

Response ID ANON-R7GH-1ZH9-4

Submitted to **Consultation on Scottish Hate Crime Legislation**

Submitted on **2019-02-22 16:41:34**

Part One – Consolidating and Modernising Hate Crime Legislation

1 Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?

Yes

Please tell us why::

Fife Centre for Equalities agree with Lord Bracadale that any amendments to hate crime legislation will be made under the following key principles:

- Harmonise the protection being offered to a wider range of protected characteristics.
- Avoidance of creating a hierarchy of protected characteristics.
- Extend the statutory aggravation as far as possible to protect the protected characteristics such as Age, Disability, Gender Reassignment, Race, Religion & Belief, Sex and Sexual Orientation.
- Extend the incitement of hate across protected characteristics listed above.
- Statutory Aggravation should apply whether the victim is perceived to be or associated with one or several protected characteristics.
- Freedom of speech is protected as human rights providing the actions of the individual are lawful.
- Online or offline actions should be dealt with the same severity.

We are in agreement that the statutory aggravation model should be the core method.

1. Victims are encouraged to report any crime
2. Police should ask victims whether they feel they're being targeted because of their protected characteristics
3. Prosecution should note the potential aggravation
4. Judges/Sheriffs will take aggravation in consideration when sentencing.

2 Do you think that the language of the thresholds for the statutory aggravations would be easier to understand if it was changed from 'evincing malice and ill will' to 'demonstrating hostility'?

Yes

Please tell us why::

We welcome the language to be changed to "demonstrating hostility" to help victims and the wider public to understand better the definition of hate crime.

3 Do you think changing the language of the thresholds for the statutory aggravations from 'evincing malice and ill will' to 'demonstrating hostility' would change how the thresholds are applied?

No

Please tell us why::

4 Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?

Unsure

Please tell us why::

We would like to suggest the creation of 'Gender Identity and Expression' to replace 'transgender identity'. We believe that 'Gender Identity and Expression' will cover categories such as transgender, non-binary and any other identity or expression that individuals may choose to identify themselves as.

'Intersex' should be included in the 'Sex' category, together with male and female.

'Sex' is what we are born with and 'Gender's is what we choose to be.

5 Do you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated?

Yes

Please tell us why::

Please see our response in Q4.

6 If you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated, what language would you propose?

Please tell us why::

Please see our response in Q4.

Part Two – New Statutory Aggravations

7 Do you agree with Option A to develop a statutory aggravation for gender hostility?

Yes

Please tell us why::

For Sex or Gender, we would suggest that this protection is offered to men, women and Intersex. We understand that gender-based abuse or harassment will disproportionately affect women, however we feel strongly that everyone should be protected from hate crime regardless of their protected characteristics.

8 Do you agree with Option B to develop a standalone offence for misogynistic harassment?

No

If you agree, please tell us why and provide examples of the types of behaviour that could be captured by this offence.:

We are not in favour of creating a separate stand-alone offence to tackle misogyny as this will not comply with the key principles we set out earlier.

At the consultation meeting we held on 20 February, participants stated there is a lack of following up reporting abuse or offence caused to females. The main issue discussed was that it was still common practice for police officers to view those reports as less serious than other offences (e.g. 'lads will be lads', 'nothing serious happened').

9 Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)?

Yes

If you agree please tell us why.:

Equally Safe should include all types of violence against women and girls such as verbal abuse to physical assaults.

Please provide examples of the types of behaviour that could be captured by this offence.:

Verbal harassment

Physical harassment

Hostile communications electronically or in printed copies

Hostile social media communications

etc

10 Do you agree with Option D of taking forward all of the identified options? (This would include development of a statutory aggravation based on gender hostility (Option A); development of a standalone offence relating to misogynistic harassment (Option B); and work to build on Equally Safe (Option C)?)

No

If you agree, please tell us why.:

We would advocate for Option A and Option C.

Please provide examples of the types of behaviour that could be captured by this offence.:

Please see Q.9

11 Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?

Yes

Please provide details.:

As we stated in Q.1 we believe in applying the same principles to all protected characteristics.

- Harmonise the protection being offered to a wider range of protected characteristics.
- Avoidance of creating a hierarchy of protected characteristics.

12 Do you think there is a need for sectarianism to be specifically addressed and defined in hate crime legislation?

No (you may wish to go to Question 16)

Please give your reasons for your response:

We do not wish to comment on sectarianism as we feel we do not have sufficient knowledge of how this will be applied differently from race or religion.

13 If your response to question 12 was yes, do you think a statutory aggravation relating to sectarianism should be created and added to Scottish hate crime legislation?

Unsure

Please give your reasons for your response.:

14 If yes to question 12, do you think a standalone offence relating to sectarianism should be created and added to Scottish hate crime legislation?

Unsure

Please give your reason for this:

15 If your response to question 12 was yes, do you agree with the Working Group that sectarianism should be defined in Scots Law in terms of hostility based on perceived Roman Catholic or Protestant denominational affiliation of the victim and/or perceived British or Irish citizenship, nationality or national origins of the victim?

Unsure

Please give your reason for this.:

We find the definition offered by the working group is very confusing.

16 If you disagree with the Working Group's proposed definition of sectarianism, what do you believe should be included in a legal definition of sectarianism?

Please give your reason for this:

Unsure

17 The Scottish Government recognises that legislation on its own will not end sectarianism. What else do you feel could be done to address sectarianism?

Comments::

Apply fines to groups or clubs for not addressing sectarian conduct.

18 Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?

No

Please provide details::

We are in agreement with Lord Bracadale that statutory aggravation should not include membership of political groups.

19 Do you think that a new statutory aggravation should be added to Scottish hate crime legislation to cover hostility towards any other new groups or characteristics (with the exception of gender and age)?

Yes

Please provide details::

Extend the statutory aggravation as far as possible to protect the protected characteristics such as Age, Disability, Gender Reassignment, Race, Religion & Belief, Sex and Sexual Orientation.

20 Do you think that the religious statutory aggravation in Scottish hate crime legislation should be extended to include religious or other beliefs held by an individual?

Yes

Please provide details::

For Religion, we hope the statutory aggravation will extend to individual belief specially to include Atheists. Several religions prescribe behaviours towards 'non-believers' and how they should be treated. Hostility towards 'non-believers' need to be addressed the same way as someone who is associated with a religion.

21 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one or more protected characteristic?

Yes

Please provide details::

Statutory Aggravation should apply whether the victim is perceived to be or associated with one or several protected characteristics.

22 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people have an association with that particular identity (relating to religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)?

Yes

Please tell us why::

Statutory Aggravation should apply whether the victim is perceived to be or associated with one or several protected characteristics.

Part Three – New Stirring Up of Hatred Offences

23 Do you agree with Lord Bracadale’s recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?

Yes

Please provide details::

We advocate that the legislation should extend the incitement of hate across all protected characteristics.

24 Do you agree with Lord Bracadale’s recommendation that any new stirring up hatred offences should require that the conduct is ‘threatening or abusive’?

Yes

If not, what do you think the threshold should be for the offence to be committed?:

25 Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences?

Yes

Please provide details::

26 Do you agree with Lord Bracadale’s recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred?

Not Answered

If you answered yes to the previous question, do you have any comments on what should be covered by any such ‘protection of freedom of expression’ provision?:

Freedom of speech is protected as human rights providing the actions of the individual are lawful.

27 Do you agree with Lord Bracadale’s recommendation that no specific legislative change is necessary with respect to online conduct?

Unsure

Please provide details::

FCE advocate that online or offline actions should be dealt with the same severity.

The consultation group we held stated that current legislation is much too weak and that yes, online crime legislation should incorporate statutory aggravations. Examples provided included policies in France, Germany and Sweden which included extensive fines to social media platforms.

The group suggested that the on-line conduct should be policed via legislating for validated IDs for social media accounts and restricting access to anonymous posts.

Part Four - Exploitation and Vulnerability

28 Do you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim?

Yes

Please provide details::

We welcome the recommendation of creating a statutory aggravation of ‘vulnerability’ separately from hate crime. We believe that many protected characteristics can be exploited because of their vulnerability, particularly children, older people, disabled, minority ethnic people and women.

The consultation group commented that vulnerability was mainly seen as increasing the likelihood of being a victim of hate crime, and it may be difficult to separate from the aggravation itself.

29 If you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim, please provide details of the circumstances that you think such an aggravation should cover?

Please provide details::

Financial harm, human trafficking, modern slavery, or physical/emotional abuse.

Part Five – Other Issues

30 Do you think that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should be repealed?

Yes

Please provide details. :

In accordance with the key principles we set out in Q1, we would agree that the repeal of Section 50A Racially Aggravated Harassment is a logical action.

31 What do you think the impact of repealing section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment could be?

Comments::

Some groups may feel that the protection being offered to Black and Minority Ethnic communities may be lessened. We believe that better prosecution of racially motivated hate crime will reassure the groups that all protected characteristics will be equally protected.

32 Do you think that courts should continue to be required to state in open court the extent to which the statutory aggravation altered the length of sentence?

Yes

Please provide details::

We would argue that recording of statutory aggravation sentencing should remain. We would suggest that instead of recording the length of sentencing, the court should record how the sentencing differs after the aggravation was proven. For example, the court might decide on additional activities that might help address the hostility of the perpetrators.

33 Do you agree that no legislative change is needed in relation to the support given to victims of hate crime offences?

Unsure

Please provide details::

In terms of support for victims, restorative justice or diversion from prosecution, views of hate crime victims will need to be taken into consideration in all national conversations. Application of justice should be the same for all victims regardless of their protected characteristics.

Our consultation group assed that more care should be given to victims with mental health conditions in hate crime legislation.

34 Do you agree that no legislative change is needed in relation to the provision of restorative justice and diversion from prosecution within hate crime legislation in Scotland?

Unsure

Please provide details::

Application of justice should be the same for all victims regardless of their protected characteristics.

35 What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?

Comments::

We would like to raise our concern that reporting of hate crime continues to fall across different protect characteristics in semi-rural regions such as Fife. Third party reporting is not effective for a variety of reasons. Scottish Government need to consider how best to support people, be it victim or witness, to report hate crime.

Our consultation group added that there are huge gaps in legislation and policing capacity to combat online hate, particularly in tackling material (fake news, incitement to violence etc) by extreme right groups that are receiving funds from overseas.

The division of attacks against women, or murder under different headings for different demographics (honour killings, dowry related deaths, domestic aggression related deaths) leads to statistics that overall seems low, but taken together would show and raise awareness of a much higher incidence of violence against women (e.g. collating statistics under the heading of femicide).

More awareness training should be given to criminal justice professionals on hidden disabilities.

About you

What is your name?

Name:

Nina Munday

What is your email address?

Email:

nina@centreforequalities.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Fife Centre for Equalities

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: