to Justin Webb on the Today Programme on BBC Radio 4 on 1 April and to Trevor Phillips on Sky News on 2 April

The Minister has a responsibility to use her access to public platforms to describe the law here accurately. We are asking her to do so, and journalists to challenge her when she does not.

For Women Scotland
Murray Blackburn Mackenzie

The Hate Crime and Public Order (Scotland) Act 2021: Extract from Section 4.

(2) A person commits an offence if—

(a) the person—

- (i) behaves in a manner that a reasonable person would consider to be threatening or abusive, or
- (ii) communicates to another person material that a reasonable person would consider to be threatening or abusive, and

(b) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3).

(3) The characteristics are—

- (a) age,
- (b) disability,
- (c) religion or, in the case of a social or cultural group, perceived religious affiliation,
- (d) sexual orientation,
- (e) transgender identity,
- (f) variations in sex characteristics.