

Hate Crime and Public Order (Scotland) Bill

Fairer Scotland Duty

Summary

FAIRER SCOTLAND DUTY SUMMARY

<p>Title of Policy, Strategy, Programme etc</p>	<p>Hate Crime and Public Order (Scotland) Bill</p> <p>Consolidation, modernisation and extension of Scottish hate crime legislation</p>
<p>Summary of aims and expected outcomes of strategy, proposal, programme or policy</p>	<p>Background</p> <p>In September 2016, a review by the, <i>Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion</i>¹, was published which included a number of recommendations for the Scottish Government and its partners. These recommendations included:</p> <ul style="list-style-type: none"> • the Scottish Government should consider whether the existing criminal law provides sufficient protections for those who may be at risk of hate crime, • the Scottish Government should lead discussion on the development of clearer terminology and definitions around hate crime, prejudice and community cohesion <p>This led to the appointment of Lord Bracadale to conduct an <i>Independent Review of Hate Crime Legislation in Scotland</i>². The remit for Lord Bracadale’s review was to consider whether existing hate crime law represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice. Lord Bracadale was asked by the Scottish Ministers to consider:</p> <ul style="list-style-type: none"> • the current law and consider how well it deals with hate crime behaviour, • whether new statutory aggravations should be created for example in relation to age and gender, • whether the religious statutory aggravation is fit for purpose or should be expanded, • whether we should make hate crime laws simpler by bringing them all together in one place, • any issues or gaps in the framework for hate crime laws and to make sure that hate crime laws are compatible with laws that protect human rights and equality

¹ <https://www.gov.scot/publications/report-independent-advisory-group-hate-crime-prejudice-community-cohesion/>

² <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

Lord Bracadale published his, *Independent Review of Hate Crime Legislation in Scotland*³, on 31 May 2018.

In responding to publication of the report, we accepted his recommendation to consolidate all Scottish hate crime legislation into one new hate crime statute and committed to consult on the detail of what would be included in the new hate crime bill.

Policy Aims

Hate Crime has a hugely damaging effect on victims, their families and communities. Hate crime and prejudice threaten community cohesion and have a corrosive impact on Scotland's communities as well as broader society. It is never acceptable and the Scottish Government is committed to tackling it.

Following the publication of Lord Bracadale's Independent Review⁴, the Scottish Government committed to updating and consolidating hate crime legislation so that it would be fit for 21st century Scotland and, most importantly, afford sufficient protection for those who need it.

The Bill seeks to consolidate, modernise and extend existing hate crime legislation by:

- adding age as a new characteristic;
- updating the definition of transgender identity, including removing the term 'intersexuality' and creating a separate category for variations in sex characteristics; and
- providing new stirring up hatred offences that will apply to all characteristics in the Bill (currently these offences only relate to race).
- The Bill will also abolish the common law offence of blasphemy.

Lord Bracadale recommended that gender should be included in the new Hate Crime Bill. However, a number of women's organisations raised concerns with the recommendation to include a statutory aggravation on gender. Therefore Ministers have agreed not to include a gender characteristic in the Bill. Instead provisions for an enabling power are included to allow sex to be added as an additional characteristic by regulations at a later date, after the Bill has passed, for example if this is recommended by the Working Group on misogynistic harassment.

³ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

⁴ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

The Scottish Government approach to developing this new legislation is based on the following principles:

- Standardisation and consistency of approach: across the characteristics, apart from where there is good reason to justify an exception. For example, in principle the Scottish Government have sought to ensure a consistent approach across the characteristics, including any new characteristics. This would involve a standard approach to how, for example, the statutory aggravations are applied, and would also help ensure there is not a perceived (or real) hierarchy between the characteristics.
- Future proofing of legislation: to reflect society in Scotland within the 21st Century whilst ensuring as far as possible that the law remains fit for purpose for the future. It is essential that the form and structure of the legislation is correct for current policy, but it would also be useful to ensure as appropriate that the legislation is set up so that it can be amended in the future. In particular, while the focus of the legislation has to be on addressing hate crime in today's society, such as race and religion, but has been developed in such a way that enables a sex characteristic to be added in at a later date by the use of regulation into an existing consistent legislative framework. It is also crucial that the legislation is robust and deliverable, ensuring that barriers and ambiguity are not created that will impede its application in order to help ensure the legislation can stand the test of time.
- Contribution to a modern Scotland: to build a more equal and inclusive Scotland. For example, hate crime legislation plays its role as part of wider efforts to ensure people feel safe and can live free from discrimination, through ensuring hate crime is enforceable with clear consequences, and where people have a greater and clearer understanding of hate crime and its consequences.

National Outcomes

This work contributes to the following National Outcomes:

- We grow up loved, safe and respected so that we realise our full potential.
- We live in communities that are inclusive, empowered, resilient and safe.
- We are creative and our vibrant and diverse cultures are expressed and enjoyed widely.

- We respect, protect and fulfil human rights and live free from discrimination.

Who will it affect?

It is expected to affect, in some capacity all people living in Scotland. In particular, it will extend the characteristics to which hate crime statutory aggravations apply and extend existing 'stirring up' of hatred offences to all statutory characteristics (these are currently only provided for race).

Hate crime legislation helps recognise the particular impact and harm caused by hate crime both to the victim, the group to which the victim belongs and to wider society. It also makes clear that such behaviour is not acceptable and sends a message to victims, perpetrators and wider society that such behaviour is not acceptable and will not be tolerated.

Current hate crime legislation in Scotland allows any existing offence to be aggravated by prejudice in respect of one or more of the characteristics of race, religion, disability, sexual orientation and transgender identity. This approach involves an existing offence (e.g. murder, assault, breach of the peace) being "aggravated" where the perpetrator evinces (or is motivated by) malice and ill-will in respect of one or more of the above characteristics.

These provisions are known as statutory aggravations and the courts are required to take them into account when determining an appropriate sentence.

Prejudice or hostility also lies at the heart of some other current offences which are recognised as hate crimes. These are sometimes referred to as standalone hate crime offences and they criminalise behaviour specifically because it is motivated by racial prejudice.

Currently, these standalone offences include:

- racially aggravated harassment: section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995; and
- stirring up of racial hatred: sections 18 to 23 of the Public Order Act 1986.

In the course of consolidating and modernising hate crime legislation, the aim is to build a Scotland where everyone feels connected, has a sense of belonging and feels valued.

Summary of evidence

Summary of Evidence Gathered

A number of evidence sources have been used to help frame this assessment. These are detailed below.

Statistics have been collected using publications sourced from the *Equality Evidence Finder*⁵, providing valuable information on both demographics and those most likely to be a victim of an offence aggravated by prejudice or wider criminality.

In cases where more specific data has been required, analytical specialists and relevant policy officials contributed relevant information as part of a framing workshop.

A combination of these methods enabled evidence to be supplemented using sources including *Developing Information on Hate Crime Recorded by the Police in Scotland*⁶, *Hate Crime in Scotland 2018-19*⁷ recorded by Crown Office and Procurator Fiscal Service (COPFS), *Criminal Proceedings in Scotland, 2017-18*⁸, as well as drawing on findings from national surveys including the *Scottish Social Attitudes Survey (SSAS) 2015*⁹, the *Scottish Household Survey (SHS) 2018*¹⁰ and the *Scottish Crime and Justice Survey 2017-2018*¹¹.

These data gave insight into hate crime related incidents, charges and convictions in respect to each of the particular protected characteristics where available, as well as an insight into public attitudes towards discrimination in Scotland, and people's self-reported experiences of harassment and discrimination and what they perceived to be the motivating factors.

Lord Bracadale's, *Independent Review of Hate Crime Legislation in Scotland*¹², provided a clear assessment of the existing legislative framework along with both qualitative and quantitative evidence to support his recommendations.

A series of engagement sessions were held in the summer of 2018 with stakeholder groups in response to

⁵ <http://www.equalityevidence.scot/>

⁶ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/3/>

⁷ <https://www.copfs.gov.uk/media-site/media-releases/1845-hate-crime-in-scotland-2018-19>

⁸ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/>

⁹ <https://www.gov.scot/publications/scottish-social-attitudes-2015-attitudes-discrimination-positive-action/pages/2/>

¹⁰ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

¹¹ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

¹² <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

Lord Bracadale's report. These included race equality stakeholders and organisations relating to women; age (both children and young people's and older people's organisations); disabled people; LGBT; and faith and belief. These sessions informed the development of the public consultation.

On 14 November 2018 the Scottish Government launched a 14 week consultation, *One Scotland: hate has no home here*¹³, to seek views on what should be included in a new hate crime bill, with 1,158 written responses submitted in total. Approximately 91% of these were submitted by members of the public and the remainder by organisations.

In December 2018 and January to February 2019, as part of the consultation process, twelve public awareness events took place throughout Scotland.

The responses to the consultation and public awareness events have yielded valuable qualitative and quantitative information both from an individual and organisational perspective.

Furthermore, independent external analysts were contracted to undertake the analysis of the consultation responses. A report *Consultation on amending Scottish hate crime legislation: analysis of responses*¹⁴ was published by the Scottish Government in June 2019.

Conclusions from Evidence Gathered

Proposals to consolidate, modernise and extend Scottish hate crime legislation are expected to affect, in some capacity, all those living in Scotland.

The individuals and groups that will be most positively impacted are those who have one or more of those characteristics protected by the proposals for the new hate crime legislation who are more likely to experience hate crime in their lives.

Specifically the adoption of a new statutory aggravation for age along with new stirring up offences for all existing and new characteristics will provide greater protection for those at risk from criminality rooted in prejudice.

¹³ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/1/>

¹⁴ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/>

Summary of assessment findings

The new hate crime legislation will provide protection for the following characteristics: race, religion, disability, sexual orientation, variation in sex characteristics, transgender identity and age.

Hate crime legislation helps recognise the particular impact and harm caused by hate crime both to the victim, the group to which the victim belongs and to wider society.

The Bill is expected to have a positive social impact through making clear that such behaviour is not acceptable and sends a message to victims, perpetrators and wider society that such behaviour will not be tolerated. This is part of a wider approach to increase community cohesion in order create a fairer and more equal Scotland.

However, as it is not the Bill's function to directly address underlying aspects of socio-economic disadvantage, it is not deemed necessary to carry out a full Fairer Scotland Duty assessment.

Sign off

Name: Robert Marshall

A handwritten signature in black ink that reads "Robert Marshall". The signature is written in a cursive style with a large initial 'R' and a long horizontal stroke extending to the right.

Job title: Deputy Director, Connected Communities Division

Date: 04 March 2020



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