



Consultation on amending Scottish hate crime legislation

RESPONDENT INFORMATION FORM

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Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

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

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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

Yes

No

Questionnaire

Respondents should take into consideration the information provided in this document alongside any other knowledge or personal experiences that could be relevant. All opinions are welcome.

We ask that you try to answer all the questions in each section, however, if you are unable to answer any question then please feel free to move on to the next.

There is a comments box below each question to allow you to set out your reasoning and provide general comments

Part One: Consolidating Hate Crime Legislation

**Q1. Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?
(Please tell us why in the comments box.)**

- Yes
- No
- No Opinion

Comments

While we agree that the aggravation model should continue, we believe that its application shouldn't just be restricted to physical assault cases but on the impact of the crime on the victim or group. We should consider the negative psychological trauma as well as material loss that can happen to a victim of hate crime such as homelessness, losing paid or voluntary employment, social isolation.

**Q2. Do you think that the language of the thresholds for the statutory aggravations would be easier to understand if it was changed from 'evincing malice and ill will' to 'demonstrating hostility'?
(Please tell us why in the comments box.)**

- Yes
- No
- Unsure

Yes we agree that language that is clearly understood by lay people will be helpful.

Q3. Do you think changing the language of the thresholds for the statutory aggravations from ‘evincing malice and ill will’ to ‘demonstrating hostility’ would change how the thresholds are applied?

(Please tell us why in the comments box.)

- Yes
- No
- Unsure

Comments

We believe that if the applications are changed as in our response to number 1, it will change how the thresholds are applied. We believe that right now the threshold does not recognise the true and detrimental impact of hate crime.

Q4. Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?
(Please tell us why in the comments box.)

- Yes
- No
- Unsure

Comments

This is an opportunity to clarify on the differences between these identities and the experiences that come with it.

Q5. Do you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated?

(Please tell us why in the comments box.)

- Yes
- No
- Unsure

Comments

Q6. If you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated, what language would you propose?

Comments

We believe that using the term Trans as an alternative to transgender is more appropriate. The term Trans could include people who are non binary as well.

Part Two: New Statutory Aggravations

Q7. Do you agree with Option A to develop a statutory aggravation for gender hostility?

(Please provide details in the comments box below.)

- Yes
- No
- Unsure

Comments

See answer to question 10

Q8. Do you agree with Option B to develop a standalone offence for misogynistic harassment?

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

- Yes
- No
- Unsure

Comments

See answer to question 10

Q9. Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)? (If you agree please tell us why.)

- Yes
- No
- Unsure

Comments

See answer to question 10

Q10. Do you agree with Option D of taking forward all of the identified options? (This would include development of a statutory aggravation based on gender hostility (Option A); development of a standalone offence relating to misogynistic harassment (Option B); and work to build on Equally Safe (Option C)? (If you agree, please tell us why.) (Please provide examples of the types of behaviour that could be captured by the standalone offence.)

- Yes
- No
- Unsure

Comments

We strongly recommend the development of option B and option C as women and girls experience inequalities and hate as a result of their gender on an individual and structural basis. We need to strengthen the legislative response to address these inequalities and create a responsibility on the justice system to thoroughly investigate these crimes and create an environment that encourages women to report.

We would however want to see provisions for protecting all people who are likely to experience gender hostility particularly those with intersectional characteristics who are stereotyped in our society.

We support Equally Safe, however, also believe there has to be a national strategy and mechanism to address prejudice and hate in Scotland across all characteristics.

Q11. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?

(Please provide details in the comments box below.)

- Yes
- No
- Unsure

Comments

There is an increased stereotyping of people of particular age groups such as young people and older people. We should have a mechanism that protects those who experience hate as a result of being part of a particular age or group.

Q12. Do you think there is a need for sectarianism to be specifically addressed and defined in hate crime legislation?

(Please give your reasons for your response.)

- Yes
- No (you may wish to go to question 15)
- Unsure

Comments

We believe that definition of sectarianism should go beyond Catholic and Protestant. It should be widened to include other religions and include caste. This would reflect the current demographic of Scottish society.

Q13. If your response to question 12 was yes, do you think a statutory aggravation relating to sectarianism should be created and added to Scottish hate crime legislation?

(Please give your reasons for your response.)

- Yes
- No (you may wish to go to question 16)
- Unsure

Comments

Following the repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 there is insufficient legislation to address issues around sectarianism.

Q14. If yes to question 12, do you think a standalone offence relating to sectarianism should be created and added to Scottish hate crime legislation? (Please give your reason for this.)

- Yes
- No
- Unsure

Comments

Q15. If your response to question 12 was yes, do you agree with the Working Group that sectarianism should be defined in Scots Law in terms of hostility based on perceived Roman Catholic or Protestant denominational affiliation of the victim and/or perceived British or Irish citizenship, nationality or national origins of the victim? (Please give your reason for this.)

- Yes
- No
- Unsure

Comments

Although we accept that this is a major issue, we believe that the true experience of sectarianism is wider than just these communities. It has an impact on the daily lives of people of different major faiths, including caste as well as other Christian sects.

Q16. If you disagree with the Working Group's proposed definition of sectarianism, what do you believe should be included in a legal definition of sectarianism? (Please give your reason for this.)

Comments

Although we accept that Roman Catholic or Protestant denominational affiliation of the victim and/or perceived British or Irish citizenship, nationality or national origins of the victim is a major issue, we believe that the true experience of sectarianism is wider than just these communities. It has an impact on the daily lives of people of different major faiths, including caste as well as other Christian sects.

Q17. The Scottish Government recognises that legislation on its own will not end sectarianism. What else do you feel could be done to address sectarianism?

Comments

There has to be education in educational institutions and communities and also importantly at all levels of the football establishment in Scotland.

**Q18. Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?
(Please provide details in the comments box.)**

- Yes
- No
- Unsure

Comments

When political objectives are based on prejudice and hate, the hate legislation should be strong enough to respond to it without any specific considerations to political entities.

**Q19. Do you think that a new statutory aggravation should be added to Scottish hate crime legislation to cover hostility towards any other new groups or characteristics (with the exception of gender and age)?
(Please provide details in the comments box.)**

- Yes
- No
- No Opinion

Comments

We believe that there should be a recognition of prejudice based on socio-economic background or status, although some may argue that socio-economic background or status changes over a person's lifetime, the prejudice experienced while you are in a particular socio- economic group is a reality.

Q20. Do you think that the religious statutory aggravation in Scottish hate crime legislation should be extended to include religious or other beliefs held by an individual?

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

Q21. Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one or more protected characteristic?

(Examples of protected characteristics are religion, sexual orientation, age, gender, race, disability, transgender identity and intersex).

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

Q22. Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people have an association with that particular identity (relating to religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)?

(Please tell us why?)

- Yes
- No
- Unsure

Comments

Part Three: New Stirring Up of Hatred Offences

**Q23. Do you agree with Lord Bracadale’s recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?
(Please provide details in the comments box.)**

- Yes
- No
- Unsure

Comments

We would also recommend that the protection against harassment that is provided under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should be extended across the protected characteristics.

**Q24. Do you agree with Lord Bracadale’s recommendation that any new stirring up hatred offences should require that the conduct is ‘threatening or abusive’?
(If not, what do you think the threshold should be for the offence to be committed?)**

- Yes
- No
- Unsure

Comments

It should be extended to how it currently stands for Race.

Q25. Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences?

(This would mean that the offence would apply where the behaviour is ‘threatening or abusive’, but not where it is only ‘insulting’.)

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

We are against the dilution of existing provisions of existing provisions concerning the stirring up of racial hatred,

Q26. Do you agree with Lord Bracadale’s recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred?

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

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

There is currently enough laxity in the criminal justice system to excuse hate behaviour as freedom of expression when it is not freedom of expression particularly in an online environment. Making such provisions, will only muddy the waters, unless any provisions that are made will have a restrictive and clear definition and statutory guidance on what is considered freedom of expression.

Q27. Do you agree with Lord Bracadale’s recommendation that no specific legislative change is necessary with respect to online conduct?

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

The repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 also took away provisions that were there to address aspects of online hate crime and there is a need to relook at aspects from that legislation that could be applied to hate crime legislation.

Part Four: Exploitation and Vulnerability

Q28. Do you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim?

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

Q29. If you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim, please provide details of the circumstances that you think such an aggravation should cover?

Comments

Part Five: Other Issues

Q30. Do you think that Section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment should be repealed? (Please provide details in the comments box.)

- Yes
- No
- No Opinion

Comments

While we support that these protections should be applied to all characteristics, we strongly oppose the repeal of racially aggravated harassment.

Q31. What do you think the impact of repealing section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment could be?

Comments

This legislation remains a strong mechanism of prosecuting race hate. It has provided confidence to BME communities to report hate crime. The repeal of this weakens the important, essential and particular message it conveys to Ethnic Minority groups.

Q32. Do you think that courts should continue to be required to state in open court the extent to which the statutory aggravation altered the length of sentence?

(This would mean that Lord Bracadale's recommendation on sentencing would not be taken forward.)

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

Q33. Do you agree that no legislative change is needed in relation to the support given to victims of hate crime offences?

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

We would expect an investment of thought, action and financial resources in the development of practical strategies in how victims of hate crime are supported such as setting up a national helpline for hate crime victims and the creation of a national advocacy service for victims of hate crime.

Q34. Do you agree that no legislative change is needed in relation to the provision of restorative justice and diversion from prosecution within hate crime legislation in Scotland?

(Please provide details in the comments box.)

- Yes
- No
- Unsure

Comments

In our experience, restorative justice while helpful in not criminalising individuals especially young people who commit hate crimes; we find that there is a lax attitude in recognising the impact of crime on the victims social, physical, emotional well-being when making such decisions. We believe that the legislation must be changed to require that cognizance be taken off the impact of the crime on the victim when using restorative justice or diversion from prosecution within hate crime.

Q35. What else do you think the Scottish Government should include in its proposals to update Scottish hate crime legislation?

Central Scotland Regional Equality Council (CSREC) is an organisation that supports victims of hate, prejudice and discrimination. We spread awareness on hate crime reporting and anti-discrimination. We believe that for these legislative changes to make the difference that they intend to make, Scotland must have the following:

- 1) There must be a coordinated effort on part of the government, local government, police, other statutory partners and the third sector to raise awareness of hate crime, the methods available to report it and to encourage victims and witnesses to report it. In 2017 and 2018 Hate Crime Awareness week was observed with the support of the Scottish Government and Police Scotland. While we welcome and support this, we need to consider the timing of this as the Hate Crime Awareness Week occurs at a time when schools in a lot of local authorities in Scotland are closed for October break. A Scottish Hate Crime Awareness week should be considered during a period when schools are open across Scotland. The observance of Scottish Hate Crime Awareness Week should be made mandatory for all local authorities with a programme like what is done for 16 Days of Activism Against Gender-Based Violence.
- 2) There should be sustained awareness activity throughout the year besides just the Scottish Hate Crime Awareness Week. A Scottish Hate Crime Awareness Week and the sustained activity should be supported by financial resources for it to be effective.
- 3) There must be a sustained and coordinated effort by the Government, Local Authorities, Health Boards, Public Bodies, Police and the Third sector to have local partnerships that specifically address issues about hate crime. These partnerships should be modelled like Violence Against Women/Gender Based Violence Partnerships that exist in local authorities in Scotland.
- 4) There should be a resourced national toll-free helpline to
 - a) provide immediate support to third party report,
 - b) a listening service,
 - c) provide practical information, and
 - d) signpost to local support services that are appropriate to the needs of victims and witnesses of the particular hate crime.

At present there is no national helpline and we know that hate crimes occur more often after office hours and at weekends when third sector support organisations and most Third Party Reporting Centres do not operate. A well-publicised toll-free national helpline must be set up, so victims and witnesses can seek support and report. The provision of a dedicated 24 hour support service must be backed with a comprehensive communications strategy and budget. It must also be noted that calls to 101 are charged and often wait times are long and similar to cases of domestic abuse and sexual abuse victims and witness may not want to speak directly to the police to start with.
- 5) It should be made mandatory for all schools to report hate and bullying incidents that take place and the actions that have been taken by the school following the

report. The recording of hate and bullying in schools must be done at the point at which reports are received rather than following investigation, although it would be also important to know what the outcomes of investigations were. Not recording incidents at the point when an incident was first reported will perpetuate the under recording of hate and prejudice and poor outcomes for those reporting in our schools.

- 6) There is a need for better and further education in schools about what is acceptable language and behaviour, hate crime and prejudice and how it is reported.
- 7) Campaigns to create awareness of hate crime must also publicise alternative ways that hate crime can be reported through, like Third Party Reporting
- 8) Confidence in the criminal justice system must be built so that there are positive outcomes for victims and there is confidence that incidents will stop occurring. We hope that legislative changes will improve the experience of victims. Currently people do not report as they do not believe that they will be taken seriously and when matters have gone to court very rarely have we had any positive outcomes for our victims with cases often being dropped during prosecution.
- 9) There needs to be more awareness and education on hate crime, so people know what has happened to them is not normal and should not be acceptable.
- 10) Accessibility for reporting hate crime must be improved. There are deficiencies in the online reporting form on the Police Scotland website. The website and reporting form is not accessible in alternative languages and BrowseAloud. Moreover, the online reporting form is not friendly for handheld devices such as mobiles and tablets. The reporting link is not easy to find on mobiles and tablets this is pertinent when we know that desktop usage of the internet has been declining consistently.
- 11) A hate crime reporting App may make it easier for reporting hate crime and more fit for purpose. The current police reporting form does not have a facility to upload images. A hate crime reporting app will be able to provide richer information linking to photos, take location from the phone and provide information on support that a victim or witness may need.
- 12) Police Scotland must be contactable by text and Whatsapp for all people.
- 13) A no bystander approach to witnesses of hate crime must be encouraged as witnesses are likely to be in a better position to report a hate crime.
- 14) There needs to be training of frontline staff including police, public services and third sector staff on being sensitive to the victims based on trauma response as what may be perceived like a 'low level' incident has high impact on the victim.

- 15) Our focus group also suggested that there is also a need to improve awareness among certain communities that reporting hate crime is something which it is okay to do without there being fear of recriminations. Some communities can often feel when they are the victim of a hate crime that it is 'just something they need to put up with'. This perception needs to be altered, with a focus on ensuring that victims feel confident in coming forward to report hate crime, and that they will be supported when they do so.
- 16) Victims also need to be made to feel confident that when they come forward to report a hate crime, their reports will be treated with the seriousness with which they are due, that their reports will be investigated fully, and that action will be taken swiftly to bring the perpetrator to justice.
- 17) A large portion of hate crimes reported are hate crimes experienced by the Police, staff of health boards and public services. This further highlights the underreporting of hate crime. This shows the need for increasing awareness and eliminating the perceived barriers to reporting by victims. Our research and work has shown the following barriers to reporting hate crime based on the perception of victims and they need to be considered:
- i. Fear of reprisals.
 - ii. It's too trivial.
 - iii. Fear of not being believed by Police
 - iv. Fear of the Police.
 - v. Previous negative experience.
 - vi. It's too embarrassing.
 - vii. Mistrust of the police.
 - viii. Police won't do anything.
 - ix. Worried what happens next e.g. Court.
 - x. Cultural barriers – females not allowed to report on their own.
 - xi. Family member is a suspect.
 - xii. Could affect business (pub/shop/taxis etc.).
 - xiii. Labelled a 'grass'.
 - xiv. Victims feel it's their fault.
 - xv. No witness.
 - xvi. Will affect immigration status.
 - xvii. Not allowed legal aid
 - xviii. Have no time to report
 - xix. Might not be taken seriously because of mental health issues.
 - xx. Communication issues – First language, speech, BSL.
 - xxi. Accessibility issues.
 - xxii. Did not know a crime had been committed.
 - xxiii. Do not want family members / friends to know.
 - xxiv. Fear of sexual orientation being divulged.
 - xxv. Fear of being identified as Transgender.
 - xxvi. Media coverage if the case goes to court.
 - xxvii. Ability to come to Police (means, transport, confidence etc).
 - xxviii. Power to contact the Police, may be inhibited by the abuser.
 - xxix. De-sensitised.
 - xxx. Lack of knowledge of alternative reporting options
 - xxxi. Clinical Depression can leave individuals at such a low ebb emotionally that all their energy is channelled into keeping going.

xxxii. Contacting the police feels difficult.

- 18) CSREC would also refer you to the recommendations made in the report, SAREC Report – Why Me? Research into the experiences of those who have experienced hate crime in order to understand the kind of support services that they actually need. CSREC produced this report in partnership with other Regional Equality Councils in Scotland, ELREC, GREC and WSREC under the umbrella of Scottish Alliance of Regional Equality Councils (SAREC). The report that was released in March 2017 and can be found at:

https://www.csrec.org.uk/wp-content/uploads/2015/12/Why_Me_Hate_Crime_Research_Final_Report_March_2017.pdf

THIRD PARTY REPORTING:

We are a Third Party Reporting Centre and we have been able to see first-hand the value in having a system where victims who do not want to report directly to the police, those who need support in reporting to the police, those who want to meet the police at a neutral venue, and/or those who wish to report anonymously without going to the police can do so. In addition, we have found that when we report as a third party reporting centre it is encouraging that the police response is within a few hours whereas a police response to reports made through 101 can sometimes take days for officers to attend..

Third Party Reporting Centres allow hate crime victims who may otherwise be fearful or apprehensive about reporting directly to the police to come forward and report their experience while receiving supporting for the distress they may be experiencing as a result.

In theory Third Party Reporting is a good concept but in practice it is very disappointing. There are no budgets available to Third Party Reporting Centres to resource the services. We are an active Third Party Reporting Centre and we are able to support this only because fighting prejudice is core to our work.

In section 10.13 of the Independent Review of Hate Crime Legislation in Scotland – Final Report, Lord Bracadale refers to Police Scotland’s ‘Short Life Working Group’ on Third Party Reporting. CSREC was a part of this group that met twice in 2017 and no final report was shared with partners or those who attended. In his report Lord Bracadale says “Police Scotland have introduced an ‘activity monitoring form’ which is to be completed every time a TPRC offers support in relation to hate crime. This information will be collated on a quarterly basis to provide management with statistics on usage and on which protected characteristics feature in the use of the service” – As a Third Party Reporting Centre we can confirm that this is not being used and we are not aware of any other improvements that have been made to Third Party Reporting since Lord Bracadale’s report.

We have had extensive conversations with other Third Party Reporting Centres, our service users and members of the public. Our findings are:

- a) There is very low awareness of Third Party Reporting amongst the general population as well as likely victims. This extends to staff at Third Party Reporting Centres and frontline police staff. There must be a significant awareness campaign to increase awareness of Third Party Reporting Centres and logos of Third Party Reporting to be used in all hate crime campaigns.
- b) There are no resources provided to Third Party Reporting Centres. It is unreasonable to expect the almost 400 Third Party Reporting Centres in Scotland to operate a service without financial resources when the processing of each complaint and the support and admin task takes at least 4 hours of work.

- c) Third Party Reporting Centres must have access to a national pool of accessible services (interpreting, translation, BSL etc) to support those using their services.
- d) No statistics are kept on reports received from Third Party Reporting Centres so it is difficult to say what the effectiveness of hate crime reporting is. One Third Party Reporting Centre present at the focus group reported that they had only received three hate crime reports in the entire time that they have operated as a Third Party Reporting Centre.
- e) Besides financial resources Third Party Reporting Centres must be easily identified by standardised signage so victims and witnesses know where they can report it.
- f) A dedicated toll free number besides a local level liaison officer should be provided to each Third Party Reporting Centres to follow up on cases and liaise with Police.
- g) When reports are made through Third Party Reporting Centres staff of the Third Party Reporting Centre who were involved in making the report are called as witnesses to court and this can sometimes mean a few days of waiting in witness rooms for a hearing to take place. Staff of Third Party Reporting Centres must be given the flexibility allowed to Police Officers of being available nearby to attend court at short notice rather than wait in witness rooms endlessly as this waiting greatly impacts the service delivery of Third Party Reporting Centres which tend to be voluntary sector organisations that are stretched for time and resources.
- h) The experience of Third Party Reporting Centres in dealing with the police must be improved. We have had several cases where frontline officers attending to reports have not been aware of Third Party Reporting and therefore not understood why reports were being made anonymously.

Officers attending cases are not consistently informed about the following:

- 1) That the report is a Third Party Report
 - 2) That victims and/or witnesses have requested not to be contacted directly
 - 3) That victims and/or witnesses have special support needs and/or accessibility requirements
- i) At our focus group it was shared by other voluntary sector partners that people generally tend to feel confident in sharing their story with a person from an service or organisation who they are familiar with and/or shares their identity, and in that regard, it may be beneficial to look at adequately resourcing Third Party Reporting Centres.