

## General Overview

### **What is the Scottish Government going to do?**

The Scottish Government is committed to updating hate crime legislation; ensuring it is fit for the 21st century.

The [Hate Crime and Public Order \(Scotland\) Bill](#) has been introduced to the Scottish Parliament. The legislation is an essential element of the Scottish Government's ambitious programme of work to tackle hate crime and build community cohesion.

The Bill provides for the modernising, consolidating and extending of hate crime legislation in Scotland.

Current hate crime legislation has evolved over time in a fragmented manner. Different elements of hate crime law are located in different statutes; it is not as user-friendly as it could be and it lacks consistency.

The new Bill will provide greater clarity, transparency and consistency. It brings most of Scotland's hate crime legislation into one statute. This will make the law easier to understand and more user-friendly.

Humza Yousaf MSP, Cabinet Secretary for Justice:

'This new Hate Crime Bill is an important milestone. By creating robust laws for the justice system Parliament will send a strong message to victims, perpetrators, communities and to wider society that offences motivated by prejudice will be treated seriously and will not be tolerated.'

### **Why is the Scottish Government doing it?**

Hate crime has hugely damaging effects on victims, their families, communities and wider society. Hate crime and prejudice threaten community cohesion. A cohesive society is one with a common vision and a sense of belonging for all communities.

The Scottish Government recognises that legislation in and of itself is not enough to build the inclusive and equal society that we aspire to. However, having clear legislation sends a strong message.

Lord Bracadale carried out an [Independent Review of Hate Crime Legislation](#) in Scotland and his report and recommendations were published on 31 May 2018. The Scottish Government has considered Lord Bracadale's recommendations and engaged extensively with stakeholders and the wider public, including through the [One Scotland: hate has no home here](#) consultation, engagement events and bilateral meetings.

Between December 2018 and February 2019, as part of the consultation process, the Scottish Government ran 11 public awareness events throughout Scotland. Many of these were attended by either individuals with a general interest in hate crime legislation or as representatives from a variety of different stakeholder groups.

Subsequently the Scottish Government contracted independent external analysts who undertook the analysis of the consultation responses and produced a [report](#), published by the Scottish Government in June 2019.

The responses to the consultation and public awareness events have yielded valuable information both from individual and organisational perspectives; helping to inform the development of the Bill.

The Scottish Government also undertook Impact Assessments in order to ascertain how the Bill would impact on the lives of people in Scotland. The policy development of the Bill has been shaped, in particular, by the Equality Impact Assessment (EQIA), which gives careful consideration to equality issues throughout in order to ensure better outcomes for people and communities.

The Bill's impact assessments can be found [here](#) and in the Bill's Policy Memorandum.

We would welcome your views on any aspect of the Bill. Please send any queries to [ConnectedCommunities@gov.scot](mailto:ConnectedCommunities@gov.scot).

### Key Points

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## AGGRAVATION OF OFFENCES BY PREJUDICE

- The Bill retains the existing core method of prosecuting hate crimes in Scotland – via the attachment of a statutory aggravation when a person has committed an offence and has evinced, or has been motivated by, malice and ill-will towards a person or group of persons based on a listed characteristic.
- A baseline offence (e.g. murder, assault, breach of the peace) must be committed for an aggravation to be attached. The Bill retains the existing threshold for proving an aggravation (i.e. the aggravation can be proved by evidence from a single source).
- Where proven, the court must state and record the conviction so that it shows the type of prejudice in question (for instance, race, sexual orientation) as the aggravation. The court must also take the aggravation into account in sentencing, stating the extent, if any, that a sentence has been increased due to the operation of a statutory aggravation. Where the sentence is not different, the court must state the reasons for there being no such difference.
- The Bill contains a list of characteristics that such hate crime statutory aggravations apply to, which are set out below. This includes offences aggravated by prejudice based on a presumption by the offender that the victim is a member of, or is associated with, a group of persons defined by reference to a listed characteristic.
- An offence may also be aggravated by prejudice in circumstances where the offender evinces malice and ill-will towards the victim based on the offender's incorrect presumption that the victim is a member of, or is associated with, a group of persons defined by reference to a listed characteristic. For example, if the offender assaults a person (the victim) and, in so doing, evinces malice and ill-will towards the victim based on the offender's presumption that the victim was a Muslim then, even if the victim is not in fact a Muslim, the offence (assault) may still be aggravated by religious prejudice.

## CHARACTERISTICS

- The list of characteristics in relation to which an offence may be aggravated by prejudice is being updated to reflect society in 21<sup>st</sup> century Scotland. As well as adding age to the list, the definition of transgender identity has been updated and a separate category for variations in sex characteristics has been created (this was previously listed as ‘intersexuality’ within the definition of transgender identity).
- The characteristics listed for these statutory aggravations are:
  - Age
  - Disability
  - Race, colour, nationality (including citizenship), or ethnic or national origins
  - Religion
  - Sexual orientation
  - Transgender identity
  - Variations in sex characteristics
- The offences relating to stirring up hatred in Part 2 of the Bill also apply in relation to these characteristics.

## OFFENCES RELATED TO STIRRING UP HATRED

- The Bill provides for offences relating to stirring up hatred.
- Currently, stirring up offences in Scotland operate solely in the context of the characteristic of racial hatred.
- Offences related to stirring up hatred involve conduct that is intended or likely to encourage others to hate a particular group of people.
- In terms of stirring up of racial hatred, the Bill largely replaces, modernises and consolidates the existing offences in Part III of the Public Order Act 1986 (“the 1986 Act.”)
- The Bill provides it is an offence for a person to behave in a threatening, abusive or insulting manner, or to communicate threatening, abusive or insulting material to another person where:
  - in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origin, or
  - as a result, it is likely that hatred will be stirred up against such a group.
- The Bill also introduces new offences related to stirring up hatred in respect of the characteristics of age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics. The offences related to stirring up hatred in Part 2 of the Bill therefore apply in relation to the same list of characteristics as are listed in relation to offences aggravated by prejudice in Part 1 of the Bill.
- A person commits an offence of stirring up hatred in respect of one of the new listed characteristics (i.e. other than race, colour, nationality, or ethnic or national origin) if the person behaves in a threatening or abusive manner, or communicates threatening or abusive material to another person, and either:
  - in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to age, disability, religion, sexual orientation, transgender identity or variations in sex characteristics, or
  - as a result, it is likely that hatred will be stirred up against such a group.

- The Bill also provides for the offences of possession of inflammatory material.
- In respect of the listed characteristics (other than race, colour, nationality, or ethnic or national origins), a person commits an offence if they have possession of threatening or abusive material with a view to communicating the material and either:
  - the person intends to stir up hatred in respect of a group of persons based on the group being defined by reference to age, disability, religion, sexual orientation, transgender identity or variations in sex characteristics, or
  - it is likely that, if the material were communicated, hatred will be stirred up against such a group.
- In respect of possession of inflammatory material, in relation to race, colour, nationality (including citizenship), or ethnic or national origins, the Bill provides for a very similar offence. The only difference is that the threshold for the conduct is that the material is threatening, abusive or insulting.
- The Bill therefore retains 'insulting' behaviour within the scope of the revised offences related to stirring up of racial hatred, and therefore adopts the same thresholds as those for existing offences related to stirring up racial hatred contained in the 1986 Act.
- A separate approach for racial hatred is justified due to the historical and structural nature of racism, the prevalence and seriousness of race hate crime in Scotland, and the impact that this has on community cohesion.
- For the purposes of the offences relating to stirring up hatred, the Bill also contains provisions on freedom of expression that provide, among other things, that behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes discussion or criticism of religion or religious practices or practices.

## POWER TO ADD THE CHARACTERISTIC OF SEX AT A LATER DATE

- The Bill also includes a power to, by regulations, add 'sex' to the list of characteristics which apply in relation to aggravation of offences by prejudice offences under Part 1 of the Bill and/or to the list of characteristics which apply in relation to offences related to stirring up under Part 2 of the Bill .
- In effect, this power therefore provides the option to add either a statutory aggravation and/or stirring up of hatred offence on the grounds of sex.
- If 'sex' were to be added to the legislative framework at a later date it would be applied on the same basis as the other characteristics included within the Bill. This is based on the motivations of the perpetrator (and thus not on whether a victim actually shares one of more of the characteristics-).
- For example, a statutory aggravation in relation to 'sex' may apply where the offender evinces malice and ill-will based on the offender's perception that the victim was a woman, irrespective of the victim's sex, or of the victim's trans identity. The statutory aggravation on sex could also be applied if a person was targeted because they have an association with women.

## **BLASPHEMY**

- The Bill will abolish the common law offence of blasphemy. The offence has not been prosecuted in Scotland for more than 175 years and no longer reflects the kind of society in which we live.



## **What else is the Scottish Government doing in addition to the Bill?**

### **MISOGYNISTIC HARASSMENT**

In addition to the provisions included in the Bill, the Scottish Government recognises the clear need to tackle misogyny.

The Scottish Government is therefore committed, in principle, to developing a standalone offence on misogynistic harassment. A Working Group will be established to take this forward.

The Working Group will look at how criminal law deals with misogyny, including whether there are gaps in legislation that could be filled with a specific offence on misogynistic harassment.

The Working Group will also consider the power provided in the Bill to, by regulations, add the characteristic of sex to the new hate crime framework established by the Bill. The Scottish Government will reflect on the conclusions reached by the Working Group and will report to Parliament with agreed next steps.

The ongoing focus of the Scottish Government is on responding to the coronavirus (COVID-19) outbreak. However, the remit and membership of the Working Group on misogynistic harassment will be announced at the earliest date possible and their work will begin shortly after.

### **SECTARIANISM**

The Bill does not include provision for a sectarianism statutory aggravation or stirring up of hatred offence. A sectarian aggravation would overlap with both race and religious aggravations, with the latter aggravations already capturing sectarian offending.

The Scottish Government remains fully committed to tackling sectarianism in Scotland. Over the past eight years more than £14.5 million has gone towards establishing educational work in schools, colleges, universities, workplaces, communities and online.