

Response ID ANON-R7GH-1ZSS-9

Submitted to **Consultation on Scottish Hate Crime Legislation**

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Part One – Consolidating and Modernising Hate Crime Legislation

1 Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?

No opinion

Please tell us why::

It is Sacro's experience that even low level hate crime and sectarian offending can have a negative impact on individuals and communities, inciting division and fuelling tensions with the potential of escalation. Activities which are perceived as harmless, such as banter, sectarian chanting at football matches and inappropriate 'joking' feed into higher level hate offending and as such need to be covered by legislation. Further, the aggravation model hinders the ability to use Diversion from Prosecution options, even for low level or first time offenses.

However, Sacro also understands that the statutory aggravation model might be the most 'realistic' way of prosecuting hate crimes in Scotland. The reasoning behind this is that should 'low-level' behaviours be prosecuted in their own right, this might actually fuel further division and hostility against groups protected by this very legislation. This particularly refers to individuals and groups subscribing to traditional or conservative beliefs who might feel that their freedoms or speech or expression are unreasonably restricted by this type of legislation, which can be viewed as promoting the rights of people who are seen by such groups as 'undeserving' of such rights.

2 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'?

Yes

Please tell us why::

Sacro agrees with the proposed change in language in this legislation. By modernising the terms used, Sacro believes that this legislation will become considerably more accessible to a wider section of the population more likely to be affected by Hate Crime, for example people for whom English is not their first language, or who might be diagnosed as intellectually challenged.

3 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?

Unsure

Please tell us why::

Sacro believes that it is possible that changing the language of the thresholds will affect how the thresholds are applied. One possible consideration is the use of the term 'to demonstrate'. For a number of individuals for whom English is not the first language, the verb 'to demonstrate' often involves the ability to produce tangible evidence of an act such as pictures, video, screenshots, letters, or otherwise. As such, this particular term might deter people from reporting hate crime and hate incidents if they are unable to produce this type of tangible evidence. Furthermore, a concern that needs to be taken into consideration is the threshold at which a particular behaviour can be deemed to 'demonstrate' hostility in a practical context or in a courtroom setting. For the aforementioned reasons, the term 'evincing hostility' might be more appropriate in maintaining an appropriate level of threshold application.

4 Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?

Yes

Please tell us why::

Sacro recognises that people who identify as 'intersex' comprise a distinct category from people who identify as transgendered. Whereas transgendered individuals' gender does not match the physical appearance of their sex/reproductive organs, intersex individuals are born with ambiguous genitalia that do not traditionally fit descriptions of male/female dichotomy. From this distinction alone, Sacro believes that for the sake of accuracy, clarity and precision, it would be prudent to establish 'intersex' as a separate category.

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

Yes

Please tell us why::

The current definition of intersexuality as part of transgender identity is inaccurate and does not correspond to reality. Additionally, it is important to recognise 'non-binary' under this category, due to increasing numbers of individuals who, regardless of their biological assignation at birth choose not to identify as either male or female.

6 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?

Please tell us why::

Sacro concurs that the language currently used in Scottish hate crime legislation in relation to transgender identity and intersex is outdated and can be

considered irrelevant or not applicable by people who would identify within these categories.

Specifically, Sacro would discourage the use of the term 'transsexualism' as this has often been termed as offensive by members of the LGBT+ community. Instead, Sacro would propose the use of the terms 'transgender' (identifying as a gender non-compliant to one's physiological sex characteristics); 'intersex' (individuals with ambiguous or non-dichotomous physiological sex characteristics); 'non-binary' (individuals who, regardless of physiological sex characteristics choose to identify as neither male or female); and 'cross-dressing' (individuals whose dress choices might not conform to traditional dress for their sex).

Part Two – New Statutory Aggravations

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

Yes

Please tell us why::

Sacro welcomes the proposal of introducing a statutory aggravation for gender hostility, insofar as this provides protection for the gender expression of any individual. This includes cis- and transgendered men and women, non-binary, intersex people, and individuals who choose to conform or not conform to express their gender in socially prescribed or 'acceptable' ways.

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

Unsure

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

Sacro believes that any hate incident or hate crime against women is unacceptable and should be treated as such by law. Sacro also adopts a gendered understanding of the systems which disproportionately disadvantage women and girls in society and actively works to combat those through projects and services recognising and responding to the specific needs of women and girls (for example Another Way, supporting women involved in or at risk of becoming involved in sex work). Misogyny is the expression of the inequality between men and women which is ingrained in societies worldwide.

In spite of this recognition, Sacro believes that a standalone offence for misogynistic harassment would excessively complicate the justice process, while risking portraying all women as (potential) victims and all men as (potential) perpetrators. Further, this type of legislation would risk alienating transgendered women, while it might also create further divide in crimes that may appear to be misogynistic while in fact they are not, such as Female Genital Mutilation (FGM).

In summary, Sacro proposes that whereas gender hostility should become a statutory aggravation, this should be sufficient to cover any hate crime or hate incident motivated by misogyny.

9 Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)?

Yes

If you agree please tell us why.:

Sacro stands firmly against any type of violence against women and girls and is committed to providing support services tailored to the needs of vulnerable women in the community who are affected by gender-based violence. The organisation would support a non-legislative approach that raises awareness and educates the wider public around what constitutes misogyny, including 'low level' behaviours that serve to belittle, shame, limit women's freedom or control the expression of their gender. With regards to specific behaviours to be covered by this legislation, Sacro is happy to defer to the knowledge and expertise of specialist organisations in this area.

Sacro recognises that the abovementioned behaviours do not comprise an exhaustive list of behaviours that could be identified as 'misogynistic', and there is considerable overlap between misogynistic behaviours, attitudes and other criminal behaviours such as domestic abuse, sexual offences and honour-based violence. The organisation is committed to providing support to women who might have been affected by such behaviours and to encourage reporting of any harassment or abuse stemming from misogynistic attitudes, however, Sacro would also defer to the expertise of specialist organisations addressing violence against women and girls for additional information in this area.

Please provide examples of the types of behaviour that could be captured by this offence.:

As above, Sacro would defer to specialist organisations in this area to define types of behaviour that would be captured by this offence.

10 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)?)

No

If you agree, please tell us why.:

As above, Sacro supports options A and C.

Please provide examples of the types of behaviour that could be captured by this offence.:

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

Yes

Please provide details.:

Sacro agrees that, as age is a protected characteristic, any offence committed against a person because of their age should be protected by hate crime legislation.

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

Yes

Please give your reasons for your response:

Sectarianism is a significant issue in Scotland. It should be recognised as such and this recognition should be reflected in available legislation.

13 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?

Yes

Please give your reasons for your response.:

14 If yes to question 12, do you think a standalone offence relating to sectarianism should be created and added to Scottish hate crime legislation?

Yes

Please give your reason for this:

15 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?

Yes

Please give your reason for this.:

16 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:

Sacro has already provided evidence on this matter and has no further comment at this time.

17 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::

Sacro believes that although legislation alone would not bring an end to sectarianism, legislation will nevertheless send a strong message that sectarianism is not tolerated in Scotland. In order for this issue to be addressed, Sacro would propose wider educational programmes for primary and secondary school-aged children, as well as media campaigns similar to those against drink-driving.

18 Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?

No

Please provide details::

Although political beliefs can feed into sectarianism and some political entities (for example asylum seekers and refugees) are more likely to be victimised by hate crime, Sacro recognises that introducing this new statutory aggravation runs the risk of potentially undermining the existing legislation and its emphasis on protected characteristics. However, Sacro would also welcome the wider publicity of the exact categories covered by Scottish hate crime legislation such as nationality and citizenship, and the justice system's commitment to protecting characteristics which are inherent in people's identities.

19 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)?

No

Please provide details::

Sacro believes that any approach to effectively tackle hate crime needs to address the attitudes that fuel hostility against potential victims' inherent characteristics. It is the organisation's view that increasing the number of groups or characteristics protected by hate crime legislation runs the risk of undermining the existing categories covered by the legislation.

20 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?

Yes

Please provide details::

Sacro recognises that religion is a protected characteristic covered by Scottish hate crime legislation. However, as a diverse organisation supporting individuals from a wide range of religious, cultural, and ethnic backgrounds, Sacro also recognises that there is often hostility and malice between individuals belonging to

the same religious, ethnic or cultural group. Sacro believes that in order to uphold equality, legislation must be applied as evenly as possible, and it must recognise that hatred and hostility can, and often is, directed between individuals of the same religious, ethnic or cultural group. In fact, the organisation's anti-sectarian service, 'STOP' has extensive experience working with hate crime offenders where the crime has been intra religion. As such, the organisation proposes the even application of the law where the key factor in assessing whether any offence is a hate crime does not depend on religion (or ethnicity) alone; instead, what needs to be explored is whether hostility and malice on the basis of any aspect of religion was a motivating factor in the commission of a crime at all.

21 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?

Yes

Please provide details::

Sacro agrees that aggravations in Scottish Hate Crime Legislation should apply regardless of the number of protected characteristics that victims of hate crime are presumed to have. In the experience of Sacro and particularly services engaging with diverse communities such as Fearless and Bright Choices, there is often an overlap of protected characteristics of victims of hate crime. For example, Islamophobic hate crime incidents tend to disproportionately affect women of colour, and tend to involve the violent removal of hijab (headscarf worn by Muslim women) using physical force. It is the view of Sacro that such incidents are motivated by the victim's gender, religious identity and their ethnicity concurrently, and all of these characteristics should be considered in the commission of a hate crime. This would be a significant step towards recognising the intersectionality of multiple protected characteristics as well as the significant vulnerability of people who possess more than one of those characteristics.

22 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)?

Yes

Please tell us why::

Sacro believes that any criminal activity motivated by hostility towards a particular group, legal ramifications should apply evenly, regardless of whether the victim belongs, is assumed to belong or associates with a particular group towards whom the hostility is directed.

Part Three – New Stirring Up of Hatred Offences

23 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?

Yes

Please provide details::

Sacro recognises that stirring up of hatred has significant negative, and at times irreparable effects on individuals, families, communities and the wider society. In addition to the impacts already outlined by Lord Bracadale, Sacro and partner voluntary organisations has also witnessed the by-product of stirring up of hatred in people becoming progressively more reluctant to report hate crime due to the fear that they will not be taken seriously or that there are likely to be repercussions from perpetrators.

However a further key consideration should be the threshold at which an action is considered to be 'stirring up of hatred' and how perpetrators can be identified with a view to being held accountable for such offences. During recent years, Scotland and the UK more widely has seen an increase in xenophobic content both in online and printed media, including social media. Although such content does not specifically qualify as a 'call to action' against particular groups, headlines such as '1 in 5 Brit Muslims sympathy for jihadis' (The Sun, November 23, 2015) can be considered as contributing to a sentiment of fear, hostility and hatred towards particular groups.

Sacro believes that stirring up of hatred has a catastrophic impact on the cohesion of communities and on social fabric as a whole and has the capability of contributing to offending behaviour and serious crime. However to address this effectively, a holistic approach is required where the threshold for consideration of an action as a 'stirring up of hatred' offence is explicitly and specifically defined, and is applied equally to individuals, organisations and institutions found culpable.

24 Do you agree with Lord Bracadale's recommendation that any new stirring up hatred offences should require that the conduct is 'threatening or abusive'?

Unsure

If not, what do you think the threshold should be for the offence to be committed?:

Sacro recognises that threatening or abusive conduct against any individual or group of individuals is unacceptable under any circumstances. However in the experience of the organisation, particularly services such as 'STOP' (Sacro Tackling Offending Prejudices), Fearless (support for any male/LGBT+ victim of domestic abuse) and Bright Choices (support for people of Black and Minority Ethnic backgrounds affected by Honour Abuse) even 'low level' behaviours such as 'jokes' or 'banter' can contribute significantly to the development of hostile attitudes and behaviours against particular groups. This can also be demonstrated by the Allport Scale of Prejudice (available here: <https://goo.gl/jfyvQk>)

However, once again Sacro recognises the risk that criminalising such low level behaviours can also be counterproductive. It is possible that individuals already subscribing to such discriminatory views but who have not committed relevant offences might feel that their freedom of speech is restricted, thus increasing the likelihood of committing a hate crime; or that such sentiments of 'freedom of speech' limitation might drive further division between those likely to commit offences and those protected by the legislation.

25 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?

Unsure

Please provide details::

Sacro recognises that actions do not necessarily need to be threatening in order to incite hostility and to be damaging to community/social cohesion. However, defining 'insulting' acts as criminal offences runs the risk of undermining the purpose of this legislation and potentially overwhelming statutory services with unfounded complaints.

Instead, Sacro would propose redefining what behaviours can be considered 'abusive': any type of joking, banter or chanting has the potential to be abusive when directed specifically to a group vulnerable to hate crime offences. Therefore the organisation's proposal would include identifying such behaviours as 'abusive' where they have the potential to ridicule, demean or limit the freedoms of specific social groups.

26 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?

Yes

If you answered yes to the previous question, do you have any comments on what should be covered by any such 'protection of freedom of expression' provision?:

Sacro believes that effective legislation is measured in its approach to both protect individuals vulnerable to hate crime while also ensuring that other fundamental freedoms are not oppressed or damaged. However, the organisation also recognises that the boundary between freedom of expression and the incitement of fear and hostility can often be difficult to define. With specific regard to hate crime, Sacro believes that there is a need for legislation to be very explicit and specific in its definition of where the boundary between freedom of expression lies in relation to expressions intended to evoke hostility and malice towards a particular group.

However, Sacro is also happy to defer to the expertise of specialist organisations with regards to this question.

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

Yes

Please provide details::

Sacro agrees that current hate crime legislation in Scotland is adequate in addressing online conduct.

Part Four - Exploitation and Vulnerability

28 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?

Unsure

Please provide details::

Sacro believes that there should be legal ramifications for any individual who offends against a vulnerable individual. However, there are concerns around the definition of 'vulnerability' as well as the fact that all individuals at any point in their life can identify as 'vulnerable'. In the experience of Sacro services, vulnerability can be defined quite clearly by legislation, and yet often individuals who are vulnerable might not come across as such-both to statutory services, as well as to individuals who offend against them. An example of this comes from victims of Honour-Based Violence and Forced Marriage: on many occasions, such individuals might not be identified as vulnerable, and yet their life experience might have been such that it has rendered them vulnerable. For example, young women who have been forced into a marriage might not be covered by child protection legislation and may not be identified as vulnerable adults; however the level of control they have experienced through their families or communities might have severely limited their essential life skills (for example money management; knowing how to use public transport; no socialisation with peers) that renders them vulnerable to a number of possible offences against them, including hate crime offences.

29 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?

Please provide details::

Sacro is happy to defer to specialist organisations for a comprehensive response to this question.

Part Five – Other Issues

30 Do you think that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should be repealed?

No Opinion

Please provide details. :

Sacro would defer to specialist organisations for a comprehensive response to this question.

31 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::

Sacro would defer to specialist organisations for a comprehensive response to this question.

32 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?

Yes

Please provide details::

Having taken Lord Bracadale's recommendation into consideration, Sacro believes that the extent to which the statutory aggravation altered the length of sentence should continue to be stated in open court. The reason for this is to ensure and improve public understanding of the legislation, as well as to send a strong message that hate-motivated offences are not tolerated in Scotland. Additionally, Sacro believes that a statement to this effect in open court might support to reassure victims of hate crime that they are respected and supported by the legal system.

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

Yes

Please provide details::

Sacro agrees that in light of the support currently available to victims of hate crime offences, no further legislative changes are required.

34 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?

Unsure

Please provide details::

Sacro has no further comment on this issue.

35 What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?

Comments::

Sacro has no further comment on this issue.

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Sacro

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

Do not publish response

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

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: