Briefing for the Public Petitions Committee

<table>
<thead>
<tr>
<th>Petition Number: PE1665</th>
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<tbody>
<tr>
<td>Main Petitioner: Mark McCabe</td>
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<tr>
<td>Subject: Blasphemy</td>
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</tbody>
</table>

Calls on the Parliament to abolish the common law crimes of blasphemy, heresy and profanity to the extent that they remain law.

Background

In 2016, the University of Glasgow published Religion in Scots Law: Report of an Audit at the University of Glasgow. The report states:

“The crime of blasphemy is not unlike the crime of heresy in historical Scots law, in that both presupposed an established church whose doctrines are formally acknowledged in law. That is to say, blasphemy, like heresy, is a crime relative to a fixed set of beliefs to which people are obliged to adhere under pain of criminal sanctions. In this, what could be classed as blasphemous or heretical during the pre-Reformation period can often be distinguished from what was classed as blasphemous or heretical during the Scottish Protestant ascendency.

From this perspective, even if it may be argued that the crime of blasphemy lingers on in Scots law, it is difficult to see how it could be coherently enforced within a plural religious context”.

The Stair Memorial Encyclopaedia (a key legal source) notes that:

“It is a crime at common law to publish or expose for sale blasphemous works which are intended to asperse, vilify, ridicule and bring into contempt the Holy Scriptures or the Christian religion. The last reported Scottish case of blasphemy was in 1843.

Blasphemy is not now the subject of prosecution in Scotland although it cannot yet be said to have been extinguished by desuetude\(^1\). The reason that blasphemy was criminal at common law was that the Christian religion and the Bible were said to be part of the law of the land and that accordingly any vilification of them was an infringement of

\(^1\) Literally, a state of disuse.
the law. It follows that blasphemy protects only the predominant religion in Scotland and is not available to shield the sensitivities of other non-Christian faiths. As such, in a pluralistic society, it is open to criticism.

Whether it is necessary in modern society must now be a moot point. In any event, it seems tolerably plain that a prosecution for blasphemy, were one ever to be mounted, could contravene article 10 of the European Convention on Human Rights².

It is worth noting that, to the extent the crime exists, it is not based on statute but is instead founded in the common law – i.e. the case law made by judges. As pointed out above, the last reported case in Scotland was more than 170 years ago. In practice, it would fall to the Crown Office and Procurator Fiscal Service to bring an action, which does not seem likely. For example, the Free Church of Scotland has said that: “The last time the law was invoked was in 2005 when some of us complained against the BBC for its transmission of 'Jerry Springer: The Opera', but no prosecution was forthcoming”.

In similar terms to the crime of blasphemy, the crimes of heresy and profanity have fallen into disuse. A person cursing and swearing in the street today may be more likely to be charged with a breach of the peace, antisocial behaviour or threatening or abusive behaviour depending on the individual circumstances of the case.

**England and Wales**

The common law offences of blasphemy and blasphemous libel have been abolished in England Wales.

Blasphemy and blasphemous libel have been defined in the following terms:

“Blasphemy is an indictable offence at common law consisting in a publication of contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ, the Bible or the formularies of the Church of England. The publisher must intend to publish, but he need not intend that the words amount to blasphemy. It is immaterial whether the words are spoken or written; but, if written, they constitute blasphemous libel. The offence is punishable by fine and imprisonment at the discretion of the court³.

On 9 January 2008 during the Report Stage of the Criminal Justice and Immigration Bill 2007-08, the Liberal Democrat MP, Dr Evan Harris, tabled an amendment that:

“The offences of blasphemy and religious libel are abolished”.

The Government minister at that time, Maria Eagle, indicated that, subject to the results of a consultation with the Church of England, an amendment would

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² Article 10 of the ECHR deals with freedom of expression.
³ Halsbury’s Laws Direct, para 826.
be brought forward in the House of Lords for this purpose. Subsequently, Dr Harris did not move his amendment.

During committee stage of the Bill in the House of Lords, the Government tabled an amendment to abolish the blasphemy offences. It was passed by 148 to 87 and the legislation returned to the House of Commons on 6 May 2008. The Commons agreed with the amendment made in the Lords in a division by 378 to 57. The Criminal Justice and Immigration Bill received Royal Assent on 8 May 2008.

**Scottish Government Action**

The Scottish Government has not taken any action on this issue to date.

**Scottish Parliament Action**

A number of motions have been lodged in the Parliament in relation to blasphemy but these have been concerned with how relevant laws operate in Pakistan.

**Graham Ross**
**Senior Researcher**
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