

# **Hate Crime and Public Order (Scotland) Bill**

## **Business and Regulatory Impact Assessment**

**April 2020**



**Scottish Government**  
Riaghaltas na h-Alba  
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# Business and Regulatory Impact Assessment

## **Title of Proposal**

Hate Crime and Public Order (Scotland) Bill

## **Purpose and intended effect**

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

In September 2016, a review by the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion<sup>1</sup> was published which included a number of recommendations for the Scottish Government, including that: the Scottish Government should consider whether the existing criminal law provides sufficient protections for those who may be at risk of hate crime; and the Scottish Government should lead discussion on the development of clearer terminology and definitions around hate crime, prejudice and community cohesion.

In 2017, this led to the appointment of Lord Bracadale to conduct an Independent Review of Hate Crime Legislation in Scotland<sup>2</sup>. 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 published his Independent Review of Hate Crime Legislation<sup>3</sup> on 31 May 2018. In responding to publication of the report, the Scottish Government accepted his recommendation to consolidate Scottish hate crime legislation into one new hate crime statute and committed to consult on the detail of what will be included in what has become this Bill.

The Scottish Government is committed to taking this opportunity to shape hate crime legislation so that it is fit for 21st century Scotland and, most importantly, affords sufficient protection for those that need it.

This Bill provides for the modernising, consolidating and extending of hate crime legislation in Scotland. Legislation in this area has evolved over time in a fragmented manner with the result that different elements of hate crime law are located in different statutes, there is a lack of consistency, and the relevant legislation is not as user-friendly as it could be.

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

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

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

In addition to consolidation, the Bill seeks to modernise and extend existing hate crime legislation by:

- adding age as a new characteristic;
- conferral of an enabling power to allow the additional characteristic of sex to be added by regulations at a later date, once the Bill has passed;
- 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. 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.

These changes in particular support the following National Performance Framework objectives:

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

## **Consultation**

On 14 November 2018 the Cabinet Secretary for Justice and Cabinet Secretary for Communities launched a public consultation 'One Scotland: Hate has No Home Here' on hate crime legislation in Scotland<sup>4</sup> in response to recommendations made by Lord Bracadale. The consultation also included questions on the recommendations made by the Working Group on Defining Sectarianism in Scots Law. Specifically, whether sectarianism should be included within this Bill and, if so, how sectarianism would be defined.

The consultation exercise ran from 14 November 2018 to 24 February 2019, with 1,159 written responses submitted in total. A total of 1,051 responses were received from individuals (91% of responses) and 108 responses from organisations (third sector bodies, public sector and partnership bodies, faith groups and other organisations). The analysis of responses showed that organisations and individuals often had differing perspectives and views on the issues under consideration.

Additionally, a series of 11 consultation roadshows were held across Scotland from December 2018 to February 2019, enabling approximately 400 individuals and organisations to engage in discussion and have their views heard about Lord Bracadale's recommendations.

<sup>4</sup> <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/2/>

In addition to the 108 responses received from organisations, further engagement and consultation has been undertaken with a number of stakeholders and partner organisations

Engagement internal to the Scottish Government has included policy leads in Justice, Safer Communities, and Local Government and Communities Directorates, as well as relevant Analytical Services Divisions and those teams that have a relevant interest to the specific tests and assessments set out later in this document.

Both the consultation and the associated events focused specifically on Lord Bracadale's recommendations, but also provided an opportunity for suggestions to be made on what else should be included in new hate crime legislation.

## **Options**

The following options were considered:

### **Option 1: 'Do nothing'**

This would mean retaining the various pieces of legislation covering Hate Crime: section 96 of the Crime and Disorder Act 1998; section 74 of the Criminal Justice (Scotland) Act 2003, and the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

### **Option 2: 'To introduce a Hate Crime and Public Order Bill'**

This would mean consolidating the various pieces of legislation into one statute, and modernising and extending hate crime legislation by adding age as a new characteristic; conferral of an enabling power to allow the additional characteristic of sex to be added by regulations at a later date, once the Bill has passed; updating the definition of transgender identity, including the creation of 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).

## **Sectors and groups affected**

The legislation will affect those involved in the Criminal Justice system: Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board, the Scottish Courts and Tribunals Service and the Scottish Prisons Service as well as local authorities and some organisations that support third party reporting centres.

## **Benefits**

### **Option 1: 'Do nothing'**

No cost.

No need for existing resources, guidance and/or systems to be updated.

### **Option 2: 'To introduce a Hate Crime and Public Order Bill'**

Consolidated, modernised and extended legislation that is fit for a modern 21<sup>st</sup> century Scotland and, most importantly, provides sufficient protection to those that need it most.

Consolidating the legislation will meet the Better Regulation principles.

The Scottish Prisons Service have also specifically identified that the new aggravations and offences on an offender's warrant will aid Scottish Prisons Service during their risk assessment process.

### **Costs**

Option 1: 'Do nothing'

No cost.

Option 2: 'To introduce a Hate Crime and Public Order Bill'

As the Bill includes an enabling power to allow the additional characteristic of sex to be added in the future, estimated costs for the new aggravations and stirring up offences includes costs for age and sex characteristics.

### Police Scotland

In advance of the coming into effect of the eventual Act (assuming the Bill is passed by the Scottish Parliament), Police Scotland will have to update their standard operating procedures, their Police College course information and their 'crime recording and vulnerable persons' database. They will also have to update the Police Scotland 'Criminal History System' which has an interface with the Crown Office and Procurator Fiscal Service systems.

The Scottish Government expects there to be a fairly long lead in until the eventual Act comes into effect should help minimise the costs as some of the changes can be included within the regular Police Scotland review and update processes. General guidance on changes will be done through their regular intranet updates.

Police Scotland run a 'Third Party Reporting Centre Portal' that is used by many third sector organisations to assist victims in reporting Hate Crime. The portal will need to be updated, but again will be able to be amended during regular review and update processes.

We estimate that the maximum costs associated with these changes would be around £50,000.

### The Crown Office and Procurator Fiscals Office

In advance of the coming into effect of the Bill the Crown Office and Procurator Fiscal Service will have to update the formal training content for their 'Victims and Witnesses' course information, make one-off changes to their 'Criminal History' database, update guidance and provide training to all staff on the changes to the current legislation. There will also be an update to the Crown Office and Procurator Fiscal Service Case Management System IT systems and Police Scotland 'Criminal History System' interface which is an interface with the Crown Office and Procurator Fiscal Service and The Scottish Courts and Tribunals Service.

The Scottish Government expects there to be a fairly long lead in until the eventual Act comes into effect should reduce the costs as some of the changes can be included within the regular Crown Office review and update processes.

We estimate that the maximum costs associated with these changes would be around £50,000.

We estimate that the annual costs for the Crown Office as a result of the new aggravations and stirring up offences to range from £22,000 to £85,000.

#### The Scottish Courts and Tribunals Service

In advance of the coming into effect of the eventual Act (assuming the Bill is passed by the Scottish Parliament), the Scottish Courts and Tribunals Service will have to update information contained in their 'Criminal Procedures' training course and make changes to their 'Criminal Operating Programme' database, as well as updating relevant guidance. The Scottish Government expects there to be a fairly long lead in until the eventual Act comes into effect should enable these changes to be incorporated in regular review and update processes however there may still be a cost incurred by the SCTS in making the changes to the criminal case management system.

The requirement to state and record the reasons for differences in sentence as a result of the new aggravations will result in additional costs being incurred by the Scottish Courts and Tribunal Service. This would result from additional court time and associated judicial and SCTS staff and accommodation resources that would be required in response to an increase in court cases.

Changes will have to be made to the Justice IT systems including the Police Scotland/COPFS interface, but again can be planned to fit in with the regular updates that are made to the systems.

We estimate that the annual costs for the Scottish Courts and Tribunal Service as a result of the new aggravations and stirring up offences to range from £16,500 to £65,800.

#### Scottish Prisons Service

In advance of the coming into effect of the eventual Act (assuming the Bill is passed by the Scottish Parliament), the Scottish Prisons Service will have to update their hate crime Equality and Diversity course notes and guidance, update their procedures and IT systems. The Scottish Government expects there to be a fairly long lead in until the eventual Act comes into effect should enable these changes to be incorporated in regular review and update processes however there may still be a cost incurred by the Scottish Prisons Service in making the changes to the criminal case management system.

There may be costs if the new aggravations and stirring up offences increase the length of sentences and the number of offenders sentenced.

We estimate that the annual costs for the Scottish Prisons Service as a result of the new aggravations and stirring up offences to range from £67,000 to £261,000.

### Scottish Legal Aid Board

There may be costs if the new aggravations and stirring up offences increase the number of people granted criminal legal aid and who are issued with a legal aid certificate.

We estimate that the annual costs for SLAB as a result of the new aggravations and stirring up offences to range from £23,000 to £88,000.

### Local Authorities and the Third Sector

Local Authorities and third sector organisations will have one-off costs relating to updating websites, guidance and training.

Local authorities will also have costs relating to the training of the community justice workforce and building capacity to undertake preventative work with third sector organisations and communities to ensure the success of the legislation.

They will not incur costs relating to the updating of the portal, see above, and will benefit from general guidance issued in advance of the eventual Act coming into effect.

The new age aggravations could result in additional costs for local authorities due to an additional number of community payback orders (CPOs) that will be undertaken by the Scottish Criminal Justice Social Work Services (SCJSWS).

We estimate that the annual costs for SCJSWS as a result of the new aggravations and stirring up offences to range from £6,600 to £27,800.

### **Scottish Firms Impact Test**

In addition to the consultation and engagement events, further engagement was taken forward with the Crown Office Procurator Fiscal, the Scottish Courts and Tribunals Service, Police Scotland and the Scottish Prisons Service.

These discussions included consideration of a number of areas, including additional training needs, the updating of guidance, IT systems and forms, the costs of dealing with additional offences, additional convictions and the possible extensions of sentences.

On the whole, it was agreed that any training and updating of forms IT systems and guidance could be planned and mostly absorbed under the regular updates.

It was felt that although new offences would be created and the number of aggravations would be increased, that very few 'new' convictions would occur, as they would result in a re-labelling of the crime or making aggravations statutory that are currently taken into account along with all evidence gathered relating to the prosecution of an offence.

The main benefit would be that a statutory aggravation helps formalise the recording of the charge and conviction, and aids collection of statistics to measure incidences of hate crimes across Scotland.

### **Competition Assessment**

The changes will have no competitive impacts; therefore a competition assessment has not been completed.

### **Consumer Assessment**

The Bill will have no direct impact on the price of goods and services.

The Bill will help to build a Scotland where there is no place for hatred and prejudice, which will in turn will contribute towards a fairer and more equal society.

The Consumer and Competition Policy Unit were contacted about our assessment and are content that the Bill will have no direct impact on the price of goods and services.

### **Test run of business forms**

The Scottish Government does not propose introducing any new forms as a result of this legislation.

Police Scotland and Crown Office and Procurator Fiscals Office use electronic forms that are regularly updated and tested. All delivery agent's forms will be tested in advance of the Bill coming into effect.

### **Digital Impact Test**

The Bill has no provisions specifically relating to digital/online content  
Stirring up of racial hatred offences and offences that are motivated by prejudice are capable of being committed on-line, just as they can be committed off-line. There is limited evidence that the provisions will have a disproportionate impact either on off-line or on-line businesses. Regarding whether the measures could be circumvented by digital transactions, as this is not a Bill concerned with regulating commercial activity, the Scottish Government does not think it is relevant.

The Digital Economy Team were contacted about the assessment and given that the statutory aggravations will be capable of being applied to offences committed in an online environment as they would in an offline environment and that the Bill doesn't stray into commercial territory fully agree with our assessment.

### **Legal Aid Impact Test**

This section has been discussed with colleagues in the access to justice team who are content that the legal aid implications have been given due consideration.

The legislation will not add new procedures or rights of appeal to a court or tribunal, or change of policy or practice which may lead people to consult a solicitor.

As statutory aggravations can only apply if there is a pre-existing criminal offence, the addition of new statutory aggravations for age and race will not result in the number of offences. However, as charges with a statutory aggravator are less likely to be dealt with via non court disposal and more likely to receive a court disposal, some additional legal aid should be required. An estimate of these costs is set out in the financial memorandum.

The only additional offence added by this legislation is the creation of stirring up of hatred offences to apply to religion, disability, sexual orientation and transgender identity, age, variations in sexual characteristics, and sex (if added in the future by the enabling power), currently they currently only apply to race. The Scottish Government estimates that the majority of prosecutions would have previously been prosecuted under existing criminal law and that no any new legal aid requirements would be minimal.

As stated above there may be costs if the new aggravations and stirring up offences increase the number of people granted criminal legal aid and issued with a legal aid certificate. The Scottish Government estimates that the annual costs for SLAB as a result of the new offences to range from £23,000 to £88,000.

The Access with Justice Team have seen this assessment and stated that they have spoken with SLAB who do not anticipate major consequences for the legal aid fund.

#### **Enforcement, sanctions and monitoring**

As with all legislation it will remain vulnerable to Court challenges.

#### **Implementation and delivery plan**

The Scottish Government intends to take forward this legislation in the current Parliamentary session. The new legislation will likely come into effect in autumn 2021.

#### **Post-implementation review**

A review of the legislation will be carried within 10 years of the Bill coming into effect.

## Summary and recommendation

Option 2 To introduce a Hate Crime and Public Order Bill is recommended.

The introduction of this Bill will ensure that our legislation is fit for 21<sup>st</sup> century Scotland and affords sufficient protection for those that need it. The costs relating to the introduction of this legislation to each of the justice bodies are minimal, but this will help to build a Scotland where there is no place for hatred and prejudice.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No need for existing resources, guidance and/or systems to be updated.	Nil.
2	<p>Consolidating the legislation will meet the Better Regulation principles and should bring more consistency across the various characteristics.</p> <p>Consolidated, modernised and extended legislation that is fit for a modern 21<sup>st</sup> century Scotland and, most importantly, provides sufficient protection to those that need it most.</p> <p>The Scottish Prisons Service have also specifically identified that the new aggravations and offences on an offender's warrant will aid Scottish Prisons Service during their risk assessment process.</p>	<p>The introduction of new aggravations and stirring up offences will require new procedural arrangements which could give rise to one-off costs of £100,000.</p> <p>We estimate that there will be ongoing annual costs to criminal justice organisations and local authority organisations ranging from £135,200 to £527,600.</p>

## **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

A handwritten signature in black ink, appearing to read 'H. Yousaf', written over a light blue horizontal line.

**Date:**

**16 March 2020**

**Minister's name: Humza Yousaf**

**Minister's title: Cabinet Secretary for Justice**

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