

Briefing on Patrick Harvie's proposal for a Sentencing of Offences Aggravated by Prejudice (Scotland) Bill

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The Equality Network strongly supports Patrick Harvie's proposal for a Sentencing of Offences Aggravated by Prejudice (Scotland) Bill, and we very much hope that members of Parliament from all parties will support it.

The proposed bill is very simple, and just implements the central recommendation of the previous Scottish Executive's Hate Crime Working Group, which reported its recommendations in October 2004.

The bill would extend the current 'statutory aggravation' that applies when any criminal offence is motivated by malice and ill-will on grounds of race or religion, to cover offences motivated by malice and ill-will on grounds of disability, sexual orientation and transgender identity.

The proposed change to the law would ensure that where an offence is so motivated, and that is proved in court, the judge or sheriff will take the motivation into account as an aggravating factor in setting the sentence. It will also enable proper recording of such offences, and statistical monitoring, will increase consistency in the handling and sentencing of these offences, and will encourage reporting of hate crime to the police. It will also send an important public message about the unacceptability of prejudice and intolerance that is expressed as crime.

The previous Scottish Executive established the Hate Crime Working Group in June 2003, and that Group spent a year considering the evidence, and the options for legislative and non-legislative approaches to hate crime. The Group consulted publicly between January and April

¹ The Equality Network is a national network in Scotland of lesbian, gay, bisexual and transgender (LGBT) groups and individuals working for equality.

2004, receiving 175 consultation responses, which are analysed in detail in the Group's report, available here:

www.scotland.gov.uk/Publications/2004/10/20027/44264

The key recommendation of the Working Group, recommendation 1, was that the existing race/religion statutory aggravation be extended to cover offences motivated by malice and ill-will on grounds of disability, sexual orientation and transgender identity. This is exactly what Patrick Harvie proposes.

The Equality Network supports the proposed bill for the following reasons:

- Research shows that there is a very significant level of crime targeted at people because of their race, religion, disability or sexual orientation/transgender identity. A study in 2002 of lesbian, gay, bisexual and transgender (LGBT) people across Scotland found that one in four had been physically assaulted because they are LGBT, and studies in Glasgow and Edinburgh show even greater rates. Many victims do not report the offences to the police because they think they will not be taken seriously, or "it's just something that happens to someone like me".
- Anyone can be a victim of a hate crime, regardless of their identity. For example, a person may be assaulted outside a gay bar because they are assumed to be gay, or they may be out with LGBT friends, and caught in an attack for that reason. The statutory aggravation in the proposed bill is based on the motivation of the offender; it is not based on the identity of the victim. It would apply to an offence against anyone where the offence is motivated by disability-related or homophobic or transphobic malice, regardless of whether the victim is actually disabled or LGBT.
- Since the introduction of the statutory aggravation for racist crime in 1998, and for crime motivated by religious prejudice in 2003, the police, prosecutors and courts have been able to deal much more consistently and appropriately with those hate crimes. This bill will introduce the same consistent handling for the other identified prevalent hate crimes.

- The bill will enable proper recording of disability and sexual orientation / transgender identity related hate crimes, across the justice system. Exact statistics are now available for racist and religious-prejudice crimes, including statistics for reports to PFs, proceedings in court and conviction rates. No such figures are available for disability-related, or homophobic & transphobic crimes. Without a statutory aggravation and the recording that goes with it, we have no idea of the numbers of prosecutions or conviction rates for such offences. Clear recording of convictions as prejudice-aggravated will also enable repeat hate crime offenders to be identified.
- The legislation will send hugely important messages: to victims, that they should report the crime and it will be dealt with appropriately; to offenders, that crimes motivated by hate will be recognised as such and sentenced appropriately; and to society as a whole, that Scotland is a country that in the 21st century says no to prejudice and intolerance, especially when these result in criminal offences.
- The legislation will not introduce any new offence, nor will it introduce any new sentencing arrangement. It will simply bring consistency to the handling and sentencing of hate crimes of the types that research shows are high prevalence, bringing the handling of homophobic, transphobic and disability-related offences into line with racist and religious / sectarian offences.
- Experience with the race and religion statutory aggravations in Scotland has shown these to be effective. There are more than 4000 reports to PFs of racially aggravated offences, and around 700 of religious prejudice aggravated offences, per year. Most are proceeded against in court, and conviction rates are high. Similar legislation to Patrick Harvie's bill proposal was passed for England and Wales in 2003, with all-party support in the Westminster Parliament. It came into effect in 2005 and has been effective for handling homophobic and disability-related hate crime.

We would be very happy to provide further information or clarification, and can be contacted at en@equality-network.org or on 0131 467 6039.