



Working group on
hate
crime

Consultation Paper



SCOTTISH EXECUTIVE

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EXECUTIVE SUMMARY

This paper contains seven chapters plus annexes. A brief description of each chapter is set out below:

Chapter 1: Introduction

Chapter 2: Law and Order

This chapter looks at how the current criminal justice system works if you are a victim of hate crime and provides a brief description of the main bodies involved in the process.

Chapter 3: Legislative Options

Chapter 3 sets out the main arguments and issues surrounding legislation on hate crime. The chapter firstly looks at the generic arguments for and against legislation on hate crime. It then sets out the options for different types of legislation. These are:

- A) New legislation – create a new statutory offence
- B) New legislation – create a statutory aggravation of offences
- C) Change the law to improve recording and monitoring
- D) Do not change the law

The chapter then discusses which groups could be covered by hate crime legislation and the importance of distinguishing between prejudice and vulnerability.

Chapter 4: Existing Policy Initiatives

This chapter looks at the ways the Scottish Executive and other agencies are currently working to combat hate crime, both within the criminal justice system and outside of it.

Chapter 5: Consultation Questions

The paper asks five questions about hate crime and the appropriate ways to tackle it.

Chapter 6: Glossary

Chapter 7: Research

1. INTRODUCTION

- 1.1 The Scottish Executive is committed to a just and tolerant Scotland in which diversity is valued and every citizen is treated with respect. There is no place in Scotland for discrimination and prejudice. Criminal acts motivated by prejudice are particularly repugnant.
- 1.2 Equal opportunities are at the heart of the Scottish Parliament and Scottish Executive. Promoting equal opportunities is one of the Scottish Parliament's four founding principles while the Scottish Executive has set up an Equality Unit, which has produced an Equality Strategy, and run two anti-prejudice campaigns - "One Scotland Many Cultures" and the "see me..." campaign. The "One Scotland Many Cultures" campaign was set up to promote equality of opportunity for all and to raise public awareness of racist attitudes and behaviour, while the "see me..." campaign aims to improve public understanding of mental disorder.
- 1.3 This consultation paper examines the case for legal measures to address offences which are motivated by hatred or prejudice towards social groups. The paper has been prepared by a working group convened by the Scottish Executive and consisting of bodies representative of the equality groups mainly affected, along with those involved in the enforcement of the criminal law. Comments are invited on the consultation paper, following which the working group will submit a report to the Scottish Executive which will in turn consider whether further action is required.
- 1.4 Throughout this paper, you will see certain words such as *provision* in italics the first time they appear in the text. These are generally legal words, which are explained in more detail at the back of the paper in the Glossary section on p. 23.

BACKGROUND

- 1.5 Other parts of the UK are also currently considering hate crime. The Secretary of State for Northern Ireland announced proposals for legislation on hate crime motivated by sectarianism, racism or sexual orientation in October 2003. The UK Government has recently introduced provisions in the Criminal Justice Act, which increases the sentence for crimes motivated by hatred because of a person's sexual orientation or disability (See Annex A).
- 1.6 In Scotland, the process leading to the production of this consultation paper began when the Scottish Executive set up a Cross Party Working Group on Possible Legislation to Tackle Religious Hatred, following proposals for a Member's Bill by Mr Donald Gorrie MSP. The recommendations of the Group were wide-ranging and were addressed to the prosecution authorities, to football clubs and to local authorities as well as to the Scottish Executive. The Working Group's report supported legislation which was added to the then Criminal Justice Bill at Stage 3 in early 2003, by an *amendment* lodged by Mr Gorrie and which has now been enacted in section 74 of the Criminal Justice (Scotland) Act 2003. Section 74 states that where an offence is aggravated by religious prejudice then the court must take the *aggravation* into account when deciding the appropriate sentence. The courts must also state any extra element of the sentence they give for the aggravation (See Annex B).

- 1.7 During Stage 3, Robin Harper MSP also lodged an amendment to the Bill. This amendment was very similar to Mr Gorrie's, but dealt with offences aggravated by prejudice against the victim because of their age, disability, gender or sexual orientation (See Annex C).

WORKING GROUP ON HATE CRIME

- 1.8 The Scottish Executive did not support Mr Harper's amendment at that time because Ministers felt that further detailed consideration was required on the most appropriate measures needed to combat crime based on hatred towards social groups. Consequently, the Executive proposed to set up a working group to look at this issue, focusing on the criminal justice system. When the Executive announced its intention in February 2003, Mr Harper withdrew his amendment. The working group began meeting in Summer 2003 and has the following remit:

“To look at the current criminal justice system and consider improvements, including legislation, which might be made to deal with crimes based on hatred towards social groups.”

- 1.9 A list of the members of the working group is at Annex D.

CONSULTATION

- 1.10 The working group decided to produce a consultation paper and, following consideration of a summary of the responses, submit a report to the Scottish Ministers, setting out advice on the way forward. It is therefore important that anyone who has any views on hate crimes makes their views known as this will be vital in helping produce the working group's report and to develop Scottish Executive policy. A summary of the consultation responses, produced by the Executive, will also be published.
- 1.11 There is a webpage on the Scottish Executive website that contains more information about the working group on hate crime and contains an electronic copy of the consultation paper. It also lists links to a number of research papers. The website address is:
http://www.scotland.gov.uk/about/JD/CJ/00017915/wg_papers.aspx
- 1.12 Although the initial impetus for setting up the group was proposed legislative change, the criminal justice system is made up of a range of bodies from the police to the courts, each with their own roles and procedures. As well as commenting on possible legislation, we would like you to let us have your views on whether different parts of the system could be improved in order to deal more effectively with hate crime and if so, how. This can encompass, for example, reporting a crime to the police, victim support, the courts system, and sentencing.
- 1.13 Finally, as set out in its remit, the working group is focusing on improvements that could be made to the criminal justice system. The group has decided to keep a tight focus on this consultation in order to make realistic changes which are possible to implement in the short-term. However, you will be given the opportunity at the end of this paper to propose wider ways of tackling this form of prejudice and how this might be done.

OUTLINE OF PAPER

1.14 The paper is set out as follows:

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RESPONDING TO THE CONSULTATION AND FURTHER INFORMATION

1.15 You will see boxes containing questions highlighted throughout the paper. These are also set out at the end of the paper (p. 21). We would welcome responses to these questions but please do not feel constrained by them.

1.16 Please send your response to:

Hate Crime Consultation
 C/o Emma Sinclair
 SEJD Criminal Justice Division
 Area 1WR
 St Andrew's House
 Regent Road
 Edinburgh
 EH1 3DG

Or email: hatecrimeviews@scotland.gsi.gov.uk

The consultation deadline is **30 April 2004**.

1.17 A copy of this consultation paper is available on the Internet at:

http://www.scotland.gov.uk/about/JD/CJ/00017915/wg_papers.aspx

Further copies can also be obtained by telephoning Emma Sinclair on 0131 244 4210. Alternative formats and community language versions of this paper are available on request.

1.18 Where confidentiality is not requested, responses to the consultation exercise will be made available for public viewing in the Scottish Executive library and on the Scottish Executive website after the closing date. Please complete the responsee information form attached to the covering letter of this paper to indicate whether you wish your response to be confidential.

2. LAW AND ORDER

- 2.1 This section looks at how the current criminal justice system works if you are a victim of a hate crime and provides a brief description of the main bodies involved in the process. Chapter 4 gives more detail on these bodies and outlines their current methods for tackling hate crime.

WHAT HAPPENS IF YOU ARE A VICTIM OF HATE CRIME?

- 2.2 If you are the victim of an offence like assault where there is no evidence of it being a hate crime, the accused will usually be prosecuted under the *common law*. However, if the assault appears to be motivated by racism, the crime would be prosecuted under specific statutory *provisions* for racist offences. If the assault appeared to be motivated by, for example, homophobia, the case would still at present be prosecuted under common law with a common law aggravation of homophobia.
- 2.3 When a crime is committed, the victim has the choice of whether or not to report the crime to the police. If the crime is reported, the police will investigate the crime, try to find any evidence and when they believe they have enough evidence to support a prosecution, they will send a report to the Procurator Fiscal.
- 2.4 Once a report is received, the Procurator Fiscal decides whether there is or is not enough relevant evidence that a particular individual has committed a crime and whether to instruct further inquiries by the police. If there is enough evidence, the Procurator Fiscal must consider what action would be in the public interest and decide whether to prosecute or to take alternative action. Such alternatives can include the use of warning letters, personal warnings, Fiscal fines, social work diversion and mediation and reparation. Cases that are prosecuted will be tried either under summary procedure (before a judge only) or on solemn procedure (before a judge and jury). A precognition (legal word for a statement) may be taken by someone on behalf of the Procurator Fiscal or the defence lawyer, both of whom might want to interview the victim or witnesses about the incident. In a case motivated by racism, the Procurator Fiscal would instruct that the Victim Information and Advice Service contact the victim (See Chapter 4). The same already applies for a victim of a crime motivated by homophobia where that victim was believed to be vulnerable due to his or her sexual orientation.
- 2.5 If the victim is going to give evidence in court, he or she will be sent a formal witness *citation* from the Procurator Fiscal advising them of when they should come to court to give evidence. If the accused is found guilty, the judge will decide on the most appropriate sentence. There is a wide range of sentencing options depending on the nature of the crime and which court it is prosecuted in. If the crime is motivated by either racist or religious hatred, both of which are statutory aggravations, the judge can take this motive into account when deciding the sentence. If a crime is motivated by some other form of prejudice, the judge is able to take this into account as a common law aggravation. If the crime is prosecuted as a specific racist offence, the *statute* sets out specific penalties for the offence. More details on this are in Chapter 3.
- 2.6 The right of the person who has been found guilty to appeal against their sentence or conviction is subject to the granting of leave to appeal by the High Court. If leave is given, then the offender can challenge either the verdict of guilty and/or the sentence.

3. LEGISLATIVE OPTIONS

3.1 The working group has agreed the following definition of hate crime:

“Crime motivated by malice or ill-will towards a social group.”

3.2 The term “hate crime” originated in America where it was originally applied to racism. At its most extreme, hate crimes have been known to take the form of genocide, ethnic cleansing and serial killing. In other forms, they can include assaults, name-calling, harassment or vandalism.

EXISTING HATE CRIME LEGISLATION

3.3 The Public Order Act 1986 made it a criminal offence throughout Britain to incite racial hatred (See Annex E). In Scotland, the offence of racially aggravated harassment was introduced in the Crime and Disorder Act 1998. The same Act includes a provision for the courts to increase the sentence when any criminal offence is aggravated by racial prejudice (See Annex F). As discussed in Chapter 1, the Criminal Justice (Scotland) Act 2003 section 74 includes a similar provision for offences aggravated by religious prejudice (See Annex B). Where the statutory aggravations of racial hatred or of religious prejudice are used, the courts are required to take account of the aggravating factor when considering sentence.

REASONS FOR AND AGAINST LEGISLATION ON HATE CRIME

3.4 There are generic arguments both for and against making specific provisions for “hate crime”.

Distinguishing aspects of Hate Crime

- Research shows that some social groups, such as Lesbian, Gay, Bisexual and Transgender (LGBT) people and disabled people, are proportionately more often victims of harassment and crime, and that much of this is motivated by prejudice against those groups (see below).
- Hate crimes cause more psychological damage to a victim than crimes that are not motivated by hatred, because the victim’s core identity is being attacked. This personalises the crime and causes the victim a greater amount of distress.
- Hate crime is socially divisive. Such crimes need to be particularly condemned in order to avoid a situation in which the relevant group feels victimised as a group with members in constant fear of attack. Prejudice against groups can lead to a number of consequences, ranging from fear of crime and inability to participate in normal social activities to paranoia and vigilantism.

Reasons for legislation

- Legislation can highlight an issue and send a strong signal about society’s values and what is and is not acceptable. Because it is generally socially undesirable to be labelled racist or bigoted, clear hate crime legislation can have an increased deterrent effect.

- Statute law is an appropriate vehicle for reinforcing and maintaining society’s moral values and can be used to reflect changes in those values over time.
- Statutory legislation can make the recording and monitoring of specific types of crime easier. The recording of the aggravation in the charge, and in the record of the sentence, allows for more suitable sentencing for repeat offenders.

Reasons against legislation

- Scots law is largely a common law system. One of the main advantages of this is its flexibility and ability to cover a vast variety of criminal situations and conduct. A range of crimes and offences already exist which make it illegal to assault someone physically, to steal or damage their property, or to pester them or scare them through insults and so on. Prosecutors currently can and do include details of aggravating factors in common law charges and the existence of aggravating factors has a bearing on decisions about which level of court to prosecute in. These factors can include the fact that the victim was assaulted or otherwise victimised because of membership, or perceived membership, of a particular social group. The aggravation involved in offences motivated by prejudice or hate is therefore already covered in the common law.
- Leading on from this, if hate crime were to be made statutory, the current flexibility of the common law, both in terms of preparing charges, and sentencing on conviction, would be eroded. Each statutory aggravation effectively restricts the flexibility inherent in the common law, since in practice, Procurators Fiscal will respect the wishes of Parliament and use a statutory provision over the common law alternative. As outlined above, Scots law is largely a common law system, the efficiency of which depends to a large extent on the flexibility at its core. Using common law aggravations means the aggravation can be drafted to fit the circumstances, rather than attempting to manipulate a set of facts into a statutorily defined aggravation.
- There is a need to distinguish between crimes committed against victims because of their vulnerability rather than a hatred of the victim’s perceived social group. That distinction is already made under the flexible common law system, but will be harder to make with new statutory provisions.
- If some social groups are covered by a statutory hate aggravation and others are not, it may suggest that there is a “hierarchy” of victims, where some victims are seen as more important or deserving than others, or some statutory aggravations are seen as more important than others.

Q1. Do you think it is appropriate to use some kind of statutory legislation to tackle hate crime?

DIFFERENT TYPES OF LEGISLATION

- 3.5** There are a number of options for how statutory legislation could be used to address hate crime. The main options, encompassing a description of each and possible advantages and disadvantages, are set out below. The advantages and disadvantages relate specifically to the particular legislative option and do not repeat arguments that are generic to all legislation as outlined above.

A) New Legislation - Create a new Statutory Offence

- 3.6** The Public Order Act 1986 made it a criminal offence throughout Britain to **incite racial hatred**. The offence covers the use in public of words or behaviour, the display, publication or distribution of written material, the public performance of plays, and the public distribution, showing, playing or broadcast of video or audio recordings, if the material concerned is intended to, or is likely to, stir up racial hatred. It is also illegal to possess such material with a view to making it public. The maximum penalty is two years in prison. At the time of writing, Crown Office figures suggest that in 2002-03, prosecutors received 7 reports of incitement to racial hatred from the police. One of the key disadvantages of this option is that it interferes with an individual's freedom of speech. The Working Group on Religious Hatred concluded that an offence of incitement to religious hatred was not desirable because of the risk of penalising legitimate debate. This argument may also apply to some of the social groups covered in this consultation paper. The Republic of Ireland, however, has similar legislation to the UK, but covering incitement to hatred on grounds of race, religion, sexual orientation and against Gypsy/Travellers.
- 3.7** Section 50A of the Crime and Disorder Act 1998 created a specific statutory offence of **racially-aggravated harassment**. Under section 50A, it is a criminal offence to pursue a racially aggravated course of conduct which amounts to harassment of a person or to act in a racially aggravated manner which causes, or is intended to cause, a person alarm or distress. There is no offence of harassment aggravated by religious prejudice - this law covers racial hatred only. The maximum penalty is seven years in prison. At the time of writing, Crown Office figures suggest that in 2002-03, prosecutors received 2,111 reports of racially aggravated harassment and behaviour from the police.
- 3.8** Arguments against this kind of harassment legislation include the fact that the same activities could be charged with an existing offence such as breach of the peace, together with a statutory racial aggravation (see below). To obtain a conviction for racially-aggravated harassment both the harassment and the racial aggravation must be proved in court; if either cannot be proved, the accused will be acquitted. In contrast, a person charged with an existing offence, such as breach of the peace, with a statutory racial aggravation, can still be convicted of the breach of the peace even if the racial aggravation is not proven.
- 3.9** Arguments in favour include the fact that there is no general offence of harassment in Scotland, and so there might be cases which could be charged as racially-aggravated harassment, but which no other existing offence would cover. Furthermore, it can be argued, especially on the basis of the significant numbers of prosecutions annually, that the existence of a specific offence of racially-aggravated harassment focuses the minds of the police and justice system and leads to more, and more effective, action against such crimes.

B) New Legislation - Create a Statutory Aggravation of Offences

- 3.10** In addition to the specific racial hatred offences outlined above, a provision on **racial aggravation of any criminal offence** was introduced in section 96 of the Crime and Disorder Act 1998. If any criminal offence is motivated by, or accompanied by an expression of, malice or ill-will on grounds of race, then the offence is regarded as a racially aggravated offence. At the time of writing, Crown Office figures suggest that in 2002-03, prosecutors received 817 reports with separate statutory racial aggravations. A similar provision for **aggravation based on religious hatred** was introduced as section 74 of the Criminal Justice (Scotland) Act 2003. At the time of writing, Crown Office figures suggest that prosecutors have received 102 reports of cases with an element of religious motivation from the police. The Working Group on Religious Hatred supported this religious hatred aggravation, as the Group felt that legislation was important as part of a package of measures to discourage the expression of religious hatred. In addition, the concerns about restricting legitimate freedom of expression, raised in relation to the incitement to hatred offence, did not apply to a statutory aggravation.
- 3.11** The aggravation is stated as part of the charge, and must be proved separately to the criminal offence itself (e.g. assault). However, one of the main advantages of this option is that the standard of proof is lower as *corroboration* is not required to prove the aggravation (although corroboration is required to prove the main offence itself). If the aggravation is proved, it must be taken into account during sentencing for the offence. If the aggravation is not proved, the accused may still be convicted of the non-aggravated charge. The maximum penalty depends on the maximum penalty available for the offence itself, which is up to life imprisonment in the case of common law offences such as assault, and is specified in legislation in the case of statutory offences.

C) Change the law to improve recording and monitoring

- 3.12** This would involve enacting legislation similar to section 74 (4) of the Criminal Justice (Scotland) Act 2003 (See Annex B). This would require the court to state that the offence had been aggravated by particular factors, including prejudice or hate, and that where appropriate, an increased sentence was being imposed for the aggravation. The aggravation and the increase in sentence would both be recorded on the offender's record. A variation of this would be to issue guidance to the courts to record aggravations. This approach would not make the aggravation itself statutory but it would retain the existing flexibility and judicial discretion, while ensuring that details of previous convictions motivated by hatred would be available to the court when sentencing for future offences. The downside is there may not be consistency of approach because there would not be a clear statutory framework setting out the groups covered. For the same reason, it may be that this option would not send such a clear message to police, courts and the general public, about the unacceptability of hate motivated crime. Tracking and monitoring of hate aggravated offences through the justice system from initial police involvement to conviction or acquittal would be more difficult than with the full statutory aggravations described above, as the aggravation would not be recorded in the charge, only in the conviction record.

D) Do not change the law

3.13 In line with the arguments against legislation above, it could be argued that the law works satisfactorily in its existing state, that changing the law would be detrimental to the system, and that there is no need to change the law. In other words, it may be that the law itself is adequate but the way in which it is enforced could be improved.

Q2. If you think specific legislation should be used to address hate crime, what form do you think it should take? Why?

GROUPS AFFECTED

3.14 If we are to provide extra legislative protection, the question of which groups ought to be covered is a key issue. Robin Harper MSP's amendment to the Criminal Justice Bill referred to prejudice based on:

- age;
- gender;
- sexual orientation; and
- disability.

3.15 This is why the working group on hate crime has focused on these four areas of social prejudice. There is evidence available on the prevalence of crime committed because of a social prejudice against the LGBT community and of harassment against disabled people (See Chapter 7 for references to research papers). Examples of this evidence are given below.

Research on crimes committed against the LGBT community

3.16 In "The Experience of Violence and Harassment of Gay Men in the City of Edinburgh", a report commissioned by the Scotland Office Central Research Unit in 1998, 57% of respondents had experienced some form of harassment between 1997 and 1998. In a survey by Beyond Barriers conducted in 2003, 40% of respondents had been verbally abused, threatened by someone or assaulted over the same timescale. The 2000 Scottish Crime Survey found that 5% of male respondents reported being the victim of violent crime during the previous year. This compares to 18% of gay men in the Edinburgh survey who reported being the victim of a violent incident in the prior 12 months. A study by Stonewall of violence against lesbians, gay men and bisexuals in Britain in 1996, found that the incidence of violence against under 18 year olds in this group was higher than those above this age. Forty-eight percent in this age group had experienced violence, 61% had been harassed and 90% had experienced verbal abuse as a result of their sexuality.

Research on crimes committed against disabled people

3.17 Research conducted by Glasgow University on behalf of the National Schizophrenia Fellowship (Scotland) published in 2001, reported that people with mental health problems report more than twice as much harassment as the general population. Forty-one percent of people with mental health problems reported experiencing harassment, compared to 15% in the general population. The Disability Rights Commission in Scotland publishes an annual Disability Awareness Survey.

The 2002 survey reported that 26% of disabled people reported experiencing harassment in public in relation to their disability, with 1 in 20 saying that they often experience harassment.

Research on crimes committed against other groups

3.18 There is research on violence against women but very little research on crimes committed against other social groups that is motivated by membership of that particular group. Details of the known research are given in Chapter 7.

PREJUDICE OR VULNERABILITY?

3.19 It is also important to distinguish between hate crime and attacks on certain groups or people because they are vulnerable. We have defined hate crime as “crime motivated by malice or ill-will towards a social group”. Legislation covering race and more recently religion was introduced because it was very clear that people were being abused or attacked because of their race or religion. The motivation for the crime is hatred of particular groups because of who they are or what they represent. Similarly, many in the LGBT community have experienced abuse and attacks motivated by a hatred of gay people. Again, those with mental illness or learning disabilities may suffer abuse, harassment or assault, for example, on the basis that some people do not want them to be part of the community. This is based on a misconception and stereotyping of people as a group and would be covered by our definition of hate crime, which describes it as “crime motivated by malice or ill-will towards a social group”.

3.20 However, the motivation for offences against members of social groups may not be hatred. For example, crimes against disabled people or women living on their own may be motivated by the individual’s real or perceived vulnerability, rather than by malice towards the social group of which they are a member.

3.21 In the case of gender, given that approximately half the population is male and approximately half is female, a change in the law to highlight motivation of hatred of the victim because they are male or female would be potentially protecting the entire population. It is open to debate whether men and women as social groups should receive this special attention. It is possible that circumstances could arise in which such a wide protection would be appropriate in order to penalise someone who had become embittered against men or women and who target that gender for crime. The question is always “what is the motivation for the offence?” - is it hatred for that gender, hatred for the individual or something else altogether?

3.22 Age is also a complicated category. While the most obvious example of someone’s age affecting their susceptibility to crime is someone who is older and may be less physically capable of defending themselves, the Scottish Crime Survey 2000 reported that men between the ages of 16 and 24 years old were the age group most likely to be the victim of violent crime. The fact that most of this crime is perpetrated by other young people suggests that behaviour and lifestyle, rather than prejudice against age per se, contributes to the high levels of crime against younger people.

3.23 The working group and this consultation paper are looking at hate crime rather than vulnerability. Like the system under the existing common law, if legislation on hate crime were introduced, it would be for the police, Procurator Fiscal and the courts to consider whether in any particular case there was evidence of a hate motivation.

OTHER GROUPS

- 3.24** One of the problems which arises from making special statutory provision for hate crime against certain groups is that there will be other groups who feel that they too should be covered and if they are not, will feel further excluded. Such groups might include:
- Refugees and Asylum seekers
 - Homeless community
 - Prostitutes
 - Members of certain political groups or holding certain political opinions
- 3.25** It can be argued that including a large number of groups in any legislation on hate crime would dilute the significance and signal of such legislation and would make it more difficult for the police to prioritise the allocation of resources to any particular group. In addition, there is little evidence to show the extent of hate crime against the groups listed above, although we know from individual accounts that hate crime, particularly against groups such as asylum seekers and refugees, does take place. Despite the lack of evidence, inclusion might mean that these other groups would feel more protected. Of course, these groups will continue to be protected by the common law, whether or not any legislation is enacted against hate crime.
- 3.26** It is important to be aware that any legislation is likely to be based on the offender's perception of an individual belonging to one of these social groups, rather than the victim's actual membership of the group. This is the case for both racial and religious aggravations; these examples would no doubt be used as a model for any future legislation, if legislation was thought to be appropriate.

Q3. Are there specific groups (including the ones mentioned above or other ones) that you think ought to receive special protection through legislation against hate crime? If so, which ones? Do you think different groups ought to be covered by different types of legislation?

4. EXISTING POLICY INITIATIVES

- 4.1 While this consultation focuses on the criminal justice system and therefore the impact of someone committing a hate crime, the Scottish Executive and other agencies are also working to combat crime and prejudice at other levels. This chapter sets out ongoing work in the main criminal justice bodies and other areas that are helping address this type of crime.

CRIMINAL JUSTICE SYSTEM

- 4.2 There are a variety of areas that support victims of crime, some of which provide specific support for those who are victims of “hate crime” or who are particularly vulnerable.
- 4.3 All victims of crime can access information about the criminal justice system and the support that is available. The Executive has published a leaflet to provide a simple overview of the criminal justice system which is available in a range of different formats and languages. The Executive has also established a website that contains information about how the criminal justice system works and where victims can go for further information and support:
<http://www.scottishvictimsofcrime.co.uk>

The Police

- 4.4 The police increasingly recognise the importance of dealing sensitively with minority groups. As standard practice, the police’s senior investigating officer will appoint a victim or family liaison police officer when the incident is considered serious or is particularly sensitive. The Scottish Executive, on behalf of the HM Inspectorate of Constabulary, published a paper called “Pride and Prejudice” in June 2003 reviewing police race relations in Scotland. It contains a chapter on Diversity which looks at police relations with a number of social groups including the LGBT community.
- 4.5 All forces have signed up to the National Equal Opportunities Training Strategy (NEOTS). The development of the strategy began in 1998. All staff members are given anti-discrimination training which challenges prejudice and personal attitudes by looking at racism and other different forms of prejudice and discrimination. This training is commonly referred to as “Diversity Awareness”. The delivery of the training began in 2001 in Scotland.
- 4.6 The NEOTS training is complemented by training at the Scottish Police College where students are provided with a better understanding of the complex issues surrounding the policing of a diverse society. As well as complying with any equal opportunities legislation, students are also taught to recognise that unfair treatment of others is unacceptable on any grounds. More recently, the College’s Continuous Professional Development Programme prospectus 2003-2004 includes a 1-day seminar called “Building Rapport with the Gay Community - Bridging the Gap”.
- 4.7 Many initiatives involving the police to combat hate crime are taken forward in partnerships with local authorities and other agencies. “Remote Reporting” schemes have been established throughout Scotland to encourage members of ethnic minority and LGBT communities to report crimes. A number of forces have appointed officers or identified a department to have specific

responsibilities for diversity policing issues. Forces such as Lothian and Borders, Fife and Tayside, have established liaison officers for many strands including their LGBT community. Awareness training courses have been developed to assist staff involved in policing these communities.

- 4.8** The Association of Chief Police Officers in Scotland (ACPOS) Race and Community Relations Standing Committee has a remit to consider, consult and counsel on race and community relations and other associated matters which have a national significance for the Scottish police service at strategic and policy levels. This Standing Committee covers a number of diversity portfolios, namely race, LGBT, sectarianism, older persons, asylum seekers, gypsy/travellers, disability and mental health and gender. Each portfolio holder, as part of the process of identifying and prioritising their respective work agenda, consults with both statutory and non-statutory organisations/fora established to support these specific social groups.
- 4.9** All Scottish Forces will move to a more victim-orientated National Crime Recording Standard, which will mean that a crime will be recorded if the victim believes that a crime has been committed, without requiring corroborative evidence for the crime.
- 4.10** The recording and monitoring of hate crime by the police in Scotland is a constantly changing situation as IT is adapted to meet the evolving needs of each force. As at August 2003, all Forces were recording and monitoring racist crime, most were flagging homophobic and religious/belief based hate crime, with all moving towards this capacity, and two Forces had processes in place to identify disability-related hate crime.

The Crown Office and Procurator Fiscal Service (COPFS)

- 4.11** The Crown Office and Procurator Fiscal Service provide an information service for victims called Victim Information and Advice (VIA).
- 4.12** The principal aims of VIA are:
- to give information to victims, bereaved next of kin and some witnesses about the criminal justice process
 - to keep victims and bereaved next of kin informed about the progress of the case that affects them
 - to tell victims, bereaved families and vulnerable witnesses about other agencies that can give specialist support and help, e.g. Victim Support.
- 4.13** People who are entitled to receive information and advice from VIA include:
- a victim of a racist crime
 - a victim of domestic abuse
 - a victim of a sexual offence
 - any other victim, next of kin or witness where the victim or witness may be vulnerable, e.g. because of disability or age
 - a victim of a crime motivated by homophobia where that victim is considered to be vulnerable due to his or her sexual orientation.

- 4.14** VIA is still developing and not all of Scotland as yet has access to the service. There are currently offices in Aberdeen, Glasgow, Hamilton, Kilmarnock, Peterhead, Edinburgh and Dundee. By the end of 2003, VIA aims to have offices in each of the 11 Area Procurator Fiscal Offices into which the Scottish prosecution service is divided.
- 4.15** The COPFS currently monitors the numbers of race crimes reported by the police. Statistics can be produced to show what decisions were taken about prosecuting these cases and what happened to them as they proceeded through the court process. At present other forms of hate crime dealt with under the common law are not recorded and monitored but it is possible under the present system to set up a “flagging and tagging” procedure whereby the numbers of such crimes could be recorded and monitored.
- 4.16** The COPFS has race resource teams in each of the 11 Areas that give advice on race cases and liaise with minority ethnic groups on issues at local level. These teams report on a regular basis to the Diversity Team at the Crown Office and these reports in turn are put before the Race Strategy Group which is chaired by the Solicitor General, where policies on race matters and race crime are developed.
- 4.17** As far as race crime and crimes motivated by religious prejudice are concerned, the Lord Advocate has issued guidance to police officers as to how these cases should be investigated and reported to Procurators Fiscal. Further advice on these subjects can be given to Procurators Fiscal by the Diversity Team at the Crown Office.
- 4.18** The COPFS has produced a highly detailed race equality action plan as required by the Race Relations Amendment Act. The COPFS has developed the Working Group on Interpretation and Translation which is examining ways of taking a uniform approach to the issues of availability and quality of interpreting and translation right throughout the criminal justice system.
- 4.19** The Crown Office Diversity Team is acting as a conduit between the COPFS and various minority groups with a view to addressing some of the problems or concerns regarding hate crimes.
- 4.20** The COPFS started a roll-out of 2-day diversity awareness courses that is mandatory for all COPFS staff. This programme started in November 2003 and will continue into 2005.
- 4.21** The COPFS has developed its Equality Advisory Group made up of representatives of the minority ethnic communities and other bodies with an interest in race matters. This group gives independent advice and opinion on existing and proposed COPFS policies.

The Scottish Court Service

- 4.22** The Scottish Court Service is an executive agency of the Scottish Executive Justice Department and is responsible for the general administration of the *Supreme and Sheriff Courts* in Scotland.
- 4.23** The Scottish Court Service has also made a considerable contribution to providing valuable support to witnesses and victims who are required to attend court to give evidence. It has published an Action Plan for improving services to victims attending court in line with the Scottish Strategy for Victims. In addition, Victim Support Scotland (see below) provides a witness service for which accommodation has been made available in all the Sheriff Courts and which is being rolled out to the High Court. Court staff also assist with advice and visits to court in advance of trials.

4.24 The Service is also currently contributing to work on the Vulnerable Witnesses (Scotland) Bill, which is currently before the Scottish Parliament (see below).

Q4. Do you think any of these bodies could improve their service to particular social groups to help address hate crime? If so, how?

Victim Support Scotland

4.25 Victim Support Scotland is funded by the Executive to deliver services to victims of crime and to witnesses. The police pass on to Victim Support Scotland details of all victims who wish to access support. Local victim support services then get in touch with them to offer support. Victim Support Scotland also delivers the Witness Service in the Sheriff Courts and High Court. This provides information and support to all witnesses before, during and after the trial.

The Scottish Strategy for Victims

4.26 The Scottish Strategy for Victims was published by the Scottish Executive in 2001. It sets a challenging new agenda which brings together all interests within the criminal justice system to deliver policies and services to meet the needs of victims and witnesses. Commitments included piloting victim statements; the provision of funding for a court-based volunteer Witness Service; establishing a new service working alongside the Procurator Fiscal Service to provide support and information to victims and witnesses; looking at ways of expanding the statutory definition of “vulnerable person”; and examining how those who need it could be given support or protection. Many of these have been implemented but the Strategy is a living document and will continue to evolve.

Criminal Justice (Scotland) Act 2003

4.27 The Criminal Justice (Scotland) Act 2003 introduced new rights for victims. This included a right for victims of certain types of crime to be able to make a written statement to the court about the impact of the crime on them. Victim statement schemes will be piloted in the Sheriff Courts and High Court in Edinburgh, Kilmarnock and in the Sheriff Court in Ayr over the next two years. In the pilot areas, people who have been victims of racial offences will have the right to make a victim statement, as well as those who have been victims of crimes of violence, crimes of indecency and domestic housebreaking.

Vulnerable Witnesses (Scotland) Bill

4.28 The Vulnerable Witnesses (Scotland) Bill was introduced in the Scottish Parliament on 23 June 2003. The Bill enables further assistance and protection to be given to vulnerable witnesses. This should help vulnerable witnesses to give their best evidence in a criminal case.

4.29 Much of the Bill relates to increased protection for children. However, the Bill also includes discretionary entitlements to special measures for people with a mental disorder which affects their ability to give evidence, or for those where fear, distress or intimidation could prevent them from giving their best evidence to the court. This last category should enable victims of “hate crimes” such as homophobic assaults to benefit from the use of special measures when they give evidence. These special measures include screens, the witness having a supporter, a live TV link being used for the witness to give evidence and evidence taken on commission.

Antisocial Behaviour Bill

- 4.30** The Scottish Executive introduced the Antisocial Behaviour etc. (Scotland) Bill in Parliament on 29 October 2003. The Bill includes a range of measures to support the implementation of proposals in “Putting Our Communities First: A Strategy for Tackling Antisocial Behaviour”, which was consulted on over the summer of 2003.
- 4.31** The Executive’s strategy to tackle antisocial behaviour has four themes:
- protecting and empowering communities
 - preventing antisocial behaviour - children and families
 - building safe, secure and attractive communities
 - effective enforcement
- 4.32** The Executive’s approach is intended to provide additional protection and support to those whose quality of life is undermined by threatening and intimidating behaviour and behaviour that can ruin the physical, economic and social fabric of communities. The Executive recognises that groups who are subject to hate crime may also be more likely to experience the effects of antisocial behaviour. The Executive consulted a range of equality groups and the consultation has informed the development of the proposals in the Bill. The Executive’s Policy Memorandum sets out consideration of the effects of the proposals on equal opportunities and an overarching equality provision has been added to the Bill to ensure that checks and balances are in place when measures in the Bill are implemented.
- 4.33** The Antisocial Behaviour Bill should complement work on hate crime as it provides additional tools to protect victims of antisocial conduct, which may involve incidents not sufficiently serious or clear cut to be prosecuted on a criminal basis. Where a prosecution is being made, the court should consider all the evidence in the case, including whether the incident was motivated by prejudice.
- 4.34** You can find more detail on the Bill at the following website:
<http://www.scottish.parliament.uk/bills/index.htm#12>

WORK OUTSIDE THE CRIMINAL JUSTICE SYSTEM

“see me...” Campaign

- 4.35** In 2001, the *Millan Committee* recommended a campaign of public education to improve public understanding of mental disorder, attitudes towards people with mental disorders, and to reduce the stigma of mental disorder. The Scottish Executive is funding an alliance of mental health organisations called “see me” to develop this work. The “see me...” campaign was launched in October 2002. This is a sustained high profile Scotland-wide anti-stigma and anti-discrimination campaign to combat prejudice against people with mental disorders. The campaign uses a range of media, including television and cinema advertising, the production and dissemination of a range of anti-stigma resource materials and a website. The campaign also works with national and local anti-stigma action by agencies, organisations and groups in the public, private and voluntary sectors. Guidelines for the media on good practice in reporting on mental health issues were published by “see me...” in March 2003.

Domestic Abuse

- 4.36** Domestic abuse is associated with broader gender inequality and is mainly associated with abuse against women, although abuse against men does take place. There are differing views on whether domestic abuse should be seen as a hate crime against someone because of his or her gender or whether it should more appropriately be regarded as reflecting a power imbalance in a particular relationship. The Violence Against Women Unit of the Scottish Executive view domestic abuse as a male abuse of power rather than a “hate crime”.
- 4.37** In 2000, the Scottish Executive produced a National Strategy to Address Domestic Abuse in Scotland and established the National Group to Address Domestic Abuse, now called the National Group to Address Violence against Women. To date the National group has set up four issue-based working groups to look at refuge provision in Scotland, current legislation, developing a Prevention Strategy and developing a Training Strategy.
- 4.38** In order to support the work of the National Group and to enable it to fulfil its commitment to the National Strategy, the Executive has made over £20 million available since April 2001. In addition to this funding, the Scottish Executive also provides funding to Scottish Women’s Aid and to Rape Crisis Scotland.
- 4.39** Further to the work of the National group, each local authority area now has an active multi-agency domestic abuse partnership. Each of these partnerships has a core group of representatives from the police, women’s aid, victim support, health boards and trusts and council officers from social work, housing, education and community safety. The Executive is also providing support for children who witness domestic abuse and runs awareness raising initiatives including an advertising campaign.
- 4.40** The Scottish Executive is working with the Judiciary, Scottish Court Service, the Police, the Procurator Fiscal Service and other key stakeholders to look into issues surrounding the setting up of a specific domestic abuse court. It is proposed that these courts would improve the management of domestic abuse cases and ensure support for the women suffering from abuse before, during and at the conclusion of proceedings. Two working groups have been established and it is anticipated that a pilot court could be established in Glasgow in Spring 2004.

Community Planning Partnerships’ Community Plans

- 4.41** While most Community Planning Partnerships’ Community Plans aim to combat prejudice and reduce the fear of crime, only a few relate it to specific groups. The most commonly recognised group is older people. There are a few initiatives that focus directly on crime motivated by social prejudice or a fear of crime for vulnerable members of society. Examples include:
- **Angus Community Planning Partners** has implemented a “Safe as Houses” initiative designed to reduce crime and the fear of crime especially among older people and vulnerable individuals by providing and fitting packs containing home security and safety equipment.
 - **City of Edinburgh Community Planning Partners** has recognised that levels of safety in the community can be influenced by diverse factors such as building design, lighting, planning and transportation policies, as well as social circumstances. The Community Planning Partners view crime prevention as not the sole responsibility of the police service.

- **Fife Community Planning Partners** makes explicit reference to “hate crime” in two documents “The State of Fife Report August 2002” and June 2000 Community Plan. Fife Partnership works to ensure the safety of older people and vulnerable adults. The Community Safety Partnership also proposes to work with lesbian, gay, bisexual and transgender communities to address hate crime.

Community Wardens

4.42 The Executive is providing £20m to support the extension of Community Wardens across Scotland. Community Wardens provide a visible, official presence in a neighbourhood with the aim of reducing crime and the fear of crime, reducing antisocial behaviour and improving environmental quality. They can have a wide range of roles depending on the needs of the neighbourhood and the priorities of the community. In the Executive’s guidance to local authorities and partners, it has suggested that potential roles for wardens could include keeping an eye on properties occupied by vulnerable people, for example, people with mental health problems or people who have been subjected to racial harassment, and escorting older and/or vulnerable residents, for example, to collect pensions, or to attend community activities.

Tackling Antisocial Behaviour, Violence and Bullying in Schools

4.43 The Education Department of the Scottish Executive develops policies and guidelines for education authorities and schools to tackle any bullying and antisocial behaviour or violence within schools, and to monitor and record any incidents that do occur appropriately.

4.44 The Executive funds the Anti-Bullying Network, which develops materials and resources for schools. In addition, the Executive produces and distributes information on bullying for pupils, parents and schools, and this programme of information is planned to raise awareness of issues of homophobic bullying, racist bullying and bullying motivated by other forms of prejudice.

4.45 The Executive is also working with authorities to ensure that any incident of antisocial behaviour or violence reported in schools, against school staff, is recorded to assess the motivation behind the incident, such as racism, homophobia, religion and other categories. In particular, this will begin to inform the way the national collection on data of incidents against school staff can be analysed for any trends in this regard.

Q5. Could any of these measures be improved to help address hate crime? Are there other areas outside the criminal justice system that you feel ought to be improved in order to combat hate crime? If so, which areas and how would you suggest this is done?

5. CONSULTATION QUESTIONS

- 5.1** This is a detachable page so you can write your response to the consultation paper directly onto this sheet and send it back to the Scottish Executive at the address given at the front of this paper. Alternatively, you can send an email with your response to: hatecrimeviews@scotland.gsi.gov.uk

The consultation deadline is **30 April 2004**.

Q1) Do you think it is appropriate to use some kind of specific legislation to address hate crime?

YES NO

Why?

Q2) If you think specific legislation should be used to address hate crime, what form do you think it should take? Why?

Q3) Are there specific groups (including the ones mentioned in the paper or other ones) that you think ought to receive special protection through legislation against hate crime? If so, which ones? Do you think different groups ought to be covered by different types of legislation?

Q4) Do you think any of the following bodies could improve their service to particular social groups to help tackle hate crime?

the Police the Crown Office and Procurator Fiscal Service the Scottish Courts Service

If so, how?

Q5) Could any of the measures set out in Chapter 4 be improved to help address hate crime? Are there other areas *outside* the criminal justice system that you feel ought to be improved in order to combat hate crime? If so, which areas and how would you suggest this is done?

If you wish to make a more detailed response to these questions, feel free to use a separate piece of paper. Please remember to refer to the question you are answering or to say if you are simply making general observations.

6. GLOSSARY

- **Aggravation:** “Section 74 states that where an offence is aggravated by religious prejudice then the court must take the *aggravation* into account when deciding the appropriate sentence.”

An aggravation is something that makes a crime more serious.

- **Amendment:** “The Working Group’s report supported legislation which was added to the then Criminal Justice Bill at Stage 3 in early 2003, by an *amendment* lodged by Mr Gorrie and which has now been enacted in section 74 of the Criminal Justice (Scotland) Act 2003.”

An amendment is a change proposed to a Bill that is being discussed in Parliament.

- **Citation:** “If the victim is going to give evidence in court, he or she will be sent a formal witness *citation* from the Procurator Fiscal advising them of when they should come to court to give evidence.”

A citation is a legal summons.

- **Common law:** “If you are the victim of an offence like assault where there is no evidence of it being a hate crime, the accused will usually be prosecuted under the *common law*.”

Common law refers to law that is made by precedent (where certain rules of law have been created by the courts) e.g. murder, assault and breach of the peace, rather than through parliamentary legislation.

- **Corroboration:** “However, one of the main advantages of this option is that the standard of proof is lower as *corroboration* is not required to prove the aggravation (although corroboration is required to prove the main offence itself).”

Corroboration means the process by which two independent pieces of evidence are used to convict someone under Scots law. This is necessary in the majority of offences under the Scottish system.

- **Millan Committee:** “In 2001, the *Millan Committee* recommended a campaign of public education to improve public understanding of mental disorder, attitudes towards people with mental disorders, and to reduce the stigma of mental disorder.”

This was a Ministerial-appointed external Committee, chaired by Rt Hon Bruce Millan, former Secretary of State for Scotland, set up in 1999 to review the Mental Health (Scotland) Act 1984 and related legislation.

- **Provisions:** “However, if the assault appears to be motivated by racism, the crime would be prosecuted under specific statutory *provisions* for racist offences.”

A provision is a section of proposed legislation in a Bill or legislation in an Act.

- **Supreme and Sheriff Courts:** “The Scottish Court Service is an executive agency of the Scottish Executive Justice Department and is responsible for the general administration of the *Supreme and Sheriff Courts* in Scotland.”

The Supreme Court includes the Court of Session (deals with civil matters), the High Court of Justiciary (deals with criminal appeals and serious criminal cases; all cases, except appeals, are heard before judge and jury) and the Accountant of Court’s Office. The Sheriff Courts deal with the main volume of criminal matters. In the Sheriff court, cases that are tried under summary procedure are tried before a judge only and cases tried under solemn procedure take place before a judge and jury. It is the Fiscal who decides at which court the case will be heard.

- **Statute:** “If the crime is prosecuted as a specific racist offence, the *statute* sets out specific penalties for the offence.”

Statute law is created through legislation approved by Parliament e.g. Misuse of Drugs Act 1971, as opposed to common law. Murder is a common law offence; it has not needed a statute to define it. Statute law embraces both Acts of the UK Parliament and also those of the Scottish Parliament.

7. RESEARCH

- “The Hate Debate: should hate be punished as a crime?”, edited by Paul Iganski (2002)
- “Give us a break”: exploring harassment of people with mental health problems, National Schizophrenia Fellowship (NSF) Scotland research (2001).
- “The Experience of Violence and Harassment of Gay Men in the City of Edinburgh” by Colin Morrison and Andrew Mackay, the TASC Agency (1999)
- “The Association of Chief Police Officers (ACPO) Guide to Identifying and Combating Hate Crime” (Hate Crime Manual) by ACPO (2000)
- “Racist Crime and Victimization in Scotland” by Sue Moody and Ian Clark, University of Dundee (2002)
- “A Policymaker’s Guide to Hate Crimes” by the Bureau of Justice Assistance, US Department of Justice (1999)
- “An Acceptable Prejudice? Homophobic Violence and Harassment in Northern Ireland” by Neil Jarman and Alex Tennant, Institute for Conflict Research (2003)
- “Moving On: A Survey of Travellers’ Views” by Delia Lomax, Sharon Lancaster and Patrick Gray, on behalf of the Scottish Executive and Scottish Homes (2000)
- “The Experience of Violence and Harassment of Gay Men in the City of Edinburgh”; report commissioned by the Scottish Office Central Research Unit (1998)
- “First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland” by Beyond Barriers (2003)
- “Queer Bashing” by Stonewall (1996)
- “Scottish Disability Awareness Survey” by Disability Rights Commission (2002)
- “Opening the Gateways” by Values Into Action (VIA) (2002)
- “Living in Fear” by Mencap (1999)
- “Violence Against Wives: A Case against the Patriarchy” by R. Emerson Dobash and P. Russell Dobash (1979)
- “Women, Violence and Social Change” by R. Emerson Dobash and P. Russell Dobash (1992)

ANNEXES

ANNEX A: PROVISION IN CRIMINAL JUSTICE ACT (ENGLAND AND WALES)

This annex contains the relevant provisions contained in the Act. Extract from the Criminal Justice Act:

201A Insert the following new Clause -

“ Increase in sentence for offence aggravated by reference to disability or sexual orientation”

- (1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).
- (2) Those circumstances are -
 - (a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on -
 - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
 - (ii) a disability (or presumed disability) of the victim, or
 - (b) that the offence is motivated (wholly or partly) -
 - (i) by hostility towards persons who are of a particular sexual orientation, or
 - (ii) by hostility towards persons who have a disability or a particular disability.
- (3) The court -
 - (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
 - (b) must state in open court that the offence was committed in such circumstances.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- (5) In this section “disability” means any physical or mental impairment.

ANNEX B: THE CRIMINAL JUSTICE (SCOTLAND) ACT 2003

This annex contains the relevant statutory provisions. Extract from the Criminal Justice (Scotland) Act 2003:

74.

Offences aggravated by religious prejudice

(1) This section applies where it is -

- (a) libelled in an indictment; or
- (b) specified in a complaint,

and, in either case, proved that an offence has been aggravated by religious prejudice.

(2) For the purposes of this section, an offence is aggravated by religious prejudice if -

- (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or
- (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

(3) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.

(4) Where the sentence in respect of the offence is different from that which the court would have imposed had the offence not been aggravated by religious prejudice, the court must state the extent of and the reasons for that difference.

(5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.

(6) In subsection (2)(a) -

“membership” in relation to a group includes association with members of that group; and
 “presumed” means presumed by the offender.

(7) In this section, “religious group” means a group of persons defined by reference to their -

- (a) religious belief or lack of religious belief;
- (b) membership of or adherence to a church or religious organisation;
- (c) support for the cultural and traditions of a church or religious organisation; or
- (d) participation in activities associated with such a culture or such traditions.

ANNEX C: ROBIN HARPER MSP'S PROPOSED AMENDMENT TO THE CRIMINAL JUSTICE BILL

Offences aggravated by social prejudice

- (1) This section applies where it is -
 - (a) libelled in an indictment; or
 - (b) specified in a complaint,and, in either case, proved that an offence has been aggravated by social prejudice.
- (2) For the purposes of this section, an offence is aggravated by social prejudice if -
 - (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a social group, or of a social or cultural group with a perceived religious affiliation; or
 - (b) the offence is motivated (wholly or partly) by malice and ill-will towards a member of a social group based on their membership of that group.
- (3) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.
- (4) Where the sentence in respect of the offence is, by virtue of this section, different from that which the court would have imposed but for this section, the court must state the extent of and the reasons for that difference.
- (5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by social prejudice.
- (6) In subsection (2)(a) above -

“membership” in relation to a group includes association with members of that group; and

“presumed” means presumed by the offender.
- (7) In this section, “social group” means a group of persons defined by reference to gender, sexual orientation, disability or age.

ANNEX D: MEMBERS OF WORKING GROUP ON HATE CRIME

Richard Scott, Head of Criminal Justice division, Scottish Executive (Chair)

Emma Sinclair, Criminal Justice division, Scottish Executive (Secretariat)

Simon Bradstreet, Scottish Association for Mental Health

Alastair Carmichael, Crown Office and Procurator Fiscal Service

Keith Cowan, Outright Scotland

Ian Dickinson, Assistant Chief Constable of Lothian and Borders Police

Michelle Hegarty, Capability Scotland

Tim Hopkins, Equality Network

Ali Jarvis, Stonewall Scotland

Fiona McOwan, Engender

Euan Page, Disability Rights Commission

Helena Scott, Age Concern Scotland

Nicola Smith, Enable

John Wilkes, Equal Opportunities Commission

ANNEX E: PUBLIC ORDER ACT 1986 PART III

This annex contains the relevant statutory provisions. Extract from the Public Order Act 1986 (as amended):

Meaning of “racial hatred”

17.

In this Part “racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Acts intended or likely to stir up racial hatred

Use of words or behaviour or display of written material

18.

- (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if -
 - (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances racial hatred is likely to be stirred by thereby.
- (2) An offence under this section may be committed in a public or private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.
- (3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.
- (4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.
- (5) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.
- (6) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

Publishing or distributing written material

19.

- (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if -
 - (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.
- (2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
- (3) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

Public performance of play

20.

- (1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if -
 - (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.
- (2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove -
 - (a) that he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour, or
 - (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.
- (3) This section does not apply to a performance given solely or primarily for one or more of the following purposes -
 - (a) rehearsal,
 - (b) making a recording of the performance, or
 - (c) enabling the performance to be included in a programme service;

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of those things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purposes mentioned above.

- (4) For the purposes of this section -
- (a) a person shall not be treated as presenting a programme of a play by reason only of his taking part in it as a performer,
 - (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and
 - (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance;
- and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.
- (5) In this section "play" and "public performance" have the same meaning as in the Theatres Act 1968.
- (6) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 of that Act -
- section 9 (script as evidence of what was performed),
 - section 10 (power to make copies of script),
 - section 15 (powers to entry and inspection).

Distributing, showing or playing a recording

21.

- (1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if -
- (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.
- (2) In this Part "recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing or a recording are to its distribution.

ANNEX F: CRIME AND DISORDER ACT 1998

This annex contains the relevant statutory provisions that apply to Scotland. Extract from the Crime and Disorder Act 1998 (as amended):

Racially-aggravated offences: Scotland

33.

After section 50 of the Criminal Law (Consolidation) (Scotland) Act 1995 there shall be inserted the following section -

Racially-aggravated harassment

50A.

- (1) A person is guilty of an offence under this section if he -
 - (a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and -
 - (i) is intended to amount to harassment of that person; or
 - (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or
 - (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.
- (2) For the purposes of this section a course of conduct or an action is racially aggravated if -
 - (a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group; or
 - (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.
- (3) In subsection (2)(a) above -

“membership”, in relation to a racial group, includes association with members of that group;

“presumed” means presumed by the offender.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender's malice and ill-will is also based, to any extent, on -
 - (a) the fact or presumption that any person or group of persons belongs to any religious group; or
 - (b) any other factor not mentioned in that paragraph.

- (5) A person who is guilty of an offence under this section shall -
- (a) on summary conviction, be liable to a fine not exceeding the statutory maximum, or imprisonment for a period not exceeding six months, or both such fine and such imprisonment; and
 - (b) on conviction on indictment, be liable to a fine or to imprisonment for a period not exceeding seven years, or both such fine and such imprisonment.
- (6) In this section -
- “conduct” includes speech;
 - “harassment” of a person includes causing the person alarm or distress;
 - “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins,
- and a course of conduct must involve conduct on at least two occasions.

Offences racially aggravated

96.

- (1) The provisions of this section shall apply where it is -
- (a) libelled in an indictment; or
 - (b) specified in a complaint,
- and, in either case, proved that an offence has been racially aggravated.
- (2) An offence is racially aggravated for the purposes of this section if -
- (a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a racial group; or
 - (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group,
- and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection, that an offence is racially aggravated.
- (3) In subsection (2)(a) above -
- “membership”, in relation to a racial group, includes association with members of that group;
 - “presumed” means presumed by the offender.

- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender's malice and ill-will is also based, to any extent, on -
 - (a) the fact or presumption that any person or group of persons belongs to any religious group; or
 - (b) any other factor not mentioned in that paragraph.
- (5) Where this section applies, the court shall, on convicting a person, take the aggravation into account in determining the appropriate sentence.
- (6) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

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