

## **An Independent Review of Hate Crime Legislation in Scotland Consultation**

### **Policy Update**

This report provides an overview of the consultation on the Independent Review of Hate Crime Legislation in Scotland to obtain the initial views of members on it. This item will be accompanied by a presentation at the Board meeting by Lord Bracadale who is leading the review.

### **Summary and Recommendations**

The consultation on the review of hate crime legislation follows the Scottish Government's response in June 2017 to the recommendations produced by the Independent Advisory Group chaired by Dr Morrow on hate crime, prejudice and community cohesion.

The intention of the consultation is to explore what type of conduct criminal law should identify as hate crime and whether the current set of offences adequately covers such conduct.

This paper invites Members to:

- i. Provide initial views on the independent review of hate crime consultation;
- ii. Provide any comments or questions on Lord Bracadale's presentation; and
- iii. Agree COSLA's next steps in paragraph 10.

### **References:**

No previous relevant reports

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## An Independent Review of Hate Crime Legislation in Scotland

### **Policy Update**

1. In January 2017, Annabelle Ewing, Minister for Community Safety and Legal Affairs announced an Independent Review of Hate Crime Legislation to be led by Lord Bracadale a former judge of the Court of Session. The review of hate crime legislation follows the report published in September 2016 from the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion<sup>1</sup> chaired by Dr Morrow.
2. The Independent Advisory Group examined a range of factors that could address hate crime and prejudice. It concluded that the language defining hate crime was unclear and recommended that the Scottish Government should explore this further. It also recommended that further consideration should be given to the scope of existing hate crime legislation and whether it should be extended.
3. The Scottish Government in June 2017 published its response<sup>2</sup> to the Independent Advisory Group's report. This included a series of actions to be taken forward to address hate crime, prejudice and community cohesion. Members may be aware of the current public awareness campaign running on hate crime as an action from the Scottish Government's response. This is expected to last for a 6 week period.

### **Current COSLA Position**

#### Scope of the Consultation on the Independent Review of Hate Crime

4. The scope of the consultation on the independent review of hate crime covers several main areas that are set out below along with the full list of the twenty five questions outlined in Annex 1.
  - A proposal to consolidate hate crime in one piece of legislation;
  - The International Holocaust Remembrance Alliance approach to defining anti-semitism;
  - Sentencing and recording;
  - Freedom of expression and stirring up of hatred;
  - Alternative means to regulate social media platforms;
  - The relevance of public disorder to the offence in section 1 of the Offensive Behaviour at Football and Threatening Communication (Scotland) Act 2012; and
  - The application of other offences to the behaviour covered by section 1 of the 2012 Act.
5. The intention of the consultation is to explore what type of conduct criminal law should identify as hate crime and whether the current set of offences adequately covers such conduct with different stakeholder audiences. As such, Lord Bracadale has produced a

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<sup>1</sup> <http://www.gov.scot/Resource/0050/00506074.pdf>

<sup>2</sup> <http://www.gov.scot/Resource/0052/00520818.pdf>

full technical version of the consultation aimed at a legal audience along with a non-technical guide which is intended for the general reader.

6. COSLA is currently gathering responses from member councils on Lord Bracadale's extensive consultation<sup>3</sup> along with views from professional officer networks such as SOLAR and SCEN to develop a local government response.

### **What is Changing?**

7. Hate crime laws have been created in a number of different pieces of legislation over the last 52 years with offences to tackle racist behaviour first introduced in 1965. Since then legislation in Scotland has developed in a rather piecemeal fashion. It covers offences targeting criminal conduct in relation to race, religion, disability, sexual orientation and transgender identity.
8. The report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion (2016) noted that the lack of clarity in the definition of hate crime raised the issue of whether additional groups should be protected. In addition, there have been other recent developments relevant to the review regarding about how the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is working in practice.
9. Lord Bracadale's review arose in part out from a murder case with a religious motivation which did not fall within the current law on hate crime.

### **Next Steps**

10. COSLA is currently consulting member councils on the independent review of hate crime legislation consultation as well as professional local government officer networks. When these responses are compiled we will develop a COSLA response to the consultation to be agreed by members of the Community Wellbeing Board by correspondence.
11. Initial views on the consultation provided from local authorities are that hate crime needs to be better explained as there are many in our communities who are unclear as to what it means. In addition, hate crime needs to be taken much more seriously.
12. Further, online hate crime requires to be given more attention as it is a growing problem. There also needs to be thorough consideration in relation to offensive behaviour at football matches.

### **Summary and Recommendations**

13. The report outlines the Independent Review of Hate Crime consultation that is being led by Lord Bracadale.
14. Members are invited to:
  - i. Provide initial views on the Hate Crime consultation;
  - ii. Provide comments or questions on Lord Bracadale's presentation; and
  - iii. Agree COSLA's next steps in paragraph 10.

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<sup>3</sup> [https://consult.scotland.gov.uk/hate-crime/independent-review-of-hate-crime-legislation/user\\_uploads/nontechnical.pdf](https://consult.scotland.gov.uk/hate-crime/independent-review-of-hate-crime-legislation/user_uploads/nontechnical.pdf)

## **Annex 1**

### **Questions in the Consultation on the Independent Review of Hate Crime Legislation**

1. Do you consider that the working definition, discussed in this chapter, adequately covers what should be regarded as hate crime by the law of Scotland?
2. How can we prevent tensions and misunderstandings arising over differences in what is perceived by victims, and others, to be hate crime, and what can be proved as hate crime?
3. Should we have specific hate crime legislation?
4. Do you believe there is a need to bring all the statutory sentencing provisions, and other hate crime offences, together in a single piece of legislation?
5. Do you consider that the current Scottish thresholds are appropriate?
6. Should “evincing’ malice and ill-will” be replaced by a more accessible form of words?
7. Should an aggravation apply where an offence is motivated by malice and ill-will towards a political entity (e.g. foreign country, overseas movement) which the victim is perceived to be associated with by virtue of their racial or religious group?
8. Should an aggravation apply where an offence is motivated by malice and ill-will towards a religious or other beliefs that are held by an individual rather than a wider group?
9. Do you have any views about the appropriate way to refer to transgender identify and/or intersex in the law?
10. Does the current legislation operate effectively where conduct involves malice and ill-will based on more than one protected characteristic?
11. Should the aggravation consistently be recorded? Is it necessary to have a rule that the sentencing judge states the difference between what the sentence is and what it would have been but for the aggravation?
12. Is this provision necessary? Should the concept of a standalone charge be extended to other groups? If so, which groups?
13. Should there be offences relating to the stirring up of hatred against groups? If so, which groups?
14. If there are to be offences dealing with the stirring up of hatred against groups, do you consider that there needs to be any specific provision protecting freedom of expression?
15. Does the current law deal effectively with online hate? Are there specific forms of online activity which should be criminal but are not covered by the existing law? Should this be tackled through prosecution of individuals or regulation of social media companies or a combination of the two?
16. How clear is the 2012 Act about what actions might constitute a criminal offence in the context of a regulated football match? Should sectarian singing and speech, and the waving of banners

and making gestures of a sectarian nature at a football match be the subject of the criminal law at all? If so, what kind of behaviour should be criminalised? Does equivalent behaviour exist in a non-football context? If so, should it be subject to the same criminal law provisions?

17. Is it beneficial to be able to prosecute in Scotland people who usually live in Scotland for offences committed at football matches in other countries? Should a similar provision apply to non-football related hate crime?
18. Is it appropriate to have a requirement that behaviour is or would be likely to incite public disorder in order for it to amount to a criminal offence?
19. Is there any conduct currently subject to prosecution under section 1 of the 2012 Act which would not be covered by pre-existing common law or legislation?
20. Should a football club be able to apply to the court for a football banning order?
21. Do you consider any change to existing criminal law is required to ensure that there is clarity about when bullying behaviour based on prejudice becomes a hate crime?
22. Do you think that specific legislation should be created to deal with offences involving malice or ill-will based on: age; gender; immigration status; socio-economic status; membership of gypsy/traveller community; other groups?
23. Do you have any views as to how levels of under-reporting might be improved? Do you consider that in certain circumstances press reporting of the identity of the complainant in a hate crime should not be permitted? If so, in what circumstances should restriction be permissible?
24. Do you consider that a third party reporting scheme is valuable in encouraging the reporting of hate crime? If so, how might the current scheme be improved?
25. Are diversion and restorative justice useful parts of the criminal justice process in dealing with hate crime? Should such schemes be placed on a statutory footing?