

## Racial Hatred

### Current hate crime legislation

There are two core methods of prosecuting racial hate crime in Scotland. These are through standalone criminal offences and via the attachment of a statutory aggravation when a person has committed a criminal offence.

#### Standalone criminal offences

##### *Offences relating to stirring up racial hatred*

Currently, offences relating to stirring up of racial hatred are dealt with as standalone offences and seek to criminalise certain conduct which encourages others to hate a group of persons based on their racial identity.

These offences are contained in sections 18 to 23 of the Public Order Act 1986 ('the 1986 Act'), which is a UK statute with certain provisions extending to Scotland. For the purposes of these offences, "racial hatred" means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

For each of these offences (involving racial hatred), the conduct includes some form of threatening, abusive or insulting words, behaviour, material, images or sounds. The prosecution must show that the accused intended by their conduct to stir up racial hatred, or that racial hatred was likely to be stirred up by it. However, for each offence there is no requirement to prove that racial hatred was in fact stirred up.

##### *Racially aggravated harassment*

There is currently also a standalone offence of racially aggravated harassment and conduct under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. There are two ways in which this offence may be committed:

1. A racially-aggravated course of conduct which amounts to harassment of a person. "Harassment of a person" includes causing the person alarm or distress. "Conduct" is defined as including speech and a "course of conduct" must involve conduct on at least two occasions.
2. Acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

The operation of a standalone offence of racially aggravated harassment in part reflects the prevalence of racial hate crime within the context of all hate crime offending in Scotland.



### Application of a statutory aggravation

Current hate crime legislation also specifies when an existing offence may be aggravated by prejudice in relation to a racial group. This approach does not involve the creation of new offences; rather it involves an existing offence (e.g. murder, assault, breach of the peace) being 'racially aggravated' where the perpetrator evinces, or is motivated by, malice and ill-will in relation to a racial group.

In Scotland, the existing 'hate crime' statutory aggravation in relation to racial groups is contained in section 96 of the Crime and Disorder Act 1998.

### **What the Hate Crime and Public Order (Scotland) Bill will do**

#### *Offences relating to stirring up racial hatred*

The Bill introduces new offences relating to stirring up hatred in relation to race, colour, nationality, and ethnic and national origins.

These new offences largely replace, modernise and consolidate similar existing offences which apply in the relation to the stirring up of racial hatred contained in the 1986 Act.

The Bill provides that 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. The prosecution must also show that the accused intended 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 origins, or that it is likely that hatred will be stirred up against such a group.

The Bill also provides that it is an offence for a person to possess threatening, abusive or insulting material with a view to communicating the material to another person, where there is an intention or likelihood that this will stir up racial hatred.

The Bill therefore sends a clear message that encouraging others to hate a group of persons based on their racial identity will not be tolerated.

The Bill also introduces new offences relating to stirring up hatred beyond racial groups to cover groups with any of the other characteristics listed in the Bill (i.e. they will apply not only in relation to racial groups, but will for the first time also apply to groups defined by reference to age, religion, disability, sexual orientation, transgender identity and variations in sex characteristics).

#### *Section 50A*

The Bill, however, does not repeal section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. The Bill does not make provision to repeal section 50A in order to maintain existing protections for those subject to racially-aggravated harassment.



### *Application of a statutory aggravation*

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. The Bill retains the current thresholds for proving the aggravation of offences by prejudice.

Hatred based on racial prejudice will therefore continue to be prosecuted using the existing application of a statutory aggravation (to offences such as murder, assault, breach of the peace).

### **Impact**

#### *Section 50A*

Retaining section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 recognises the prevalence of racial hate crime within the context of all hate crime offending in Scotland and the fact that the laws in relation to racial hate crime have been in place for many years and appear to be working effectively.

Repealing section 50A was recommended by Lord Bracadale in his independent review of hate crime legislation. However, racial hate crime accounts for the majority of hate crime offending in Scotland and has a particular and significant place in Scots law. Its removal could be particularly damaging in terms of tackling racial hatred within Scottish society and could be perceived as a weakening of criminal law protection in the area of racial hatred. Therefore, the Scottish Government has taken the decision to retain section 50A. This ensures that existing protections for those subject to racially-aggravated harassment are preserved.

The Scottish Government is of the view that, due to the historical and structural nature of racism, the prevalence and seriousness of race hate crime, a separate approach is justified.

### **Further Information**

Further information about the Hate Crime and Public Order (Scotland) Bill can be found on the Scottish Government webpage <https://www.gov.scot/policies/crime-prevention-and-reduction/hate-crime/>.