The Offences (Aggravation by Prejudice) (Scotland) Bill

Briefing on the bill

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The Offences (Aggravation by Prejudice) (Scotland) Bill is a member's bill introduced in the Scottish Parliament by Patrick Harvie MSP on 19th May 2008. The bill has the support of the Scottish Government, who assisted with the preparation of it. Details of the bill are available here:

www.scottish.parliament.uk/s3/bills/09-AggPrej/index.htm

The Equality Network strongly supports this bill. The bill is very simple. It implements the central recommendation of the previous Scottish Executive's Hate Crime Working Group, which reported its recommendations in October 2004.

What does the bill do?

The bill addresses the problem of hate crime – crime that is motivated by malice and ill-will towards people simply because of who they are: their race, religion, disability, sexual orientation or transgender identity.

Scots law currently includes 'statutory aggravations' for race and religion hate crime. These are in effect labels that can be attached to the charge for a criminal offence, alleging that the offence was motivated by malice or ill-will on grounds of race or religion. The bill would extend that labelling system to cover offences motivated by malice and ill-will on grounds of disability, sexual orientation and transgender identity. In other words, to cover disability-related, homophobic and transphobic hate crime.

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

The key effect of the statutory aggravation labelling is that it identifies the alleged offence as a hate crime. If the motive of malice and ill-will is proved in court, the judge or sheriff will take the motivation into account as an aggravating factor in setting the sentence. That might mean a heavier sentence, for example, or it might mean a specific choice of community sentence to suit the nature of the offence. The choice of sentence remains entirely up to the judge or sheriff.

The statutory aggravation system also enables proper recording of hate crime. It allows statistical monitoring of how much hate crime is reported, and how it is dealt with by police, prosecutors and courts. It increases consistency in the handling and sentencing of these offences. By demonstrating that the justice system recognises the nature of hate crime and deals with it appropriately, the statutory aggravation system encourages more people to report hate crimes to the police. It also sends an important public message about the unacceptability of prejudice and intolerance that is expressed as crime.

Where does the bill come from?

The previous Scottish Executive established the Hate Crime Working Group in June 2003. 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 2004, receiving 175 consultation responses. These 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 the bill does.

Patrick Harvie MSP introduced the formal proposal for this bill in November 2007. By December 2007, 45 MSPs had signed up in support. In January 2008, the Scottish Government announced their support for the bill, and have been fully involved with the drafting.

Section 1 of the bill establishes the statutory aggravation for offences aggravated by prejudice on grounds of disability. Section 2 deals with offences aggravated by prejudice on grounds of sexual orientation or transgender identity. It uses the existing well-established legal definition of sexual orientation, and an inclusive definition of transgender identity that has been developed in consultation with transgender groups.

Why is the bill needed?

The Equality Network strongly supports the 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. Studies in Glasgow and Edinburgh have shown even greater rates. Many victims do not report the offences to the police because they fear they will not be taken seriously, or think “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 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

procurators fiscal, proceedings in court, and conviction rates. No such figures are available for disability-related, or homophobic and 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 bill 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. It brings 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 procurators fiscal 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 the bill 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.

- The bill is closely modelled on the existing Scottish legislation for the race and religion statutory aggravations[2]. The definition of sexual orientation is the one already used in anti-discrimination law. We fully support the definition the bill uses for transgender identity, which was developed by the Scottish Government following consultation with transgender and LGBT groups.

[2] Section 96 of the Crime and Disorder Act 1998 (race) and section 74 of the Criminal Justice (Scotland) Act 2003 (religion)