

Sentencing of Offences Aggravated by Prejudice (Scotland) Bill – some answers to questions

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- Isn't it wrong to make something illegal only because the victim is disabled or gay?

The bill doesn't make anything illegal. It applies only to the way that existing crimes are sentenced, making sure that if the crime is motivated by hate, the judge knows about that when setting the sentence. The judge then chooses the appropriate sentence.

- An assault or other crime is just as bad whoever the victim is – why should some crimes be dealt with differently?

Research shows that some groups of people are more likely to be victims of certain kinds of crime, motivated by prejudice against those people. The evidence shows a significantly increased rate of crime based on prejudice on grounds of race, religion, disability and sexual orientation. Other people can fall victim to these hate crimes too, for example if their religion or sexual orientation is wrongly identified by an attacker, or if they are just in the wrong place at the wrong time (for example out with gay friends).

Research also shows that crimes which target someone based on hatred of a core part of their identity (their race, sexual orientation etc) can have a particularly bad psychological effect on the victim and on their life afterwards. The high rate of hate crime also undermines attempts to make Scotland a tolerant country in which we all get along in mutual respect.

It is common for the law to handle particular problem crimes in specific ways – the domestic abuse court in Glasgow is one example. This bill addresses the particular problem of hate crime.

- Why should the sentence be heavier for a hate crime?

The bill doesn't say that the sentence should be heavier – it says the court must take the hate motivation into account in setting the sentence. It's up to the judge to decide what is appropriate. In some cases a heavier sentence may be appropriate to reflect the effect on society of a hate crime, or the fact that the offender is a repeat hate crime offender, for example. In other cases, an appropriate community sentence might be chosen which will help reduce hostility and prejudice.

- Why should the sentence be different for a crime just because the victim is gay or disabled? Isn't that making disabled people and gay people into specially protected groups?

The bill is not about the identity of the victim – it's about the reason the offender did the crime. Anyone can become a victim of a hate crime, for example a heterosexual person can be victim of a homophobic hate crime because they are in the wrong place at the wrong time, or are mistakenly thought to be gay.

- Why should the motivation of the offender make a difference to the sentence – isn't that making certain kinds of thought into a crime?

The bill only applies where a crime has been committed, for example assault or vandalism. Holding prejudiced views is not illegal and this bill certainly does not change that – people are entitled to hold and to express their views.

The bill applies where prejudice turns into actual crime. After a person has been found guilty of a crime, the judge already takes a wide range of factors into account in choosing an appropriate sentence. These include the evidence about the effects of the crime, and about the motives and background of the offender. The bill ensures that if the crime is a hate crime, that is taken into account in sentencing also.

- Can't the courts already take a hate motive on any grounds into account in sentencing an offender, under the common law of Scotland?

In theory this may be possible, but it simply has not been happening for disability-related and homophobic hate crime. The police, prosecutors and courts only started dealing consistently and more appropriately with racist and religious hate crimes when sentencing legislation similar to this bill recognised the existence of those crimes and gave them a specific tool to do that. This bill will introduce the same consistent handling for other hate crimes.