

Hate Crime and Public Order (Scotland) Bill

Equality Impact Assessment Record

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Scottish Government
Riaghaltas na h-Alba
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EQUALITY IMPACT ASSESSMENT RECORD

Legislation	Hate Crime and Public Order (Scotland) Bill	
Minister	Mr Humza Yousaf; Cabinet Secretary for Justice	
Lead official	Mr Brian Hirst; Hate Crime Bill Team	
Officials involved in the EQIA	Name	Team
	Mr Bill Brash	Hate Crime Bill Team
	Ms Jo Gillies	Connected Communities
	Ms Rachael Wilson	Connected Communities
	Mr Philip Lamont	Criminal Justice
	Mr Patrick Down	Criminal Justice
	Ms Linsay Mackay	Criminal Justice
	Mr Stephen Coulter	Safer Communities
	Mr Neil Grant	Justice Analytical Services
Directorate: Division: Team	Local Government and Communities: Connected Communities: Hate Crime Bill Team	
Is this new policy or revision to an existing policy?	Both – the Bill will consolidate, modernise and extend hate crime legislation	

Screening

Background

In September 2016, a review by the *Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion*¹, was published which included a number of recommendations for the Scottish Government (SG) and its partners. These were:

- the SG should consider whether the existing criminal law provides sufficient protections for those who may be at risk of hate crime;
- the SG should lead discussion on the development of clearer terminology and definitions around hate crime, prejudice and community cohesion.

This led to the appointment of Lord Bracadale to conduct an *Independent Review of Hate Crime Legislation in Scotland*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:

- 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.

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

In response, the Scottish Government 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 a new hate crime bill.

On 14 November 2018 the Cabinet Secretary for Justice and Cabinet Secretary for Communities launched a public consultation on hate crime legislation in Scotland in response to recommendations made by Lord

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/>

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

Bracadale, which sought views on what should be included in a new hate crime bill.

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). 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.

Hate Crime and Public Order (Scotland) Bill

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. The new hate crime legislation will provide greater clarity, transparency and consistency.

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.

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 about hate crime sends a strong message. In particular, it makes it clear to victims, perpetrators, and communities and to wider society that offences motivated by prejudice will be treated more seriously and will not be tolerated by society.

Policy Aim

Scotland's diversity is its strength; and all communities are valued and their contribution welcomed. 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.

This legislation provides an essential element of the Scottish Government's ambitious programme of work to tackle hate crime and build community cohesion. Anyone who has experienced or witnessed a hate crime is encouraged to report it to the police or to one of the third party reporting centres that are in place across Scotland.

A cohesive society is one with a common vision and a sense of belonging for all communities; a society in which the diversity of people's backgrounds, beliefs and circumstances are appreciated and valued, and similar life

opportunities are available to all. It is through this lens that the Scottish Government has considered the recommendations from Lord Bracadale's 'Independent Review of Hate Crime Legislation in Scotland' in order to inform the modernisation and reform of hate crime legislation in Scotland.

To ensure a consistent overarching approach, the Scottish Government identified a set of three principles to inform and guide policy decision making and development of hate crime legislation. These principles are:

- 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 has 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 is on addressing hate crime in today's society, such as racial and religious hatred, provision is also included to enable the characteristic of sex to be added into the new legislative framework established by the Bill, at a later date by means of regulations. 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.

Hate Crime Definition

There is no single accepted definition of hate crime with different definitions produced for different purposes, however Lord Bracadale stated in his review:

"Hate crime is the term used to describe behaviour which is both criminal and rooted in prejudice".

Rationale for Hate Crime Legislation

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.

The courts take it into consideration when offences are motivated by prejudice when determining sentences. Recording of convictions for hate crimes (whether the aggravation of offences by prejudice or offences relating to stirring up hatred) ensures that levels of hate crime are recorded and trends can be identified and monitored.

Current Hate Crime Legislation In Scotland

Current hate crime legislation in Scotland specifies when an existing offence may be aggravated by prejudice in respect of one or more of the characteristics of race, religion, disability, sexual orientation and transgender identity (which includes 'intersexuality'). 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 'aggravated' where the perpetrator evinces, or is motivated by, malice and ill-will towards a group of persons defined by reference to one or more of the above characteristics.

In Scotland, the existing 'hate crime' statutory aggravations are:

- race: section 96 of the Crime and Disorder Act 1998 ('the 1998 Act');
- religion: section 74 of the Criminal Justice (Scotland) Act 2003 ('the 2003 Act');
- disability: section 1 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 ("the 2009 Act");
- sexual orientation: section 2 of the 2009 Act;
- transgender identity: section 2 of the 2009 Act.

The above legislation makes provision for the aggravation of offences, requiring courts to take the aggravation into account when determining sentence.

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

National Outcomes

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.
- 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).

The legislation specifically creates criminal offences and statutory aggravations in respect of the characteristics of age, disability, race, religion, sexual orientation, transgender identity and variations in sex characteristics. The legislation provides a criminal justice response to hate crime, acting as a deterrent and thereby sending a clear message to society that this behaviour is not acceptable and will not be tolerated.

What might prevent the desired outcomes being achieved?

Although there was broad support for hate crime laws and for consolidation and modernisation among organisations, the majority of individuals were not supportive of hate crime laws suggesting that they restrict freedom of expression and create a hierarchy of victims. Those who supported having hate crime laws saw it as important in protecting particular groups and that it sends a clear message about unacceptable conduct.

Although supportive of hate crime legislation generally, a number of organisations were divided on a range of key issues included in the Scottish Government consultation. These included:

- whether sectarianism should be included as a characteristic within hate crime legislation
- whether section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should be repealed
- whether gender should be included as a characteristic within hate crime legislation

Scottish Government have ensured concerns have been addressed as far as possible and that there is robust justification for the decisions taken in developing the Bill. Engagement with stakeholders will continue as the Bill progresses through Parliament.

Stage 1: Framing

Results of framing exercise

A number of evidence sources have been considered to help frame this assessment.

Lord Bracadale's *Independent Review of Hate Crime Legislation in Scotland*⁴, 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 Lord Bracadale's report including race equality stakeholders, women's organisations, age (both children and young people's and older people's organisations), disabled people's organisations, LGBT organisations and faith and belief organisations. These sessions helped inform the development of the public consultation exercise which was launched in November 2018 to seek views on what should be included in the Bill. A series of public awareness events were also undertaken throughout Scotland.

A full analysis report following the consultation was produced and published in June 2019⁵.

To supplement the above, statistics have been collected using publications sourced from the *Equality Evidence Finder*⁶, providing valuable information on both demographics and those most likely to be a victim of an offence (including those aggravated by prejudice). Sources included *Developing Information on Hate Crime Recorded by the Police in Scotland*⁷, *Hate Crime in Scotland 2018-19*⁸ recorded by Crown Office and Procurator Fiscal Service (COPFS), *Criminal Proceedings in Scotland, 2017-18*⁹, as well as drawing on findings from national surveys including the *Scottish Social Attitudes Survey (SSAS) 2015*¹⁰, the *Scottish Household Survey (SHS) 2018*¹¹ and the *Scottish Crime and Justice Survey 2017-2018*¹².

Extent/Level of EQIA required

A full EQIA has been carried out.

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

⁵ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/1/>

⁶ <http://www.equalityevidence.scot/>

⁷ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/3/>

⁸ <https://www.copfs.gov.uk/media-site/media-releases/1845-hate-crime-in-scotland-2018-19>

⁹ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/>

¹⁰ <https://www.gov.scot/publications/scottish-social-attitudes-2015-attitudes-discrimination-positive-action/pages/2/>

¹¹ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

¹² <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

Stage 2: Data and evidence gathering, involvement and consultation

The table below summarises some of the key evidence from the review of the available data.

Where possible, some data around intersectionality of the characteristics has been provided. However, it is important to note that results presented from some of the sources, such as the SCJS on victimisation rates, do not prove that equality characteristics are necessarily (or solely) driving differences identified between population sub-groups. Further analysis would be required to unpack the relative impact of different characteristics on experiences, whilst other contextual factors such as lifestyle and location may also be important. Further work is currently being progressed separately by Scottish Government's Justice Analytical Services to examine the factors associated with victimisation more closely. Additionally, it should be noted that SCJS population sub-group victimisation data refers to experience of any property or violent crime, not specifically hate related incidents.

Please note that direct links to all sources referenced in column two (evidence gathered and strength/quality of evidence) can be found in column three (source).

Characteristic ¹³	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>Statistical Data</p> <p><u>Demographics</u></p> <p>The <i>2011 Census</i> recorded that Scotland's 65 and over age group comprised 16% of the population.</p> <p>The <i>Mid-2018 Population Estimates Scotland</i>, approximated that in 2018, just under one in five people (19%) were aged 65 and over, compared with 16% in mid 2008.</p>	<p>Primary Source - Equality Evidence Finder¹⁵</p> <p><i>2011 Census Reconciliation Report - Population¹⁶</i></p> <p><i>Mid-2018 Population Estimates Scotland¹⁷</i></p>	<p>Quantitative data available on age for general demography is mainly based on mid-year population estimates and population projections.</p> <p>The next Scottish census will take place March 2021.</p>

¹³ Refer to Definitions of Protected Characteristics document for information on the characteristics

¹⁵ <http://www.equalityevidence.scot/>

¹⁶ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/reconciliation-report/mye-reconciliation-report.pdf>

¹⁷ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-18/mid-year-pop-est-18-pub.pdf>

	<p>The, <i>2016-based Population Projections</i>, estimates that people aged 75 and over are projected to be the fastest growing age group in Scotland. The number of people aged 75 and over is projected to increase by 27% over the next ten years and by 79% over the next 25 years.</p> <p><u>Experiences of crime</u></p> <p>The <i>Scottish Crime and Justice Survey</i>, found that in 2017/18, 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone out-with their household, an increase from 10% in 2012/13.</p> <p>The likelihood of experiencing crime was lowest for those aged 60 and over at 5.3%. In comparison 16% of 16-24 year olds experienced crime.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, found that in 2018, 3% of victims of harassment thought their age or perception of this may have been a motivating factor in their most recent (or only) experience of harassment while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>Additionally in 2018 it was found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. The survey showed that 15% of those who</p>	<p><i>2016-based Population Projections</i>¹⁸</p> <p><i>Scottish Crime and Justice Survey 2017-18</i>¹⁹</p> <p><i>Scottish Household Survey 2018</i>²⁰</p>	<p>Information on the age of victims and perpetrators is not generally available for police recorded crime.</p> <p>No figures are available for hate crime and age as this is not currently a characteristic in existing hate crime legislation, nor is the existing hate crime data disaggregated in this way.</p>
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¹⁸ <https://www.nrscotland.gov.uk/files//statistics/population-projections/2016-based-scot/pop-proj-2016-scot-nat-pop-pro-pub.pdf>

¹⁹ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment
<https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/20/>

²⁰ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

	<p>reported experiencing harassment and 7% who reported experiencing discrimination said it was motivated by their age.</p> <p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that since 2008-09 the highest conviction rate for criminal offences has shifted upwards from the 18-20 age group to the 21-30 age group which in 2017-18 stood at 35 convictions per 1,000 population. The 31-40 age group in 2017-18 also declined to a level of 35 convictions per 1,000 population, compared to 38 per 1,000 in the previous year.</p> <p>Over the past 10 years the number of convictions per 1,000 population for younger people (under-21s and 21-30s) has fallen much more quickly than the numbers for older people, although they are falling in all groups.</p> <p>Lord Bracadale’s Review</p> <p>Lord Bracadale considered whether age should be included as a characteristic within hate crime legislation. He noted stakeholders reported that while it may be that many crimes against the elderly are motivated by a desire to exploit a perceived vulnerability, some crimes are motivated by hostility based on the perceived age of the victim. He found that:</p> <p><i>‘there is sufficient evidence of hostility-based offences against the elderly, particularly in the light of the information provided by Action for Elder Abuse, to include age as a protected characteristic based on the current model of hostility.’</i></p>	<p><i>Criminal Proceedings in Scotland, 2017-18</i>²¹</p> <p><i>Independent Review of Hate Crime Legislation in Scotland</i>²²</p>	<p>Qualitative data availability around age is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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²¹ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/13/>

<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/2/>

²² <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/5/>

<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>

	<p>Lord Bracadale also considered the application of this to children and young people particularly in reference to bullying (in the circumstances where the particular conduct in question constituted an offence).</p> <p>Lord Bracadale therefore recommended that, ‘<i>There should be a new statutory aggravation based on age hostility</i>’. He suggested that this should covers people of any age and should not refer to a particular age group such as elderly people or children and young people.</p> <p>Lord Bracadale also recommended to introduce stirring up offences for all existing and any new characteristics including age.</p> <p>Separate to this, Lord Bracadale has also recommended that the Scottish Government should consider, outwith the hate crime legislation, introducing a general aggravation covering exploitation and vulnerability, noting that older people were often specifically targeted due to their actual or perceived vulnerability.</p> <p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on the above recommendations.</p>	<p><i>One Scotland: consultation on current hate crime legislation</i>²³</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>²⁴</p>	
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²³ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/4/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/6/>

²⁴ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

	<p>In regards to a new statutory aggravation for age, there were mixed views. A total of 29% of respondents were in favour and 54% were not, although 64% of organisations supported a new statutory aggravation for age. Those in favour argued that there was a need for legislation in this area and there should be a consistent approach to statutory aggravations applied across all characteristics. These respondents also thought that the creation of a new statutory aggravation relating to age would provide a deterrent to age-related hostility. Those opposed thought that there was little evidence of age-related hostility being targeted either at older people or at young people and, therefore, legislation in this area was not needed. Some thought a statutory aggravation relating to 'age' would be unworkable in practice.</p> <p>Respondents felt that most offences committed against the elderly were likely to be motivated by a perpetrator's perception of the victim's vulnerability, rather than age-related hostility.</p> <p>It was also highlighted that since age is a protected characteristic under the, <i>Equality Act 2010</i>¹⁴, adding age would represent a consistent approach.</p> <p>There was, however, an acknowledgment among organisations dedicated to supporting the elderly that crimes against older people were more likely motivated by perceived</p>	<p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>²⁵</p>	
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¹⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

²⁵ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/8/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/14/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

	<p>vulnerability than age-related hostility. Consequently they encouraged further consideration being given to an exploitation of vulnerability aggravation outwith hate crime legislation.</p> <p>Youth organisations cited the importance of children receiving the same level of protection as other groups to help address ‘societal and media’ pressure in addition to protecting young people from exploitation and exposure to violence.</p> <p>Furthermore stakeholders representing children and young people recommended that any legislative development should be subject to a Child Rights and Wellbeing Impact Assessment. A copy of this can be found the Scottish Government website.</p> <p>Contributions from age organisations in response to the consultation included:</p> <ul style="list-style-type: none">• Age Scotland;• Action on Elder Abuse;• Children in Scotland;• Scottish Children’s Reporter Administration;• Together (Scottish Alliance for Children’s Rights);• YouthLink Scotland;• Youth Community Support Agency YCSA		
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	<p>Police Scotland consultation response</p> <p>The report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion explained that evidence on the demographics of convicted perpetrators suggests that they are likely to be young (25 years of age and under). Police Scotland’s response to the consultation on hate crime legislation supports this finding.</p> <p>Additional Stakeholder Engagement</p> <p>Following the publication of Lord Bracadale’s review, a number of stakeholder engagement events were held in summer 2018 to help inform the development of the Scottish Government public consultation. This included an event with age organisations:</p> <p>The following age organisations attended:</p> <ul style="list-style-type: none"> • Soroptomists International; • Outside the Box; • Age Scotland; • Scottish Pensioners Forum; • Scottish Older People’s Assembly; • Action Against Elder Abuse. <p>The organisations agreed that age based hostility exists and therefore adding age to hate crime law would help address this issue.</p> <p>There was general recognition among the attendees that only a very small number of crimes are based on age hostility.</p>	<p><i>Report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion, published September 2018²⁶</i></p> <p><i>Programme of multi stakeholder engagement events</i></p>	
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²⁶ <https://www.gov.scot/publications/report-independent-advisory-group-hate-crime-prejudice-community-cohesion/pages/3/>

	<p>However, one representative participating in the stakeholder sessions cited the younger generation blaming the elderly for using the NHS and taking jobs away from the young etc. as evidence of age-related intolerance. The media encouraging hostility between young and old and the dangers of the elderly being vulnerable to exploitation (either by family members, carers or bogus tradesmen and general scammers) were offered as more general examples.</p> <p>One organisation specifically cited exploitation and vulnerability as issues that needed to be looked at in greater detail by the Scottish Government outwith the hate crime legislation.</p> <p>Action on Elder Abuse Meeting</p> <p>The organisation issued a formal report to the Justice Committee and later met with the Cabinet Secretary for Justice on how to tackle criminals that intentionally targets older people. They highlighted the reluctance of older people to report crimes against them, particularly where they are committed by family members or carers. They also expressed concern about what they regarded as a reluctance on the part of the police and COPFS to treat such cases as a matter for the criminal justice system.</p> <p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young</p>	<p><i>Action on Elder Abuse Meeting</i></p> <p><i>YouthLink Scotland Events²⁷</i></p>	
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²⁷ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

	<p>people on what should be included in the new hate crime legislation.</p> <p>There was a strong view amongst the young people that both older and younger people could potentially be victimised because of their age and therefore they were very supportive of age being added as a characteristic within hate crime law.</p>		
DISABILITY	<p>Statistical Data</p> <p><u>Demographics</u></p> <p>The proportion of adults with a long-term limiting mental or physical health condition or disability is increasing as the population ages.</p> <p>Between 2008 and 2018, the proportion of women who were disabled increased from 28% to 36%. Over the same period, the proportion of men who were disabled increased from 23% to 30%.</p> <p><u>Experiences of crime</u></p> <p>The, <i>Scottish Crime and Justice Survey</i>, found that in 2017/18, 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone out-with their household, an increase from 10% in 2012/13.</p>	<p>Primary Source - Equality Evidence Finder²⁸</p> <p><i>Scottish Health Survey 2018²⁹</i></p> <p><i>Scottish Crime and Justice Survey 2017-18³⁰</i></p>	<p>There are a range of high level statistics on demographics surrounding disability.</p> <p>Information on the disability status of victims and perpetrators is not available for police recorded crime, however results are available from the Scottish Crime and Justice</p>

²⁸ <http://www.equalityevidence.scot/>

²⁹ <https://www.gov.scot/publications/scottish-health-survey-2018-volume-1-main-report/>
<https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

³⁰ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment
<https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/SCJS/SCJS2016-17-vol-1> (see Excel tab 1.01b)

	<p>Additionally, 3% of victims of harassment thought their disability or a condition they have may have been a motivating factor in their most recent (or only) experience of harassment while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>Disabled people were more likely to have experienced crime in 2017/18 than non-disabled people. An estimated 14.9% of disabled adults were victims of at least one crime compared to 11.8% of non-disabled adults.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018, found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. Some groups were more likely than others to report this including people who are disabled, of whom 11% reported experiencing discrimination and 8% reported experiencing harassment. A further 11% of those who reported experiencing harassment and 10% who reported experiencing discrimination said it was motivated by their disability.</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>, reports that in 2017-18, the police recorded 308 hate crimes which included a disability aggravator (including hate crimes with multiple aggravators).</p> <p>The number of disability aggravated charges reported to COPFS remained almost unchanged, up 1% to 289 in 2018-</p>	<p><i>Scottish Household Survey 2018</i>³¹</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>³²</p>	<p>Survey (which includes crimes not reported to the police).</p> <p>The Scottish Government is engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and</p>
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³¹ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

³² <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/>

	<p>19. With the exception of 2016-17, there have been slight year on year increases in charges reported since the legislation introducing this aggravation came into force in 2010.</p> <p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that 2017-18, 58 people were convicted in Scottish courts of an offence with an associated disability aggravation. Convictions with this particular aggravator remain relatively stable, rising marginally from 53 in 2016/17.</p> <p>Lord Bracadale’s Review</p> <p>Disability is already included in the characteristics covered by hate crime legislation. Lord Bracadale recommended to introduce stirring up of hatred offences for all existing and any new characteristics including disability (currently only exist in relation to race). He recommended this to ensure parity across all characteristics covered by hate crime legislation.</p> <p>Separate to this, Lord Bracadale has also recommended that the Scottish Government should consider, outwith hate crime legislation, introducing a general aggravation covering exploitation and vulnerability, noting that disabled people may be vulnerable, or perceived as being vulnerable. He explicitly recognised that a proportion of offences committed against disabled people are based not on hostility, but on perceived vulnerability.</p>	<p><i>Hate Crime in Scotland 2018-19</i>³³</p> <p><i>Criminal Proceedings in Scotland, 2017-18</i>³⁴</p> <p><i>Independent Review of Hate Crime Legislation in Scotland</i>³⁵</p>	<p>circumstances of these cases (including analysis of disability related hate crimes). It is anticipated that a report on the findings of this exercise will be published in 2020.</p> <p>Qualitative data availability around disability is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders</p>
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³³ <https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

³⁴ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/28/>
<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/27/>

³⁵ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/5/>

	<p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on the above recommendations.</p> <p>Results from the consultation showed that 69% (55) of organisations agreed with the introduction of stirring up offences for each characteristic, including disability.</p> <p>Organisations representing disabled people provided evidence and examples of the abuse experienced by their stakeholders to support the case for introducing additional stirring up offences and that it would send a clear message about the unacceptability of such behaviour.</p> <p>Furthermore, establishing stirring up offences for all characteristics would be helpful in supporting consistent data gathering and monitoring of abusive and threatening conduct targeted at different groups.</p> <p>Respondents emphasised the importance of a statutory aggravation to cover crimes against people with protected characteristics (i.e. disability) that are not motivated by hatred and/or prejudice. This was accompanied by calls to improve</p>	<p><i>One Scotland: consultation on current hate crime legislation</i>³⁶</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>³⁷</p> <p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>³⁸</p>	
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³⁶ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/6/>

³⁷ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

³⁸ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/14/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/12/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/17/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

	<p>access to justice for those with learning difficulties, improving the appropriate adult service for people with mental illness and improved access to victim-centred support provided by staff with appropriate expertise.</p> <p>Respondents generally also supported (55% of organisations, 52% of individuals) the retention of the requirement for courts to state the extent to which the sentence imposed is different from what would have been imposed in the absence of the aggravation (including for age). Reasons included increased confidence in a more transparent justice system and sending a clear message to perpetrators about the unacceptability of this form of criminality.</p> <p>Contributions from disability organisations in response to the consultation included:</p> <ul style="list-style-type: none"> • Advocating Together (Dundee) • SCIO; • British Deaf Association Scotland; • Deaf Scotland; • ENABLE; • Glasgow Disability Alliance; • Inclusion Scotland; • People First (Scotland); • Royal Blind and Scottish War Blinded; • Scottish Commission for Learning Disability. <p>Additional Stakeholder Engagement</p> <p>Following the publication of Lord Bracadale’s review, a number of stakeholder engagement events were held in summer 2018 to help inform the development of the Scottish</p>	<p><i>Programme of multi stakeholder engagement events</i></p>	
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	<p>Government public consultation. This included an event with disability organisations.</p> <p>The following disability organisations attended</p> <ul style="list-style-type: none"> • Health and Social Care Alliance; • Scottish Ethnic Minority Deaf Club; • People First Scotland; • Scottish Council on Deafness; • ENABLE; • British Deaf Association Scotland; • Disability Agenda Association • Scottish Commission for Learning Disability • Sense Scotland <p>Much of the discussion centred around the issue of vulnerability and the majority of those in attendance supported Lord Bracadale’s recommendation to introduce a general aggravation covering exploitation and vulnerability outwith hate crime. Although it was noted that defining vulnerability would prove challenging and that many disabled people do not consider themselves vulnerable.</p> <p>The importance of recognising less visible disabilities was also highlighted. It was noted that many members of the deaf community do not consider themselves disabled.</p> <p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young</p>	<p><i>YouthLink Scotland Events</i>³⁹</p>	
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³⁹ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

	<p>people on what should be included in the new hate crime legislation.</p> <p>The young people that took part in these events were supportive of the extension of the stirring up of hatred offences for all characteristics, including disability.</p> <p>They also discussed hidden disability and the need for hate crime against people with hidden disabilities to be taken seriously. It was viewed that hate crime against people with hidden disabilities is often treated as banter and often there is a lack of reporting by the victim.</p>		
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<p>SEX</p>	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>Scotland had a relatively even split between men and women. 2018 figures show that was, with 51% women and 49% men, although this varied amongst age groups.</p> <p><u>Experiences of crime</u></p> <p>The, <i>Scottish Crime and Justice Survey</i>, found that in 2017/18, 14% of adults reported that they had been insulted,</p>	<p>Primary Source - Equality Evidence Finder⁴⁰</p> <p><i>Mid-2018 Population Estimates Scotland⁴¹</i></p> <p><i>Scottish Crime and Justice Survey 2017-18⁴²</i></p>	<p>There is a range of high level statistics for demographics surrounding sex.</p> <p>Information on the sex of victims and perpetrators is not generally available for police recorded crime, however quantitative data around sex for general crime is</p>
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⁴⁰ <http://www.equalityevidence.scot>

⁴¹ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-18/mid-year-pop-est-18-pub.pdf>

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2018> (see Tables and Figures; All Tables; Excel tab 'Table 1')

⁴² https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment

	<p>pestered or intimidated in any way by someone outwith their household, an increase from 10% in 2012/13.</p> <p>Additionally, 10% of victims of harassment thought their sex, gender identity or perception of this was a possible motivating factor while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018 found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. The survey showed that 10% of those who reported experiencing harassment and 8% who reported experiencing discrimination said it was motivated by their sex or gender.</p> <p>There was no statistically significant difference in the proportion of men and women who were victims of crime in 2017/18, at 12.8% and 12.1% respectively. That said, we know men and women can experience crime differently, with the SCJS also showing that women are more likely than men to have experienced partner abuse.</p> <p>However, women were less likely than men to feel safe walking alone in their neighbourhood after dark in 2017/18 (66% compared to 89% of men).</p>	<p><i>Scottish Household Survey 2018</i>⁴³</p>	<p>available from the Scottish Crime and Justice Survey (which includes crimes not reported to the police).</p> <p>No figures are available for hate crime and sex as this is not currently a characteristic in existing hate crime legislation, nor is the existing hate crime data disaggregated in this way.</p>
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<https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/20/>
https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/13/#_9.3_Partner_Abuse
<https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/26/>

⁴³ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

	<p>Statistics from, <i>Criminal Proceedings in Scotland 2017-18</i>, reported that the number of convictions per 1,000 population has declined over the last ten years from 26 in 2008-09 to 17 in 2017-18. This fall has been driven by a decline for males, down to 28 convictions per 1,000 population in 2017-18 from 46 in 2008-09. The rate for females has also declined over the ten year period although much more gradually, from eight convictions per 1,000 population in 2008-09 to six in 2017-18. There has been a relatively large rise in custodial sentences for women aged 31-40, from 378 in 2016-17 to 496 in 2017-18.</p> <p>Lord Bracadale’s Review</p> <p>Lord Bracadale recommended that a statutory aggravation on gender hostility be included within modernised hate crime legislation.</p> <p>However a number of women’s organisations were strongly opposed to this approach, calling for the development of a standalone offence for misogynistic harassment outwith hate crime legislation. Some organisations believe that the development of a specific offence would recognise that the reality of violence against women is a complex issue and requires a considered approach. Their concerns are that creating a gender aggravation would lead to a failure to deal effectively with violence against women and girls, and they are not convinced that the hate crime framework provides an appropriate model for dealing with gender based violence.</p>	<p><i>Criminal Proceedings in Scotland 2017-18</i>⁴⁴</p> <p><i>Independent Review of Hate Crime Legislation in Scotland</i>⁴⁵</p>	<p>Qualitative data availability around sex is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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⁴⁴ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/13/>
<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/2/>

⁴⁵ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/5/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/7/>

	<p>On 26 November 2019 Engender published their report, 'Making women safer in Scotland: the case for a standalone misogyny offence' which sets out some of their key arguments. They concluded that: <i>'We are of the view that a 'gender aggravation' would be a mistake. It would not fill the gaps in the law. It would undermine our shared analysis of violence against women and girls. International experience suggests that we would see very few investigations, prosecutions, and convictions because it is not a model that aligns well with public understanding of women's inequality. Instead, we are calling for a participatory development process for a standalone offence that would include the most iniquitous forms of misogynistic harassment and abuse.'</i></p> <p>Lord Bracadale also recommended the introduction of stirring up offences for all existing and any new characteristics, including for gender. He believes that this would help to tackle online misogyny in particular.</p> <p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on how best to tackle gender based prejudice and misogyny.</p> <p>A number of options were presented in the consultation as we were already aware of mixed views in this area. Four options were presented:</p>	<p><i>Making women safer in Scotland: the case for a standalone misogyny offence</i>⁴⁶</p> <p><i>One Scotland: consultation on current hate crime legislation</i>⁴⁷</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>⁴⁸</p>	
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⁴⁶ <https://www.engender.org.uk/content/publications/Making-Women-Safer-in-Scotland---the-case-for-a-standalone-misogyny-offence.pdf>

⁴⁷ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/4/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>

⁴⁸ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

	<ul style="list-style-type: none"> • develop a statutory aggravation for gender hostility; • develop a standalone offence for misogynistic harassment; • take a non-legislative approach and build on Equally Safe to tackle misogyny; or • all of the identified options. <p>In general, organisational respondents supported a legislative response to help tackle the issue of misogyny. Organisations were more likely to favour the development of a statutory aggravation for gender hostility rather than the development of a standalone offence for misogynistic harassment. They also generally supported building on the Equally Safe strategy, and it was common for organisations to say that any legislative approach to tackling misogynistic harassment should be complemented by efforts to change attitudes in society towards women and girls. However, some stakeholders (particularly Engender, Rape Crisis Scotland, Scottish Women’s Aid and Zero Tolerance) did not want a statutory aggravation on gender to be included in hate crime legislation and have called for the development of a standalone offence for misogyny to tackle the unique features of violence and harassment against women. They are not convinced that the hate crime framework provides an appropriate model for dealing with gender based violence. Individuals generally expressed opposition to, or mixed views on all four options.</p>	<p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>⁴⁹</p>	
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⁴⁹ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/7/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/12/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

	<p>Issues raised by respondents across all four questions related to whether any legislative response to tackle hate crimes against women should provide protection to women only, or to both women and men. There was not consensus on this issue, although organisations with expertise in women’s issues believed that the focus should be on women only. Some respondents also said that the protected characteristic specified in the Equality Act 2010 was ‘sex’, not ‘gender’ and that this should be reflected in hate crime laws.</p> <p>Currently courts are required to publically state the extent to which the statutory aggravation altered the length of the sentence.</p> <p>Contributions from women’s organisations in response to the consultation included:</p> <ul style="list-style-type: none"> • Angus Child Protection Committee, Adult Protection Committee and Violence Against Women Partnership • Glasgow Violence Against Women Partnership • Engender • Rape Crisis Scotland • Scottish Women’s Aid • Stirling Gender Based Violence Partnership • Wise Women • Women and Girls in Scotland • Zero Tolerance <p>Additional Stakeholder Engagement</p> <p>Following the publication of Lord Bracadale’s review, a number of stakeholder engagement events were held in summer 2018 to help inform the development of the Scottish Government public consultation. This included an event with</p>	<p><i>Programme of multi stakeholder engagement events</i></p>	
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	<p>women's organisations. The following women's organisations attended:</p> <ul style="list-style-type: none">• ASSIST, Community Safety Glasgow• City of Edinburgh Council• City of Glasgow Council• Engender• SACRO• Scottish Women's Aid• Scottish Women's Convention• Zero Tolerance <p>Across the engagement sessions there were mixed views expressed by the different attendees. Some organisations believed that a statutory aggravation on gender would be more workable in practice than a standalone offence for misogyny and that the latter would be too significant a legislative step. Others supported the development of standalone offence.</p> <p>Following the consultation, a number of further meetings were held with various women's organisations to explore options for how gender might be included, or not, within this Bill. It remained clear that there were mixed views amongst stakeholders in regards to whether a statutory aggravation should be introduced or not in hate crime legislation in relation to gender. However there was broad support for the establishment of a Working Group to review how criminal law deals more broadly with misogyny.</p>		
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	<p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young people on what should be included in the new hate crime legislation.</p> <p>The young people that took part in these events were supportive of developing a statutory aggravation for gender hostility. There was a strong feeling that any new legislation should be inclusive for both men and women and therefore there should not be a standalone offence for misogyny.</p>	<p><i>YouthLink Scotland Events</i>⁵⁰</p>	
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<p>PREGNANCY AND MATERNITY</p>	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>The average age of mothers rose from 26.0 in 1975 to 30.6 in 2018. Similarly, the average age of fathers (excluding births registered in the mother's name only, where the father's details were not provided) rose from 28.4 in 1975 to 33.1 in 2018. Since 1975 the average age of parents has increased by more than 4 years for both fathers (4.7) and mother (4.6).</p>	<p><i>Scotland's Population 2018 - The Registrar General's Annual Review of Demographic Trends</i>⁵¹</p>	<p>Information is available on demographics surrounding pregnancy and maternity however no information is currently available on related hate crimes.</p>
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⁵⁰ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

⁵¹ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/stats-at-a-glance/registrars-general-annual-review/2018>

	<p>Maternal obesity continues to increase. More than half (52.7%) of expectant women were overweight or obese compared with 48.5% in 2010/11.</p> <p>A report commissioned by the World Health Organisation (WHO) states that, not unlike other forms of stigmatization (on the grounds of race, class, ability, gender, sexual orientation, etc.), obesity stigma is associated with significant physiological and psychological consequences, including increased depression and anxiety, disordered eating, and decreased self-esteem.</p> <p>Teenage pregnancy rates in Scotland are at their lowest level since reporting began in 1994. Rates decreased for the tenth consecutive year from 31.7 per 1,000 women in 2016 to 30.2 in 2017.</p>	<p><i>Births in Scottish Hospitals Year ending 31 March 2019, A National Statistics Publication for Scotland, ISD⁵²</i></p> <p><i>Weight bias and obesity stigma: considerations for the WHO European Region⁵³</i></p> <p><i>Teenage Pregnancy Year of conception, ending 31 December 2017, A National Statistics Publication for Scotland, ISD⁵⁴</i></p>	<p>There is no information on weight stigma and hate crime.</p>
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⁵² <https://www.isdscotland.org/Health-Topics/Maternity-and-Births/Publications/2019-11-26/2019-11-26-Births-Report.pdf>

⁵³ http://www.euro.who.int/__data/assets/pdf_file/0017/351026/WeightBias.pdf?ua=1

⁵⁴ <https://www.isdscotland.org/Health-Topics/Sexual-Health/Publications/2019-07-02/2019-07-02-TeenPreg-Report.pdf>

	<p>Since 2007, rates per 1,000 in the under 20 age group have fallen by almost a half (from 57.7 to 30.2 in 2017). Similarly, rates for under 18s and under 16s decreased by more than 60% and almost 70% respectively.</p> <p>Addressing weight stigma is included as an action in Scotland's healthier future strategy.</p>	<p><i>A healthier future: Scotland's diet and healthy weight delivery plan</i>⁵⁵</p>	
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<p>GENDER REASSIGNMENT</p>	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>Around 1% of the UK population are transgender.</p> <p>The Scottish Trans Alliance has stated that the number of transgender people in Scotland is not currently known accurately and many transgender people are extremely wary of revealing that they are transgender.</p>	<p>Primary Source - Equality Evidence Finder⁵⁶</p> <p><i>Gender Identity Research and Education Society (GIRES) – The number of Gender Variant People in the UK (update 2011)</i>⁵⁷</p> <p><i>Scottish Trans Article on Equal Monitoring</i>⁵⁸</p>	<p>Limited information is available on demographics surrounding transgender identity/gender reassignment.</p>
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⁵⁵ <https://www.gov.scot/publications/healthier-future-scotlands-diet-healthy-weight-delivery-plan/pages/6/>

⁵⁶ <http://www.equalityevidence.scot/>

⁵⁷ <https://www.gires.org.uk/information-on-prevalence-incidence-and-monitoring/>
<https://www.gires.org.uk/wp-content/uploads/2014/10/Prevalence2011.pdf>

⁵⁸ <https://www.scottishtrans.org/trans-rights/practice/equality-monitoring/>

	<p><u>Experiences of crime</u></p> <p>The most recent findings from the, <i>Scottish Crime and Justice Survey</i>, found that 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone outwith their household - unchanged from 2008/09 and 2016/17.</p> <p>Additionally, 10% of victims of harassment thought their gender, gender identity or perception of this was a possible motivating factor while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018 found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. The survey showed that 10% of those who reported experiencing harassment and 8% who reported experiencing discrimination said it was motivated by their sex or gender.</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>, reports that in 2017-18, the police recorded 82 hate crimes which included a transgender identity aggravator (including hate crimes with multiple aggravators).</p>	<p><i>Scottish Crime and Justice Survey 2017 18</i>⁵⁹</p> <p><i>Scottish Household Survey 2018</i>⁶⁰</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>⁶¹</p>	<p>Information on the transgender identity of victims and perpetrators is not available from police recorded crime data, however survey data does provide related information on discrimination and harassment.</p> <p>The Scottish Government is engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and</p>
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⁵⁹ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment

⁶⁰ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

⁶¹ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/>

	<p><i>Hate Crime Statistics in Scotland for 2018-19</i>, published by COPFS reported that there were 40 charges with an aggravation of transgender identity, compared to 52 in 2017-18.</p> <p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that in 2017-18, 12 people were convicted in Scottish courts of an offence with an associated transgender aggravation. Convictions with this particular aggravator remain relatively stable, decreasing marginally from 14 in 2016/17.</p> <p>Lord Bracadale’s Review</p> <p>Lord Bracadale recommended that,</p> <p><i>“the drafting of any replacement for section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 should include ‘intersex’ as a separate category rather than a sub-category of transgender identity. Consideration should be given to removing outdated terms such as ‘transvestism’ and ‘transsexualism’ from any definition of transgender identity (without restricting the scope of the definition)”</i></p> <p>Since the enactment of the 2009 Act, it has become clear that there are concerns with listing ‘intersexuality’ as an aspect of transgender identity. Intersex and transgender identity are now widely understood to be two separate and distinct characteristics (intersex being a physical condition, or range of conditions, relating to biological characteristics, and transgender identity relating to a person’s gender</p>	<p><i>Hate Crime in Scotland 2018-19</i>⁶²</p> <p><i>Criminal Proceedings in Scotland, 2017-18</i>⁶³</p> <p><i>Independent Review of Hate Crime Legislation in Scotland</i>⁶⁴</p>	<p>circumstances of these cases (including analysis of transgender identity related hate crimes). It is anticipated that a report on the findings of this exercise will be published in 2020.</p> <p>Qualitative data availability around gender reassignment is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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⁶² <https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

⁶³ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/28/>
<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/27/>

⁶⁴ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/4/>

	<p>identity). Whilst the wording of the 2009 Act reflected understanding of the position at the time of enactment, this is no longer the case. Therefore Lord Bracadale recommended that ‘intersexuality’ should be removed from the definition of transgender identity given the clear differences between intersex and transgender identities. However, so as not to lose protection for this group of people, Lord Bracadale also recommended that ‘intersex’ should be a separate characteristic within hate crime law.</p> <p>Lord Bracadale also recommended introducing stirring up offences for all existing and any new characteristics, including transgender and intersex.</p> <p>Consultation</p> <p>Within Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on whether variations in sex characteristics (or intersex) should be a separate category from transgender identity and if the definition of transgender identity should be updated.</p> <p>Overall there were mixed views on whether intersex/variations in sex characteristics should be listed as a separate characteristic from transgender identity within hate crime law, with 58% of organisations agreeing that that intersex/variations in sex characteristics should be a</p>	<p><i>One Scotland: consultation on current hate crime legislation</i>⁶⁵</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>⁶⁶</p> <p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>⁶⁷</p>	
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⁶⁵ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/3/>

⁶⁶ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

⁶⁷ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/6/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/12/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

	<p>separate category, compared to 27% of individuals. Only 6% of organisations felt that intersex/variations in sex characteristics should not be listed as a separate category.</p> <p>There were also mixed views on whether terms currently used in hate crime legislation in relation to transgender identity should be updated. Only 26% of respondents agreed, however 63% of organisations agreed with only 6% disagreeing.</p> <p>Respondents who favoured updating of the language for transgender identity thought it important that the law evolved and that individuals saw themselves reflected in the law. Respondents with reservations about this highlighted the difficulty of agreeing on acceptable terms that were clear and would stand the test of time.</p> <p>The majority of organisations that responded were of the view that the terms ‘transvestite’ and ‘transsexual’ were outdated and should be removed from hate crime legislation. Those groups, including those representing the LGBT community, generally favoured the terms ‘trans’ and/or ‘transgender’ as umbrella terms covering a range of sub-groups. Within their consultation response, the Equality Network defined transgender as ‘people who find their gender identity or gender expression differs from the gender they were assigned at birth. This includes, among other identities, non-binary people, transwomen, transmen and cross-dressing people’.</p>		
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	<p>Some respondents, including dsdfamilies, argued that the creation of a separate intersex/variations in sex characteristics category was neither appropriate nor helpful when wider consideration of intersex issues was needed. However, the Equality Network welcome the inclusion of intersex/variations in sex characteristics as a separate category within hate crime legislation. They believe that 'intersex' people, or people perceived to be intersex, can face 'intersex-phobic hate crime'.</p> <p>In one of their hate crime research reports, the Equality Network found that 29% of intersex respondents had experienced hate crime based on being intersex (although noting the small number of respondents). However they state that more research is needed into intersex-specific hate crime.</p> <p>It is also worth highlighting that a number of respondents to the consultation expressed a preference for the terms, 'differences in sex development' or 'variation in sex characteristics' as opposed to the term 'intersex', which they indicated covered a very wide range of conditions.</p> <p>There was some concern among stakeholders that the extension of stirring up offences may not go far enough in providing the level of protection required to the LGBTI community. The basis of this was that certain behaviours that can often lead to violence are not always threatening or abusive and therefore the offence should apply where it is 'insulting' as well as 'threatening' and 'abusive'.</p> <p>Respondents generally also supported (55% of organisations, 52% of individuals) the retention of the requirement for courts to state the extent to which the</p>		
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	<p>sentence imposed is different from what would have been imposed in the absence of the aggravation (including for transgender identity and intersex/VSC). Reasons included increased confidence in a more transparent justice system and sending a clear message to perpetrators about the unacceptability of this form of criminality.</p> <p>Contributions from LGBT organisations in response to the consultation included:</p> <ul style="list-style-type: none"> • Equality Network/Scottish Trans Alliance • LGBT Health and Wellbeing • LGBT Youth Scotland • Scottish Bi+ Network • Stonewall Scotland • dsdfamilies <p>Additional Stakeholder Engagement</p> <p>Following the publication of Lord Bracadale’s review, a number of stakeholder engagement events were held in summer 2018 to help inform the development of the Scottish Government public consultation. This included an event with LGBTI organisations.</p> <p>The following organisations attended:</p> <ul style="list-style-type: none"> • Equality Network • LGBT Youth Scotland • Stonewall Scotland <p>One of the principal concerns raised by the attendees was whether introducing stirring up offences would go far enough in protecting the transgender community from harassment.</p>	<p><i>Programme of multi stakeholder engagement events</i></p>	
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	<p>In August 2019 a further meeting was held to discuss proposals. Attendees included:</p> <ul style="list-style-type: none"> • Equality Network; • Scottish Trans Alliance; • Stonewall Scotland; • LGBT Health & Wellbeing <p>The group agreed that the legislation should be as broad as possible in order to future-proof the legislation. Definitions used should reflect the fact that hate crime is committed based on the perpetrator’s ‘perception’. However, it is also important to ensure that communities recognise themselves as protected within the legislation, including those who use older/ outdated terminology.</p> <p>The group also agreed that ‘variations in sex characteristics’ should be used instead of, or alongside, intersex. The group were also content for intersex to be included as a separate category outwith transgender identity.</p> <p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young people on what should be included in the new hate crime legislation.</p> <p>The group agreed that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated.</p>	<p><i>YouthLink Scotland Events⁶⁸</i></p>	
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⁶⁸ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

	<p>The majority view was that intersex should be a separate characteristic from transgender identity. This was because intersex is viewed as being different than transgender identity and therefore those who identify as intersex may not necessarily identify with the transgender community. In regards to transgender, participants agreed that the term 'transvestite' should no longer be used in legislation as it is outdated. It was agreed that transgender identity should be used as an umbrella to term to include transsexual, non-binary. The following terms were also suggested:</p> <ul style="list-style-type: none"> • Gender expression/performance • Drag performance artists and cross dressing 		
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<p>SEXUAL ORIENTATION</p>	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>In 2017 around 3% of adults surveyed identified as lesbian, gay, bisexual or other. However, it should be noted that this survey likely undercounts the number of adults self-identifying as LGBT as respondents may not be comfortable being open with this form of interview process.</p> <p><u>Experiences of Crime</u></p> <p>The most recent findings from the <i>Scottish Crime and Justice Survey</i> found that 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone</p>	<p>Primary Source - Equality Evidence Finder⁶⁹</p> <p><i>Scottish Surveys Core Questions 2017</i>⁷⁰</p> <p><i>Scottish Crime and Justice Survey 2017-18</i>⁷¹</p>	<p>Limited information is available on demographics surrounding sexual orientation.</p> <p>Information on the sexual orientation of victims and perpetrators is not available from police recorded crime, however survey results provide</p>
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⁶⁹ <http://www.equalityevidence.scot/>

⁷⁰ <https://www.gov.scot/publications/scottish-surveys-core-questions-2017/pages/5/#sec24>

⁷¹ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment

	<p>outwith their household - unchanged from 2008/09 and 2016/17.</p> <p>Additionally, 6% of victims of harassment thought their sexual orientation or perception of this may have been a motivating factor in their most recent (or only) experience of harassment while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018 found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. Some groups were more likely than others to report this including people who are gay, lesbian or bisexual, of whom 25% reported experiencing discrimination and 23% reported experiencing harassment. A further 4% of those who reported experiencing harassment or discrimination said it was motivated by their sexual orientation.</p> <p>Evidence from a YouGov poll conducted on behalf of Stonewall around LGBT hate crime found that 20% of respondents reported that they had experienced a hate crime or incident due to their sexual orientation and/or gender identity in the last 12 months. This figure was 17% of lesbian, gay and bi people who weren't trans. The survey found that 21% of LGBT people in Scotland who identified as female had experienced a hate crime or incident, compared to 17% of those who identified as male.</p>	<p><i>Scottish Household Survey 2018</i>⁷²</p> <p><i>Stonewall Scotland Report</i>⁷³</p>	<p>related data on discrimination and harassment.</p>
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⁷² <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

⁷³ https://www.stonewall.org.uk/system/files/lgbt_in_scotland_hate_crime_-_web_use.pdf

	<p>The Britain-wide results of this Stonewall survey showed that LGBT people as a whole were more likely to experience hate crime or incidents if they are minority ethnic, disabled or belong to a non-Christian faith. Overall, 21% of LGBT people in Britain had experienced a hate crime or incident because of their sexual orientation and/or gender identity in the last year, as of 2017, but this rose to 34% for those who were minority ethnic, 30% for those of a non-Christian faith, and 27% for disabled LGBT people.</p> <p>In Great Britain as a whole, lesbians were more likely than bisexual women to have experienced a hate crime or incident (21% vs 14%). And 8% of LGBT women in Britain said that they had been the direct target of homophobic, biphobic and transphobic abuse online in the last month.</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>, reports that in 2017-18, the police recorded 1,224 hate crimes which included a sexual orientation aggravator (including hate crimes with multiple aggravators).</p> <p>Sexual orientation aggravated crime is the second most common type of hate crime as recorded in, <i>Hate Crime in Scotland 2018-19</i>, by COPFS. The number of charges reported to COPFS increased by 5% in 2018-19 to 1,176. With the exception of 2014-15, there have been year on year increases in charges reported since the legislation introducing this aggravation came into force in 2010.</p>	<p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>⁷⁴</p> <p><i>Hate Crime in Scotland 2018-19</i>⁷⁵</p>	<p>The Scottish Government is engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and circumstances of these cases (including analysis of sexual orientation related hate crimes). It is anticipated that a report on the findings of this</p>
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⁷⁴ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/>

⁷⁵ <https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

	<p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that in 2017-18, 354 people were convicted in Scottish courts of an offence with an associated sexual orientation aggravation. Convictions with this particular aggravator remain relatively stable, falling marginally from 356 in 2016/17.</p> <p>Lord Bracadale’s Review</p> <p>Sexual orientation is already included in the characteristics covered by hate crime legislation. Lord Bracadale recommended introducing stirring up of hatred offences for all existing and any new characteristics, including sexual orientation (currently stirring up of hatred offences only exist in relation to race). He recommended this to ensure parity with all characteristics covered by hate crime legislation.</p> <p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on the above recommendations.</p> <p>Results from consultation showed that 69% of organisations agreed with the introduction of stirring up offences for each protected characteristic.</p> <p>Organisations representing the LGBT community provided evidence and examples of the abuse experienced to support</p>	<p><i>Criminal Proceedings 2017-18</i>⁷⁶</p> <p><i>Independent Review of Hate Crime Legislation in Scotland</i>⁷⁷</p> <p><i>One Scotland: consultation on current hate crime legislation</i>⁷⁸</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>⁷⁹</p>	<p>exercise will be published in 2020.</p> <p>Qualitative data availability around sexual orientation is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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⁷⁶ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/28/>
<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/27/>

⁷⁷ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>

⁷⁸ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>

⁷⁹ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

	<p>engagement events in summer 2018 to help inform the Scottish Government public consultation. This included an event with LGBTI organisations. The following organisations attended:</p> <ul style="list-style-type: none"> • Equality Network • LGBT Youth Scotland • Stonewall Scotland <p>Some concerns were raised by representatives regarding the low number of charges following the 2012 Act and whether this was down to lack of information or public interest.</p> <p>However, the majority of organisations were very supportive of the proposals to expand stirring up offences to sexual orientation and all other characteristics.</p> <p>In August 2019 a further meeting was held to discuss proposals. Attendees included:</p> <ul style="list-style-type: none"> • Equality Network; • Scottish Trans Alliance; • Stonewall Scotland; • LGBT Health & Wellbeing <p>The group agreed that this legislation should not aim to change the definition of sexual orientation.</p> <p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young people on what should be included in the new hate crime legislation.</p>	<p><i>YouthLink Scotland Events</i>⁸¹</p>	
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⁸¹ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

	The young people that took part in these events were supportive of the extension of the stirring up of hatred offences for all protected characteristics, including sexual orientation.		
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RACE	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>In the 2011 Census, the size of the minority ethnic population was just over 200,000 or 4% of the total population of Scotland (based on the 2011 ethnicity classification) - this has doubled since 2001 when just over 100,000 or 2% of the total population of Scotland (based on the 2001 ethnicity classification) were from a minority ethnic group.</p> <p>The Asian population was the largest minority ethnic group (3% of the total population or 141,000 people) and has seen an increase of one percentage point (69,000) since 2001.</p> <p>Just over 1% (1.2% or 61,000) of the population recorded their ethnic group as White: Polish. The cities of Edinburgh and Aberdeen had the highest proportions at 3% of their total population.</p>	<p>Primary Source - Equality Evidence Finder⁸²</p> <p><i>2011 Census: Release 2A</i>⁸³</p>	<p>Information is available on demographics surrounding race.</p>
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⁸² <http://www.equalityevidence.scot/>

⁸³ <https://www.scotlandscensus.gov.uk/statistical-bulletins>

<https://www.scotlandscensus.gov.uk/documents/censusresults/release2/statsbulletin2.pdf>

	<p>Results from the, <i>Scottish Household Survey 2018</i>, found that the number of Asian adults has increased from 2.2% to 2.6% in years 2013-18.</p> <p>Findings from the same survey found the number of Polish adults had increased from 1.2% to 1.9% in years 2013-17 but had fallen slightly to 1.6% in 2018.</p> <p><u>Experiences of Crime</u></p> <p>The, <i>Scottish Crime and Justice Survey</i>, found that in 2017/18, 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone outwith their household, an increase from 10% in 2012/13.</p> <p>Additionally, 9% of victims of harassment thought their ethnic origin or race or perception of this was a possible motivating factor while 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018 found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. Some groups were more likely than others to report this including ethnic minorities, of whom 17% reported experiencing discrimination and 11% reported experiencing harassment. A further 11% of those who reported</p>	<p><i>Scottish Household Survey 2018</i>⁸⁴</p> <p><i>Scottish Crime and Justice Survey 2017/18</i>⁸⁵</p> <p><i>Scottish Household Survey 2018</i>⁸⁶</p>	<p>Information on the race of victims and perpetrators is not available from police recorded crime, however survey results provide related data on discrimination and harassment.</p>
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⁸⁴ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/2/>

⁸⁵ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment

⁸⁶ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

	<p>experiencing harassment or discrimination said it was motivated by their ethnicity.</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>, reports that in 2017-18, the police recorded 4,765 hate crimes which included a race aggravator (including hate crimes with multiple aggravators).</p> <p>Racial crime remains the most commonly reported hate crime. The Crown Office and Procurator Fiscal Service (COPFS) published Hate Crime in Scotland statistics which reported 2,880 charges relating to race crime in 2018-19, a decrease of 12% compared to 2017-18. This is 37% lower than the peak in such charges in 2011-12, when 4,547 charges were reported. It is also the lowest annual figure since consistent figures became available in 2003-04, and the first time the figure has fallen below 3,000.</p> <p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that in 2017-18, 650 people were convicted in Scottish courts of an offence with an associated racial aggravation, down 10% from 719 in 2016-17.</p> <p>The most recent, <i>Racist Incidents Recorded by the Police in Scotland</i>, report suggests that in 2013-14, where the ethnicity of the victim/complainer was known, those with a 'Pakistani' ethnic background were the most likely to be the</p>	<p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>⁸⁷</p> <p><i>Hate Crime in Scotland 2018-19</i>⁸⁸</p> <p><i>Criminal Proceedings in Scotland, 2017-18</i>⁸⁹</p> <p><i>Racist Incidents Recorded by the Police in Scotland, 2013-14</i>⁹⁰</p>	<p>The Scottish Government is engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and circumstances of these cases (including analysis of race related hate crimes). It is anticipated that a report on the findings of this exercise will be published in 2020.</p>
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⁸⁷ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/>

⁸⁸ <https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

⁸⁹ <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/28/>

<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/27/>

⁹⁰ <https://www.gov.scot/publications/racist-incidents-recorded-police-scotland-2013-14/pages/4/>

	<p>victim/complainer of a racist incident recorded by the police with 224.2 victims/complainers per 10,000 population.</p> <p>This was followed by ‘African, Caribbean or Other Black’ with 189.9 victims/complainers recorded per 10,000 population. The Scottish average across all ethnic backgrounds was 10.6 victims/complainers per 10,000 population.</p> <p>Lord Bracadale’s Review</p> <p><u>Section 50A</u></p> <p>Lord Bracadale recommended to repeal section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995</p> <p><u>Stirring up of racial hatred</u></p> <p>Lord Bracadale recommended that the existing offences concerning stirring up of racial hatred should be retained and consolidated into the Bill. He also recommended that the threshold for behaviour likely to stir up hatred amounting to an offence should be revised to cover behaviour that is “threatening or abusive” in line with his recommendation for the threshold for new offences concerning stirring up of hatred (that is, the term ‘insulting’ should be removed).</p> <p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018</p>	<p><i>Independent Review of Hate Crime Legislation in Scotland</i>⁹¹</p> <p><i>One Scotland: consultation on current hate crime legislation</i>⁹²</p>	<p>Qualitative data availability around race is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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⁹¹ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/8/>

⁹² <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/7/>

	<p>to 24 February 2019, views were sought on the above recommendations.</p> <p><u>Section 50A</u></p> <p>In response to whether section 50A should be repealed, approximately 34% (152 respondents) supported the repeal and approximately 25% (114 respondents) opposed repeal. A further 41% (187 respondents) said they had ‘no opinion’. There were mixed views among both individuals and organisations on this issue. Organisations were more likely than individuals to say ‘yes’ to repeal (50% compared to 31% respectively), and individuals were more likely than organisations to say they had ‘no opinion’ on the issue (43% compared to 28% respectively).</p> <p>Those supporting the repeal of section 50A often cited the importance of clarity within the law and the need to avoid complicating hate crime legislation. Several respondents noted that there is no equivalent to the section 50A offence in relation to any other characteristic within hate crime legislation, and felt that there was a need for consistency in approach across all of the characteristics.</p> <p>The main concern expressed by organisations opposed to repeal of section 50A was that repeal could be viewed as a reduction in the Scottish Government’s commitment to tackle racial harassment and send out the wrong message to society as a whole and particularly to BME communities regarding the importance of tackling race related hate crime.</p>	<p><i>Consultation on Scottish Hate Crime Legislation</i>⁹³</p> <p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>⁹⁴</p>	
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⁹³ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

⁹⁴ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/12/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/15/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

	<p>Consequently it could therefore damage relationships with ethnic minority communities.</p> <p>Another common concern among respondents who were against any repeal was that it would result in a gap in the law.</p> <p><u>Stirring up of racial hatred</u></p> <p>In response to the consultation, there were mixed views on the option of revising existing provisions concerning the stirring up of racial hatred so that they are formulated in the same way as the other proposed stirring up hatred offences (i.e. remove the term ‘insulting’) – 45% of total respondents agreed, 32% disagreed, and 23% said that they were unsure (representing 299, 211, and 156 out of a total of 666 respondents). However, organisations were more likely than individuals to answer ‘yes’ to this question (63% compared to 43%), while individuals were more likely than organisations to answer ‘no’ (34% compared to 14%).</p> <p>Organisations that did not wish to see the reformulation of existing race provisions (mainly third sector bodies) were generally concerned that this might make the prosecution of stirring up of racial hatred cases more difficult. A few individuals also expressed this concern. These respondents felt that the inclusion of ‘insulting’ conduct within the current formulation of the stirring up racial hatred offence had merit in capturing apparently low level conduct (sometimes persistent in nature) that could be experienced as ‘abusive’ or ‘threatening’ by the individuals at whom it was targeted.</p> <p>Respondents who agreed that existing provisions concerning the stirring up of racial hatred should be reformulated to</p>		
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	<p>reflect the other proposed stirring up hatred offences thought that consistency across offences was important.</p> <p>Organisational respondents offering this view generally supported consistency by bringing the wording of the current stirring up of racial hatred offence into line with the wording of the proposed additional stirring up offences. Individuals who expressed support for consistent wording were also supportive of the proposal to exclude the reference to 'insulting' conduct.</p> <p><u>Sentencing</u></p> <p>Respondents generally also supported (55% of organisations, 52% of individuals) the retention of the requirement for courts to state the extent to which the sentence imposed is different from what would have been imposed in the absence of the aggravation (including for race). Reasons included increased confidence in a more transparent justice system and sending a clear message to perpetrators about the unacceptability of this form of criminality.</p> <p>Contributions from race equality organisations included:</p> <ul style="list-style-type: none"> • BEMIS; • CEMVO; • CRER; • CSREC; • GREC; • Score Scotland; • WSREC. 		
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	<p>Additional Stakeholder Engagement</p> <p>Following the publication of Lord Bracadale’s review, a number of stakeholder engagement events were held in summer 2018 to help inform the development of the Scottish Government public consultation. This included an event with race equality organisations.</p> <p>The following race equality organisations attended:</p> <ul style="list-style-type: none"> • BEMIS; • CEMVO; • CRER; • CSREC; • Score Scotland; • WSREC. <p>One of the biggest concerns expressed by the representatives centred around the proposed repeal of section 50A. There was a belief that doing so could have a counter-productive effect thereby diluting the protections for race, with a risk of losing focus on the needs of victims.</p> <p>Additional discussion points included the need for improvements to third party reporting so as to better support victims and increased use of restorative justice when appropriate while ensuring victims continue to be properly protected.</p> <p>Further meetings have been held with race equality organisations where their concerns in regards to Lord Bracadale’s recommendation to repeal section 50A were discussed further.</p>	<p><i>Programme of multi stakeholder engagement events</i></p>	
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	<p>YouthLink Scotland Events</p> <p>The Scottish Government provided grant funding for YouthLink Scotland to host consultation events with children and young people on what should be included in the new hate crime legislation.</p> <p>The young people that took part in these events were supportive of the extension of the stirring up of hatred offences for all protected characteristics. They were also generally agreed that section 50A should be repealed because all hate crime characteristics should be treated equally. There was however, a strong view that Section 50A should only be repealed if there is a change to the recommended language in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 to include fear, alarm and distress. It was felt that all three terms are important and should be included.</p>	<p><i>YouthLink Scotland Events</i>⁹⁵</p>	
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<p>RELIGION OR BELIEF</p>	<p>Statistical Evidence</p> <p><u>Demographics</u></p> <p>In 2018, 46% of the adult population identified as Christian (Church of Scotland, Roman Catholic and Other Christian).</p>	<p>Primary Source - Equality Evidence Finder⁹⁶</p> <p><i>Scottish Surveys Core Questions 2017</i>⁹⁷</p>	<p>Information is available on demographics surrounding religion and belief.</p>
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⁹⁵ <https://actiononprejudice.s3.amazonaws.com/uploads/2019/02/Young-peoples-response-to-the-consultation-on-amending-hate-crime-legislation-facilitated-by-YouthLink-Scotland.pdf>

⁹⁶ <http://www.equalityevidence.scot/>

⁹⁷ <https://www.gov.scot/publications/scottish-surveys-core-questions-2017/pages/5/>

	<p>Over the past decade there has been an increase in the proportion of adults reporting not belonging to a religion, from 40% in 2009 to half of adults (50%) in 2018.</p> <p>There has also been a corresponding decrease in the proportion reporting belonging to 'Church of Scotland', from 32% to 23%.</p> <p><u>Experiences of Crime</u></p> <p>The, <i>Scottish Crime and Justice Survey</i>, found that in 2017/18, 14% of adults reported that they had been insulted, pestered or intimidated in any way by someone outwith their household, an increase from 10% in 2012/13.</p> <p>Additionally, 2% of victims of harassment thought their religion may have been a motivating factor in their most recent (or only) experience of harassment; 4% of victims thought sectarianism may have been a factor; and 63% of harassment victims in 2017/18 did not think any of their characteristics were an influencing factor in their most recent experience.</p> <p>Combined data from both the, <i>2016-17 and 2017-18 Scottish Crime and Justice Survey</i>, shows that adults who identified their religion as either Church of Scotland (10.2%) or 'Other Christian' (10.2%) were less likely to have been victims of crime in the year prior to interview than for those who had no religion (14.2%), were Roman Catholic (15.0%), or were 'another' religion (17.7%).</p>	<p><i>Scottish Crime and Justice Survey 2017-18</i>⁹⁸</p>	<p>Information on the religion or beliefs of victims and perpetrators is not available from police recorded crime, however survey results provide related data on discrimination and harassment.</p>
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⁹⁸ https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/12/#_Focus_on_harassment

	<p>The most recent findings from the, <i>Scottish Household Survey</i>, in 2018 found that 8% of adults reported that they had experienced discrimination and 6% had experienced harassment in Scotland at some point over the last 12 months. Some groups were more likely than others to report this including belong to a religion other than Christianity, of whom 17% reported experiencing discrimination and 15% reported experiencing harassment. A further 7% of those who reported experiencing harassment and 5% who reported experiencing discrimination said it was motivated by their religion.</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>, reports that in 2017-18, the police recorded 711 hate crimes which included a religion aggravator (including hate crimes with multiple aggravators).</p> <p>The most recent statistics published by COPFS on, <i>Hate Crime in Scotland 2018-19</i>, reports that there were 529 charges with a religious aggravation reported in 2018-19, which is 18% fewer than in 2017-18. This is the lowest number of such charges reported since 2004-05, shortly after the relevant legislation was introduced, when 479 were reported.</p> <p>Statistics from, <i>Criminal Proceedings in Scotland</i>, show that in 2017-18, 249 people were convicted in Scottish courts of</p>	<p><i>Scottish Household Survey 2018</i>⁹⁹</p> <p><i>Developing Information on Hate Crime Recorded by the Police in Scotland</i>¹⁰⁰</p> <p><i>Hate Crime Statistics Scotland 2018-19</i>¹⁰¹</p> <p><i>Criminal Proceedings in Scotland, 2017-18</i>¹⁰²</p>	<p>The Scottish Government are engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and circumstances of these cases (including analysis of religion related hate crimes). It is anticipated that a report on the findings of this exercise will be published in 2020.</p>
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⁹⁹ <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/pages/4/>

¹⁰⁰ <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/>

¹⁰¹ <https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

¹⁰² <https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/28/>

<https://www.gov.scot/publications/criminal-proceedings-scotland-2017-18/pages/27/>

	<p>an offence with an associated religious aggravation, down 10% from 278 in 2016-17.</p> <p>There has been a decrease of 18% in the number of charges since 2017-18 (649 charges in 2017-18 to 529 charges this year). Owing to the impact of the repeal of the Offensive Behaviour at Football and Threatening Communications Act 2012, any direct comparisons between 2018-19 and previous years should be treated with caution.</p> <p>However, charges reported by the COPFS have remained similar (noting a slight decrease from 2010-11 to 2018-19) in the last nine years: 2010-11 (694); 2011-12 (896); 2012-13 (689); 2013-14 (591); 2014-15 (567); 2015-16 (591); 2016-17 (678); 2017-18 (649) and 2018-19 (529).</p> <p>An analysis of charges reported to the Crown Office and Procurator Fiscal Service of Scotland (COPFS) with a religious aggravation under section 74 of the Criminal Justice (Scotland) Act in the previous year 2017-18, reported that Roman Catholicism is the religion that was most often the subject of offending.</p> <p>In 2017/18, the proportion of charges where Roman Catholicism was the subject of offending was 50% (319 charges) followed by Protestantism (27%, 174 charges), Islam (18%, 115 charges) and Judaism (3%, 21 charges).</p> <p>As with previous years, Glasgow had the highest concentration of charges with 173 (27% of total charges) and the highest charges per head of population with 28 per</p>	<p><i>Religiously Aggravated Offending in Scotland 2017-18</i>¹⁰³</p>	
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¹⁰³ <https://www.gov.scot/publications/religiously-aggravated-offending-scotland-2017-18/pages/4/>
<https://www.gov.scot/publications/religiously-aggravated-offending-scotland-2017-18/>

	<p>100,000 population. Police officers were the most common target for religiously aggravated abuse. In 2017-18 there were 277 charges (43%) where the police was the victim, a similar proportion to 2016-17 (44%).</p> <p>Lord Bracadale’s Review</p> <p>Lord Bracadale recommended that it was not necessary to create a statutory aggravation to extend the religious aggravation provision to capture religious or other beliefs held by an individual rather than a group.</p> <p>Lord Bracadale also recommended that provision should be made to protect freedom of expression, similar to that contained at sections 29J of the Public Order Act 1986, which provides for offences of stirring up hatred on grounds of religion in England and Wales. This provides that the offence should not be read as prohibiting or restricting discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.</p> <p>Lord Bracadale also noted the Justice Committee’s recommendation that the Scottish Government give</p>	<p><i>Independent Review of Hate Crime Legislation in Scotland</i>¹⁰⁴</p>	<p>Qualitative data availability around religion or belief is primarily based on Lord Bracadale’s Review, the One Scotland: Hate Has no Home Here consultation and further engagement sessions with stakeholders.</p>
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¹⁰⁴ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/5/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/6/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/9/>
<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/12/>

	<p>consideration to introducing a sectarian definition in Scots Law. Lord Bracadale recommended that no new offence or statutory aggravation should be introduced at this stage in regards to sectarianism, although he did acknowledge the separate work on this by the Working Group on Defining Sectarianism in Scots Law and that their findings may provide more detail for Scottish Ministers and Parliament to debate the issue.</p> <p>Lord Bracadale also concluded that the repeal of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (“the OBFTCA”) has left a gap in the law in Scotland with regards religious hatred, which, alongside race and sexual orientation, accounts for a significant proportion of recorded hate crime offending in Scotland. Therefore a stirring up of religious hatred offence will help close this gap.</p> <p>The Working Group On Defining Sectarianism In Scots Law</p> <p>As part of our consultation on Lord Bracadale’s recommendations , we also consulted on the Working Group on Defining Sectarianism in Scots Law. The Working Group recommended the development of a new statutory aggravation for sectarian hate crime based on a mix of racial and religious prejudice; provided a draft definition; and recommended that this should be taken forward as part of the Scottish Government’s work to develop consolidated and modernised hate crime legislation.</p>	<p><i>Final Report of the Working Group on Defining Sectarianism in Scots Law</i>¹⁰⁵</p>	
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¹⁰⁵ <https://www.gov.scot/publications/final-report-working-group-defining-sectarianism-scots-law/>

	<p>Consultation</p> <p>Within the Scottish Government consultation, <i>One Scotland: Hate Has no Home Here</i>, which ran from 14 November 2018 to 24 February 2019, views were sought on whether the religious aggravation should be extended to capture religious or other beliefs held by an individual rather than a group and whether there should be an aggravation added to cover sectarianism.</p> <p><u>Religious or other beliefs held by an individual</u></p> <p>In regards to religious or other beliefs held by an individual, a total of 61% (313) of respondents were opposed to extending the existing religious statutory aggravation to include religious or other beliefs held by an individual. However, certain organisations believed that Lord Bracadale’s interpretation of the protected characteristic of ‘religion’ as relating only to defined religious groups was too narrow and not in line with existing human rights legislation which did afford equal religious protection to both groups and individuals. They also cited increased instances of intra-religious hostility and the victimisation of ‘apostates’ (people</p>	<p><i>One Scotland: consultation on current hate crime legislation</i>¹⁰⁶</p> <p><i>Consultation on Scottish Hate Crime Legislation</i>¹⁰⁷</p> <p><i>Consultation on amending Scottish hate crime legislation: analysis of responses</i>¹⁰⁸</p>	
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¹⁰⁶ <https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/4/>
<https://www.gov.scot/publications/one-scotland-hate-home-here-consultation-hate-crime-amending-current-scottish-hate-crime-legislation/pages/5/>

¹⁰⁷ <https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/>

¹⁰⁸ <https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/9/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/10/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/12/>
<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/20/>

who have left a religious group). In contrast, those opposed to extension of the religious aggravation argued that, by definition, hate crime should apply only to crimes motivated by prejudice towards a particular group.

Sectarianism

Following the conclusions reached by both the Working Group on Defining Sectarianism in Scots Law and Lord Bracadale, the feedback from individuals attending the consultation events and the consultation responses showed a similar mix of opinions and opposing views. However the majority of respondents (59%; 311 out of 527) did not think there was a need to address and define sectarianism in hate crime legislation, while 26% (139 out of 527) thought it should be defined, and 15% (77 out of 527) were 'unsure'. Organisations who responded had more mixed views on this issue with 63 responding, 46% (29) did not think there was a need to address and define sectarianism, 22% (14) thought it should be defined and addressed and 32% (20) were unsure.

Blasphemy

As well as considering recommendations made by Lord Bracadale, the consultation included a question on whether anything else should be included within the Bill that wasn't already addressed within the consultation. Only 288 respondents (41 organisations and 247 individuals) responded, and most reiterated points already covered in their responses to other questions. One significant theme to emerge was the call for blasphemy laws to be abolished in Scotland.

	<p>As well as calls from the Humanist society of Scotland and the National Secular Society of Scotland, 45 individuals also supported the abolishment of blasphemy laws.</p> <p><u>Stirring up / freedom of expression</u></p> <p>A substantial majority of respondents (80%; 844 out of 1,051 respondents) disagreed with the introduction of stirring up offences for each protected characteristic. However, most organisations (69%; 55 out of 80 respondents) agreed. Those who supported the introduction of new stirring up offences thought this would achieve parity for all groups, and would recognise the gravity of hate crimes and the impact on those affected. It would also support consistent data collection.</p> <p>There were three main reasons for opposing new stirring up offences: disagreement with the principle of laws based on protected characteristics (this was a common view amongst individuals and faith bodies); concerns about the impact on human rights and freedom of speech; and disagreement with the need for new offences. Some supported the current standalone race offences but did not wish to see further offences introduced.</p> <p>There was general agreement on the need to protect freedom of expression and uphold the rights contained in the European Convention on Human Rights. Respondents often saw this as an issue of ‘balance’ between freedom of expression, responding to stirring up, and protecting relevant groups. However, views differed on the point at which that balance should be struck.</p>		
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	<p><u>Sentencing</u></p> <p>Respondents generally also supported (55% of organisations, 52% of individuals) the retention of the requirement for courts to state the extent to which the sentence imposed is different from what would have been imposed in the absence of the aggravation (including for religion). Reasons included increased confidence in a more transparent justice system and sending a clear message to perpetrators about the unacceptability of this form of criminality.</p> <p>Contributions from faith and belief organisations included:</p> <ul style="list-style-type: none"> • Call it Out: The campaign against anti-Catholic bigotry and anti-Irish racism • Humanist Society Scotland • National Secular Society • CARE for Scotland • Catholic Parliamentary Office of the Bishops' Conference of Scotland • Christian Concern • The Christian Institute • The Church of Scotland • Dornoch and District Christian Fellowship • Duncan Street Baptist Church • The Evangelical Alliance • Presbytery of the Outer Hebrides, Free Church of Scotland (Continuing) • Reformed Presbyterian Church of Scotland • Refuge Church • River of Life Church • The Scottish Churches Committee • Scottish Council of Jewish Communities (SCoJeC) 		
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	<p>and young people on what should be included in the new hate crime legislation.</p> <p>The young people that took part in these events were supportive of the extension of the stirring up of hatred offences for all protected characteristics, including religion.</p> <p>The group were generally not supportive of the proposed definition as recommended by the Working Group on Defining Sectarianism in Scots Law. They thought that the Working Group's definition should include hostility within different religions as well as Christianity. Personal examples were shared about hostility which has been shown towards them because their family belonged to a particular Muslim sect. It was accepted amongst young people that intra-Christian sectarianism is an issue in Scotland but that other faiths also experience sectarianism which should be covered by the legislation</p>		
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Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			<p>It has been acknowledged crimes based on a person's age are relatively small. However, the introduction of a statutory aggravation in respect of prejudice based on age sends a clear message to society that these offences will be treated seriously and will not be tolerated.</p> <p>Similarly, while there is less evidence that there are groups and/or individuals stirring up hatred of people on the ground of age, the extension of stirring up offences in this regard has the potential to make a contribution to reducing unlawful discrimination, advancing equality of opportunity and promoting good relations by making it harder for people to engage in activity that contributes to a social atmosphere in which prejudice and discrimination are accepted as normal. Stirring up of hatred offences also communicate to society in general that the law has taken steps to protect</p>

				<p>people with this protected characteristic from hatred. This has the potential to reduce victimisation by having an educative function that will encourage behavioural change by sending a message that this type of behaviour won't be tolerated and will be treated more seriously, thereby preventing groups and/or individuals feeling vulnerable to attack and excluded from the wider community.</p> <p>The introduction of age into the hate crime framework will ensure that the criminal law is able to appropriately respond to any emerging issue of hate crime targeting people because of their age.</p>
Advancing equality of opportunity	X			As above
Promoting good relations among and between different age groups	X			As above

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			<p>Disability is an existing characteristic under current hate crime legislation and through consolidation the legislation will continue to offer robust protection to those who need it most.</p> <p>Including disability within hate crime legislation sends a clear message to society that offences committed based on prejudice towards a disability will be treated seriously and will not be tolerated.</p> <p>While there is less evidence that there are groups and/or individuals stirring up hatred of a group of people on the ground of disability, the extension of stirring up offences in this regard has the potential to make a contribution to reducing unlawful discrimination, advancing equality of opportunity and promoting good relations by making it harder for people to engage in activity that contributes to a social atmosphere in which prejudice and discrimination are accepted as normal. Stirring up of hatred offences also communicate to society in general that the law has taken steps to protect people with this protected characteristic from hatred. This has the potential to reduce victimisation by having an educative function that will encourage behavioural change by sending a</p>

				message that this type of behaviour won't be tolerated and will be treated more seriously, thereby preventing groups and/or individuals feeling vulnerable to attack and excluded from the wider community.
Advancing equality of opportunity	X			As above
Promoting good relations among and between disabled and non-disabled people	X			As above

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	<p>The Bill does not include a characteristic to cover sex/gender. This decision was taken following extensive engagement with women's organisations in particular.</p> <p>However, recognising that there is a clear need to tackle misogyny and gender based prejudice in Scotland, the Scottish Government is committed, in principle, to developing a standalone offence on misogynistic harassment and has established a</p>

				Working Group to take this work forward. Provision is also included in this Bill for an enabling power to allow a characteristic on the grounds of sex to be added to the hate crime legislative framework at a later date, after the Bill has passed if this is, for example, recommended by the Working Group.
Advancing equality of opportunity			X	As above
Promoting good relations between men and women			X	As above

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The legislation does not encompass these groups and will have no particular impact
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			<p>Transgender identity is an existing characteristic under current hate crime legislation and through consolidation the legislation will continue to offer robust protection to those who need it most. It sends a clear message to society that these crimes will be treated seriously and will not be tolerated.</p> <p>Removing the term ‘intersexuality’ from the definition of transgender and creating a separate characteristic for ‘variations in sex characteristics’ recognises that this is a physical condition rather than an aspect of transgender identity. Updating the definition of transgender identity ensures a more inclusive definition that is more easily understood by the public.</p> <p>The introduction of a stirring up offences in respect of transgender identity and variations in sex characteristics has the potential to make a contribution to eliminating unlawful discrimination, advancing equality of opportunity and promoting good relations by making it harder for people to engage in activity that contributes to a social atmosphere in which prejudice and discrimination</p>

				are accepted as normal. The introduction of stirring up of hatred offences also communicate to society in general that the law has taken steps to protect those with this protected characteristic from hatred. This has the potential to eliminate victimisation by having an educative function that will encourage behavioural change, thereby preventing people feeling vulnerable to attack and excluded from the wider community.
Advancing equality of opportunity	X			As above
Promoting good relations	X			As above

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			<p>Sexual orientation is an existing characteristic under current hate crime legislation and through consolidation the legislation will continue to offer robust protection to those who need it most. It sends a strong message that these crimes will be treated seriously and will not be tolerated.</p> <p>The introduction of a stirring up offence in respect of sexual orientation has the potential to make a contribution to eliminating unlawful discrimination, advancing equality of opportunity and promoting</p>

				good relations by making it harder for people to engage in activity that contributes to a social atmosphere in which prejudice and discrimination are accepted as normal. The introduction of stirring up of hatred offences also communicate to society in general that the law has taken steps to protect those with this protected characteristic from hatred. This has the potential to eliminate victimisation by having an educative function that will encourage behavioural change, thereby preventing people feeling vulnerable to attack and excluded from the wider community.
Advancing equality of opportunity	X			As above
Promoting good relations	X			As above

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			<p>Race is an existing characteristic under current hate crime legislation and through consolidation the legislation will continue to offer robust protection to those who need it most. The Bill sends a strong message that these crimes will be treated seriously and will not be tolerated.</p> <p>We have taken into account the views of stakeholders regarding section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, which provides for an offence of racially aggravated harassment, and it has been decided to retain this piece of legislation.</p> <p>Similarly the word ‘insulting’ will be retained alongside ‘abusive’ and ‘threatening’ in respect to the legal threshold for stirring up of hatred offences in relation to race.</p> <p>The Bill will therefore continue to afford robust protection to those most at risk from racial prejudice, which accounts for the majority of recorded hate crime offending in Scotland</p>
Advancing equality of opportunity	X			As above

Promoting good race relations	X			As above
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Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			<p>Religion is an existing characteristic under current hate crime legislation and through consolidation the legislation will continue to offer robust protection to those who need it most. The Bill sends a strong message that these crimes will be treated seriously and will not be tolerated.</p> <p>However, the repeal of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 has left a gap in the law in Scotland with regards religious hatred, which, alongside race and sexual orientation, accounts for a significant proportion of recorded hate crime offending in Scotland.</p> <p>Therefore, the introduction of stirring up offences in respect of religion enshrines in law the protection of people from groups and/or individuals stirring up hatred on the ground of religion. These measures have the potential to make a contribution to eliminating unlawful discrimination, advancing equality of opportunity and promoting good relations by making it harder for people to engage in activity that contributes to a social atmosphere in which prejudice and</p>

				discrimination are accepted as normal. The introduction of a stirring up of hatred offence also communicates to society in general that the law has taken steps to protect those with this characteristic from hatred. This has the potential to eliminate victimisation by having an educative function that will encourage behavioural change, thereby preventing people feeling vulnerable to attack and excluded from the wider community.
Advancing equality of opportunity	X			As above
Promoting good relations	X			As above

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

If, following the impact analysis, you think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact. You will need to consult your legal team in SGLD at this point if you have not already done so.

Have positive or negative impacts been identified for any of the equality groups?	The Scottish Government has found that none of the proposals are discriminatory and that there are no significant issues that we consider would impact negatively upon people with one or more of the protected characteristics. The Scottish Government instead considers that the Bill will have a positive equality impact.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ¹¹⁰ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

¹¹⁰ See EQIA – Setting the Scene for further information on the legislation.

Describing how Equality Impact analysis has shaped the policy making process

As proposals have been developed for inclusion in the Bill, considerable consideration has been given to equalities issues throughout to ensure better outcomes for people and communities. This has been done through regular stakeholder engagement including a public consultation, consultation and engagement events, and bilateral meetings.

As a result, in addition to consolidation, the Bill seeks to modernise and extend existing hate crime legislation by:

- Adding age as a new characteristic in order to send a clear message to society that these offences will be treated seriously and will not be tolerated.
- Creating new offences relating to stirring up hatred that will apply in relation to all listed characteristics (including age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics) (currently these offences only relate to race).

The Bill ensures that characteristics currently protected within the hate crime legislative framework continue to be protected to the same extent with updated language provided where considered necessary. This will ensure that the language used in the Bill reflects changes over time and that the individuals who are afforded protection by the law recognise themselves in the terminology used.

The use of up-to-date and inclusive language is an important overall objective in updating and modernising hate crime legislation and Scottish Government have sought to ensure that, where possible, the language used is simple and understood by stakeholders and the general public. Specific updated to language include:

- Updating the definition of transgender identity, removing the terms ‘transsexualism’ and ‘transvestitism’ which are widely understood to be outdated. However, cross-dressing people are included in the new definition within the Bill to ensure the protection provided by the word ‘transvestitism’ is not lost. The Bill’s definition also includes non-binary people as they are currently protected by the exiting definition’s use of ‘any other gender identity that is not standard male or female gender identity’.
- The term ‘intersexuality’ has also been removed from the definition of transgender and a separate category for variations in sex characteristics has been created so as not to lose protection for

this group of people. The term ‘variations in sex characteristics’, as opposed to ‘intersex’, is used in the Bill as this is the term most commonly used by stakeholders.

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.

Decisions have also been taken by the Scottish Government not to accept a number of Lord Bracadale’s recommendations including:

- Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should be repealed.
- The current provisions in relation to stirring up racial hatred under the Public Order Act 1986 should be revised to include conduct which is threatening or abusive (removing the word ‘insulting’)
- There should be a new statutory aggravation based on gender hostility
- There should no longer be an express requirement to state the extent to which the sentence imposed is different from what would have been imposed in the absence of the aggravation

Decisions taken in relation to each of these areas, and the reasons for these, are discussed in further detail below.

Furthermore, in relation to gaps identified in the data and evidence section of this impact assessment, the Scottish Government is engaging with Police Scotland as they develop the information they hold on hate crime, including reviewing a large sample of police recorded hate crimes to investigate further the characteristics and circumstances of these cases. It is anticipated that a report on the findings of this exercise will be published in 2020.

Section 50A

The Bill does not repeal, nor consolidate, the offence contained in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 in order maintain existing protections for those subject to racially-aggravated harassment.

The decision is to retain section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, which is a standalone offence of racially aggravated harassment, and unique to the characteristic of race. This reflects 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

hatred have been in place for many years and appear to be working effectively. A potential negative result of repeal would be the wrong message it may send to BME communities regarding the importance of tackling race related hate crime.

Repealing section 50A would be part of consolidating existing hate crime legislation and providing consistency across the characteristics by utilising the same thresholds and tests for offences or aggravations for each of the different characteristics. The repeal of section 50A would also create consistency in the law by removing the standalone offence that exists only for racially motivated crimes. There is no equivalent to the section 50A offence in relation to any other characteristic within hate crime law and, as noted above, if left in force it could be perceived as creating a hierarchy of characteristics.

Some of those who supported repeal argued that it would ensure consistency and agreed with Lord Bracadale that this piece of legislation was no longer needed.

However, some stakeholders were concerned about the repeal of the section 50A offence and the potential message that this sends to victims, perpetrators and wider society. It had also been suggested that this would leave a gap in the level of protection provided to this group of people.

One of the main considerations when deciding whether to repeal section 50A is whether the offence of threatening or abusive behaviour in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, charged with a racial aggravation, would sufficiently deal with any matters that would previously have been charged under section 50A, or whether repeal would leave a gap in the law.

It is acknowledged that section 50A is broader in scope than section 38, accompanied with a racial aggravation, and that the two provisions are not identical. In particular, the statutes differ as to the type of behaviour that is prohibited and the intent required for the offences to be committed

Therefore after considering all views expressed the Scottish Government is of the view that the section 50A offence should be retained.

Stirring up of hatred

Introducing new offences criminalising the stirring up of hatred against people on grounds of age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics, will improve the ability of the criminal justice system to respond to conduct which stirs up hatred of people based on these characteristics, by ensuring that protections currently in place to address conduct which stirs up racial hatred are extended to cover all characteristics covered by the Bill.

Lord Bracadale recommended that the threshold about the nature of the conduct in a stirring up of hatred offence should be based on including conduct that is 'threatening or abusive'. He also considers the reference to 'insulting' conduct should not form part of any new stirring up offences

The Scottish Government agrees with Lord Bracadale that adopting a threshold of threatening or abusive behaviour for stirring up hatred offences covering new characteristics 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 removal of 'insulting' conduct from the scope of the current stirring up offences for racial hatred was explored during the Scottish Government's own consultation exercise. There were mixed views on the option of removing 'insulting', with a clear difference in the view between individuals and organisations

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. Such a perception, even if based on an incomplete understanding of the operation of criminal law, is not a perception that the Scottish Government is willing to risk arising.

Following careful consideration the Scottish Government has decided to retain 'insulting' behaviour within the scope of the revised stirring up of racial hatred offence(s). 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. As such and as discussed above, 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 race hate crime and the impact that this has on community cohesion, a separate approach is justified.

Gender

Recognising that there is a clear need to tackle misogyny and gender based prejudice in Scotland, the Scottish Government is committed, in principle, to developing a standalone offence on misogynistic harassment and is establishing a Working Group to take this work forward. Provision is also included in this Bill for an enabling power to allow a characteristic on the grounds of sex to be added to the hate crime legislative framework by regulations at a later date, after the Bill has passed if this is, for example, recommended by the Working Group.

The enabling power provides flexibility to allow sex to be included as an additional characteristic to the hate crime legislative framework at a later date; to define that characteristic; and to allow for a statutory aggravation and/or a stirring up of hatred offence on the grounds of sex.

Although Lord Bracadale recommended that gender should be added as a characteristic within hate crime law, a number of women's organisations are strongly opposed to this approach, calling for the development of a standalone offence for misogynistic harassment outwith hate crime legislation. Some organisations believe that the development of a specific offence would recognise that the reality of violence against women is a complex issue and requires a considered approach. Their concerns are that creating a gender aggravation would lead to a failure to deal effectively with violence against women and girls, and they are not convinced that the hate crime framework provides an appropriate model for dealing with gender based violence.

In response to a recommendation made by the First Minister's National Advisory Council on Women and Girls to 'criminalise serious misogynistic harassment, filling gaps in existing laws' the Scottish Government made a commitment, in principle, to developing a standalone offence on misogyny. In order to progress this commitment, a Working Group is being established to consider how the criminal law deals with misogynistic harassment, including whether there are gaps in legislation that could be filled with a specific offence on misogynistic harassment.

As well as considering the development of a standalone offence, the Working Group will consider whether a statutory aggravation and/or a stirring up hatred offence on the grounds of sex should be included within the existing hate crime legislative framework. To this end, and to ensure the Working Group has the space and flexibility required to develop the distinct approach required to tackle misogyny in Scotland, an enabling power is included within the Bill. This will enable sex to be included within the hate crime framework at a later date, for example if that is recommended by the Working Group.

Although Lord Bracadale used the term 'gender', the term 'sex' is being used within the Bill, as opposed to gender, in order to remain consistent with the Equality Act 2010.

The use of the enabling power to include a characteristic on the grounds of sex within the hate crime legislative framework provides protection on an inclusive basis given that the application of hate crime legislation is based on the motivations of the perpetrator.

For example, when considering the protection that is provided to persons who are victims of an offence motivated by malice or ill will towards women, the sex aggravation could equally be applied to provide protection towards a person who was born female, a transwoman (regardless of whether the transwoman has or does not have a Gender Recognition Certificate), or a man or a non-binary person (if that person were mistaken to be a woman). This is because, in this case, the motivation of the perpetrator was based on malice and ill will towards women and the person had been victimised because they were perceived to be a woman, whether they actually were or not. The statutory aggravation on sex could also be applied if a person was targeted because they have an association with women. For example, an offence that was motivated by malice or ill towards a man because he was fundraising for a women's cause.

To ensure additional flexibility in how sex could be included within the hate crime legislative framework, the enabling power provides the option to add either a statutory aggravation and/or stirring up of hatred offence on the grounds of sex. This will allow the Working Group to consider these separately.

Sentencing

Lord Bracadale recommended that ‘There should no longer be an express requirement to state the extent to which the sentence imposed is different from what would have been imposed in the absence of the aggravation.’ The Scottish Government took the decision to retain this requirement.

Retaining the current condition whereby a court is required to state in open court the extent, if any, that a sentence has been increased due to the operation of a statutory aggravation, will aid transparency in sentencing and help victims and others to better understand sentencing decisions.

It is clear that better understanding in sentencing decisions will improve confidence in the justice system and help prevent victims and their families feeling let down as a result of the sentence given.

The Scottish Government’s view is the requirement to state in open court the extent, if any, that a sentence has been increased does actually serve a clear purpose and is important in sending a clear message that such crimes are taken seriously by the courts, makes sentencing decisions more transparent and can be helpful in supporting victims of crimes.

Conclusion

The EQIA has helped in the development of better outcomes for people and communities by ensuring an equalities focus throughout the development of the Bill. It has resulted in a number of recommendations not being taken forward as outlined above, as well as collating evidence on the positive impacts of the provisions included in the Hate Crime and Public Order Bill.

Monitoring and Review

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

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Hate Crime and Public Order (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

A handwritten signature in black ink, appearing to read 'Robert Marshall', enclosed within a hand-drawn rectangular box.

Name: Robert Marshall

Position: Deputy Director, Connected Communities

Authorisation date: 10 March 2020



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