

Offences relating to Stirring Up Hatred

What is stirring up hatred?

Stirring up hatred is conduct which encourages others to hate a particular group of people defined by reference to a shared characteristic, for example a racial group. In the context of stirring up hatred, the intention of the perpetrator is that hatred of the group as a whole is aroused in other persons. Therefore, behaviour which may stir up hatred, against, as an example, a person's nationality or ethnic origin, can cause members of the group as a whole to feel vulnerable to attack and excluded from the wider community. The labelling of the particular behaviour in terms of stirring up of hatred is therefore symbolically important. Offences relating to stirring up hatred communicate to those convicted and to those who might engage in such conduct that it will not be tolerated.

Current hate crime legislation

Stirring up hatred is dealt with as standalone offences in our current legislation.

In the context of offences relating to stirring up hatred, hatred is primarily relevant, not as the motive for the offence itself, but on the basis that the intended or likely effect of the perpetrator's conduct is the stirring up of hatred in others against a racial group.

Currently in Scotland, offences relating to stirring up hatred apply only in relation to racial hatred. 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" is defined in section 17 of the 1986 Act and means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Sections 18 to 23 of the 1986 Act provide six offences covering a very broad range of conduct. These offences criminalise certain forms of conduct in circumstances where the conduct is intended to stir up racial hatred, or where racial hatred is likely to be stirred up thereby.

For each of the offences under the 1986 Act (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 the 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 in consequence of this conduct.



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

The Bill introduces new offences relating to stirring up hatred against a group (of persons) defined by reference to race, colour, nationality, or ethnic or national origins. The new offences in the Bill in respect of these groups comprise the offence of stirring up hatred and the offence of possessing inflammatory material, in both cases involving an intention or likelihood of stirring up hatred against the group. These largely replace, modernise and consolidate the existing stirring up racial hatred offences in the 1986 Act described above.

The Bill also introduces new offences relating to stirring up hatred against groups defined by reference to one or more of the characteristics listed below. These comprise the offence of stirring up hatred and the offence of possessing inflammatory material, in both cases involving an intention or likelihood of stirring up hatred against such a group.

Therefore, in addition to the new offences in relation to colour, race, nationality, or ethnic or national origins, offences relating to stirring up hatred are created in relation to the additional characteristics of:

- age;
- disability;
- religion;
- sexual orientation;
- transgender identity; and
- variations in sex characteristics.

The threshold for the new offences relating to stirring up hatred in relation to the characteristics of age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics require conduct or material which is 'threatening or abusive' accompanied by an intention or likelihood to stir up hatred. . The Scottish Government is of the view that adopting a threshold of threatening or abusive behaviour or material for the new offences in relation to the additional characteristics listed above strikes the right balance between conduct which ought to be criminalised and one's right to freedom of expression, and represents a measure familiar to Scots law, which works well currently in practice.

The threshold for the new offences which apply in relation to colour, race, nationality (including citizenship) or ethnic or national origins are the same as those for existing offences relating to stirring up racial hatred. That is, these new offences require behaviour or material which is 'threatening, abusive or insulting,' accompanied by an intention or likelihood to stir up hatred.

In addition, the Scottish Government considered the potential impact that removal of 'insulting' may have on the ethnic minority communities in particular. Removal of insulting could be perceived as suggesting it was in some way acceptable to insult on the basis of race in a manner that previously it would not have been.



Impact

Stirring up hatred has the potential to contribute to a social atmosphere in which prejudice and discrimination are accepted as normal. Therefore the introduction of a suite of stirring up offences would allow the law to hold perpetrators to account as well as serving an important symbolic and educative function, sending a clear message that this type of behaviour attracts particular condemnation by society and will not be tolerated.

Following careful consideration the Scottish Government decided to retain 'insulting' behaviour within the scope of the revised offences relating to stirring up racial hatred.

In this regard, it is acknowledged that racial hate crime accounts for the majority of hate crime offending in Scotland and has a particular heritage and significant place in Scots law. This is a threshold which has been operating without difficulty in practice for over three decades and as such its reformulation is not necessary. The Scottish Government also considered that its removal could be particularly damaging in terms of tackling racial hatred within Scottish society if such a removal could be perceived as a weakening of criminal law protection in the area of race. The Scottish Government is of the view that, due to the historical and structural nature of racism, the prevalence and seriousness of racial hate crime and the impact that this has on community cohesion, 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/>.