

# Offences (Aggravation by Prejudice) (Scotland) Bill Briefing for stage 1 debate on 18<sup>th</sup> March 2009

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The Equality Network is a network of more than one thousand lesbian, gay, bisexual and transgender (LGBT) people and groups in Scotland, working for LGBT equality.

**We strongly support the Offences (Aggravation by Prejudice) (Scotland) Bill, and we urge MSPs to vote in favour of the general principles of the bill.**

## Background to the bill

The bill implements Recommendation 1 of the previous Scottish Executive's Hate Crime Working Group, which reported in autumn 2004, after 15 months consideration and consultation about how to address hate crime. The report of that Group is available here:

[www.scotland.gov.uk/Publications/2004/10/20027/44264](http://www.scotland.gov.uk/Publications/2004/10/20027/44264)

As recommended by that report, the bill extends the existing hate crime statutory aggravation provisions. At present, these statutory aggravations apply where it is proven that a crime is motivated by malice and ill-will on grounds of race or religion. The bill would extend that to motivations of malice and ill-will on grounds of disability, sexual orientation and transgender identity.

## Why is the bill needed?

Research shows that large numbers of disabled and LGBT people have experienced crime that happened simply because of malice and ill-will towards their disability, sexual orientation or transgender identity.

A 2002 survey of 924 LGBT people across Scotland<sup>1</sup> found that 23% had been subjected to physical assault, and 68% to verbal abuse, just because they were LGBT. Several other studies have shown similar, or in the big cities even higher, figures.

A 2004 survey of 158 disabled people in Scotland<sup>2</sup> found that 47% had experienced hate crime because of their disability. 31% had experienced verbal abuse, intimidation or physical attacks at least once a month.

Many victims of these crimes do not report the crime to the police, especially where the offences are less serious assaults or harassment or vandalism. LGBT people have told us that this is because they don't think anything will be done, or they think "this is just something that happens to LGBT people". Nevertheless, in the year 2007-8, Strathclyde Police recorded 216 homophobic crimes, Lothian and Borders Police 76, and Grampian Police 53. In 2006-7 there were 8 homicides recorded in Scotland with a homophobic motivation<sup>3</sup>.

In summary, the evidence shows that race, religion, disability, sexual orientation and transgender identity are grounds on which particular kinds of crime are prevalent. These are crimes motivated by malice and ill-will against that characteristic (or presumed characteristic) of the victim. The crimes are usually committed in public places by people not known to the victim, or against the victim's property (house, car, etc).

## What will the bill do?

The bill places on a statutory basis an aggravation, that can apply to any crime, of motivation by malice and ill-will on grounds of the victim's actual or presumed disability, sexual orientation or transgender identity. It parallels the existing statutory aggravations of motivation by malice and ill-will on grounds of the victim's actual or presumed race or religion<sup>4</sup>.

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<sup>1</sup> First out – report of the findings of the Beyond Barriers survey of LGBT people in Scotland, Beyond Barriers, 2003

<sup>2</sup> Hate crime against disabled people in Scotland, Disability Rights Commission and Capability Scotland, 2004

<sup>3</sup> Homicide in Scotland, 2006-7, Scottish Government Statistical Bulletin, December 2007, paragraph 6.9

<sup>4</sup> Section 96 of the Crime and Disorder Act 1998 (race) and section 74 of the Criminal Justice (Scotland) Act 2003 (religion)

The bill does not introduce any new offence. The new statutory aggravations in the bill would be applied to existing offences, whether common law or statutory offences.

The common law already allows aggravating factors to be libelled and, if proven, to be taken into account in sentencing. However, this is not happening consistently or transparently for hate crimes against disabled and LGBT people, just as it was not happening consistently or transparently for racist and religious hate crime before those statutory aggravations were introduced. Nor is there any system for recording the use of such common law aggravations.

The Equality Network believes that placing these aggravations on a statutory basis will:

- introduce greater consistency in the handling of hate crimes. This will include greater consistency across Scotland, in the handling of the crimes by police, procurators fiscal and the courts, and, ultimately, in sentencing. It will also ensure greater consistency across the different types of hate crime, since the statutory aggravation system will apply in the same way to them all.
- ensure that the courts always have the evidence of the malice and ill-will motive presented, so that, if proven, the court can take it into account in sentencing. The bill leaves the decision on an appropriate sentence entirely to the discretion of the court, but requires the reasons for the sentence to be stated and recorded.
- ensure proper recording and monitoring of the levels of these hate crimes. Records and statistics are available for the handling of race and religious hate crime, by the police, procurators fiscal, and courts, because of the statutory aggravations for those crimes. But no such records are possible at present for other hate crimes.
- encourage more victims of hate crime to report offences to the police. Publicity around the bill and around the use of its provisions, especially in sentencing, will help ensure that people have confidence that these crimes will be dealt with appropriately and sensitively, with the hate element taken into account.

- send a message, not just to victims that crime should be reported, but also to perpetrators, that hate crime will be recognised and sentenced appropriately, and to society as a whole, that Scotland is a country that says no to prejudice and intolerance, and in particular when they are expressed as criminal offences.

## Is the bill fair?

The statutory aggravations introduced by the bill must be proved in court, by evidence of the same quality as required in any criminal case. The bill provides that one source of evidence is sufficient to prove the aggravation - this is consistent with the existing common law rule for any aggravating factor. The base offence to which the aggravation applies must of course also be proven, by corroborated evidence, for there to be any conviction.

It has been suggested that the bill could create a hierarchy of victims, with disabled and LGBT people protected better than others. This is not the case. The aggravation is based on the motivation of the accused, not on the identity of the victim. Non-disabled, and non-LGBT people can be the victims of these hate crimes. There have been cases for example in Edinburgh of heterosexual people being physically assaulted walking in areas near gay venues, because they were assumed to be gay. The aggravation would apply in such a case. Conversely, a crime against a disabled or LGBT person which was not motivated by prejudice (eg a straightforward robbery), would not be aggravated under this bill.

It has been suggested that the bill might impact on freedom of speech, preventing people from expressing negative views about homosexuality. The Equality Network strongly supports freedom of speech. The bill does not create any new offence, so everything that is legal now will continue to be legal. It will, quite rightly, continue to be legal for people to express their views on homosexuality, including negative views, and including those who are expressing their religious beliefs. Similarly, the existing statutory aggravation for religious hate crime has not in any way prevented people from expressing their views about different religions. The Lord Advocate has indicated that, if the bill passes, she will issue guidance to the police on its application, and the Equality Network welcomes that.