

Hate Crime and Public Order (Scotland) Bill

This document, put together by YouthLink Scotland, seeks to set out what the recently introduced Hate Crime and Public Order (Scotland) Bill aims to achieve and what it contains. This can be used by youth work practitioners as an overview to the Bill and to decide how they wish to address it with any young people they work with who may have an interest in responding to the call for views. Please note that this is not a full description of the Bill but a summary of key points.

The document will go through:

1. Definition of Hate Crime
2. Reason for the Bill
3. Timeline of the build up to the Bill
4. The contents of the Bill
5. Next Steps
6. What is YouthLink Scotland doing?

1. Definition of Hate Crime:

There is no one standard definition of hate crime, different versions are used for different purposes. In his review Lord Bracadale used the definition:

“offences which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ordinary crimes”.¹

It is worth noting that hate crimes online are treated the same as any offline.

In his review Lord Bracadale also gave an example of what a hate crime might look like under the current legislation. This is:

“A man who was annoyed at the noise his gay neighbour made putting out the bins in the early morning engaged in abusive shouting, in the course of which he made comments about the neighbour’s sexual orientation including hoping that “people like you die of AIDS”. This would amount to a breach of the peace aggravated by prejudice in relation to sexual orientation in terms of section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009”.²

2. Reason for the Bill:

Over time hate crime legislation has evolved in a fragmented way meaning that different pieces of hate crime law are in different statutes or pieces of legislation. This has made the law confusing and inconsistent and not as user-friendly as it should be.

The new Bill aims to achieve a number of key things.

- It seeks to update and consolidate existing hate crime legislation.
- It adds to the protected characteristics which currently come under hate crime law.
- It seeks to make the legislation fit for the 21st century.

¹ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

² <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/3/>

The Scottish Government does recognise that legislation alone is not enough to build a cohesive and inclusive society but that it does send a strong message that hate will not be tolerated. It seeks to make it clear to victims, perpetrators and communities that any offences motivated by prejudice will be treated more seriously.

The full Policy Memorandum which explains the policy context and background to the Bill can be viewed at:

<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/policy-memorandum-hate-crime-and-public-order-scotland-bill.pdf>

3. Timeline:

- **2015 – 2016**

Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion met.

- **September 2016**

Independent Advisory Group's report is published -

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

- **June 2017**

The Scottish Government response is published -

<https://www.gov.scot/publications/tackling-prejudice-building-connected-communities-scottish-government-response-report-independent/>

- **January 2017**

Lord Bracadale appointed to conduct a review of Hate Crime legislation in Scotland.

- **31st May 2018**

Independent Review of Hate Crime legislation: Final Report published -

<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/pages/1/>

- **2018 – 2019**

Public consultation by Scottish Government on the basis of Lord Bracadale's recommendations.

- **June 2019**

Consultation on amending Scottish hate crime legislation: analysis of responses published -

<https://www.gov.scot/publications/consultation-amending-scottish-hate-crime-legislation-analysis-responses/pages/2/>

- **May 2020**

Hate Crime and Public Order (Scotland) Bill introduced -

<https://beta.parliament.scot/bills/hate-crime-and-public-order-scotland-bill>

- **May 2020**

Justice Committee open call for views on the Bill with a deadline of 24th July 2020 -

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115038.aspx>

4. The contents of the Bill:

This is a brief overview of what the Bill includes and some explanation of the different parts. The full explanatory notes are available at:

<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/explanatory-notes-hate-crime-and-public-order-scotland-bill.pdf>

The Hate Crime and Public Order Bill is split into five parts.

• Part 1

Talks about the aggravation of an existing offence based on prejudice. It makes it a criminal offence if an offender evinces (shows or indicates) malice or ill-will towards a victim based on their membership or perceived membership of a group protected by the Bill. These groups are listed as:

- Age
- Disability
- Race
- Religion
- Sexual Orientation
- Transgender Identity
- Variations of sex characteristics

Part 1 also states the consequences of an aggravation for prejudice, which includes the need to take the aggravation into account when sentencing and state what difference this has made to the sentence.

• Part 2

Creates two different offences of stirring up hatred. The first is about stirring up hatred based on race and the second on the other characteristics protected by the Bill (as listed above). It also creates offences of having inflammatory material with the intention to communicate that material in order to stir up hatred or where it is likely that hatred would be stirred up.

In the first section stirring up of racial hatred is addressed. This makes it an offence to behave in a threatening, abusive or insulting

manner or communicate threatening, abusive or insulting material with the intention to stir up racial hatred or where it is likely that racial hatred will be stirred up.

The second section is similar but relates to age, disability, religion, transgender identity and variations of sex characteristics. It makes it an offence to behave in a threatening or abusive manner or communicate threatening or abusive material with the intention to stir up, or where it is likely that hatred will be stirred up, against any of these groups.

The key difference between these is that for racial hate there is the addition of insulting behaviour or material. This has been brought over from existing legislation and in the consultation was identified as being key to ensuring that racial hate legislation was maintained at the same level it already was at.

Part 2 also defines how material can be communicated for the purpose of these offences, how offences of stirring up hatred may relate to public performances and individual culpability where an organisation commits an offence.

This part of the legislation also provides protections for freedom of expression with regards to religion and sexual orientation. This means that criticising or discussing religion or religious practices or urging people to stop practicing a religion would not be counted as hate crime. Similarly if the behaviour or material involves discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or change their sexual conduct or practices this would not be an offence. However, if any behaviour or material threatened people with violence or was abusive it would be an offence.

- **Part 3**

Sets out more detail in terms of the characteristics protected by the Bill. What they are and what is meant by them. This part also sets out the power to add sex at a later date if it is judged to be necessary. This is currently not being added due to the ongoing work of a working group looking at this being a separate offence.

- **Part 4**

Abolishes the common law offence of blasphemy.

- **Part 5**

Contains general provisions including the power for Scottish Ministers to make ancillary provisions by regulation.

There are full explanatory notes available to read at:

<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/explanatory-notes-hate-crime-and-public-order-scotland-bill.pdf>

Please note that as with any piece of legislation this will need to be interpreted alongside the Universal Declaration of Human Rights.

5. Next steps:

The Justice Committee have opened a call for views with regards to the Bill. This is open for responses until 24th July 2020. They have outlined some suggested questions that could be answered in a response and anyone can submit a response. YouthLink Scotland would be happy to collate responses from our members and ask that should you wish to you submit these to us at

srobinson@youthlinkscotland.org

by 13th July 2020.

The suggested questions are:

General

1. Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such

as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?

Consolidation

2. The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

How to prosecute hate crime?

3. Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?
4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?

Other forms of crime not included in the Bill

5. Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?

Stirring up offences

6. Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?
7. Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?

Other issues

8. Do you have any comments on what should be covered by the 'protection of freedom of expression' provision in the Bill?
9. Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?
10. What is your view on the plans for the abolition of the offence of blasphemy?

Your response does not need to cover all of these areas and you can focus on those that are relevant to you or your organisation. Also, you are welcome to cover other areas in your submission that you think are relevant to the Committee's consideration of the Bill.

6. What is YouthLink Scotland doing?

YouthLink Scotland run a programme called Action on Prejudice which is currently funded under the Promoting Equality and Cohesion Fund. The programme consists mainly of a website which shares information and resources about how you can talk about hate crime and prejudice with young people. This has come from organisations and projects already doing this work and have been tried and tested. There is also space for young people and adults to tell their stories of how these issues have effected them.

As part of this programme but also as part of our equalities work YouthLink Scotland sits on the Tackling Prejudice and Building Connected Communities Action Group, which is chaired by Cabinet Secretary Aileen Campbell MSP. This group feed in to the Government on different issues surround hate crime and prejudice including Third Party Reporting and the Hate Crime Bill.

If you are interested in finding out more about the work of the Action on Prejudice programme you can visit the website here:

www.actiononprejudice.info