February 2019

**Consolidating and Modernising Hate Crime Legislation**

**Scottish Government**

**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?**

Yes

**Please tell us why::**

Age Scotland supports Lord Bracadale’s recommendation that statutory aggravations should continue to be the core feature of how hate crimes are prosecuted in Scotland. We agree this is a useful way to highlight the hate crime element of a crime.

**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::**

Age Scotland believe that this updated language would increase public understanding of what constitutes a hate crime, and agree that ‘evincing malice’ can cause confusion, and prevent victims of hate crime seeking justice. This will make the language of the legislation more accessible than it currently is.

**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

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

Unsure

**Please tell us why::**

We would look to other organisations to comment on this, as this is not an area of Age Scotland’s expertise.

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

Unsure

**Part Two – New Statutory Aggravations**

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

Unsure

**Please tell us why::**

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

Unsure

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

Unsure

**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)?**

Unsure

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

Yes

**Please provide details::**

As the national charity for older people, we believe it is important that a new statutory aggravation on age hostility should be introduced to Scottish hate crime legislation. We know from our work with older people throughout Scotland that they may feel discriminated against because of their age, and whilst there is separate Equality legislation it is important that older people are also recognised as a group who may experience hostility due to their age; indeed, as may younger people. This aggravation will help to underline that there is no place in Scottish society for age hostility, as well as give confidence older people who experience age hostility to report this to the police.

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

Unsure

**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?**

Unsure

**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?**

Unsure

**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?**

Unsure

**Comments::**

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

Unsure

**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 Opinion

**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?**

Unsure

**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::**

Age Scotland believes protected characteristics should be covered by statutory aggravations in Scottish hate crime legislation, even if they are just presumed.

**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::**

Age Scotland believes statutory aggravations should apply where people have an association with a particular identity. This will ensure that if a person who has a

particular identity is targeted because of it, they will be protected by hate crime legislation.

**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::**

Age Scotland supports this proposal and believe it will help to ensure there is consequences for those who encourage hatred of a particular group but do not

perpetrate abuse directly themselves.

**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’?**

Yes

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

**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::**

**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

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

Unsure

**Please provide details::**

**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?**

Yes

**Please provide details::**

We know from calls to our Freephone helpline which provides information, friendship, and advice that many older people are targeted by fraudsters due to their perceived vulnerability. This can be particularly upsetting for people with dementia, their family, and unpaid carers. For example, our research found that over 400,000 older people in Scotland were targeted by scammers in 2017. Research from Citizen Advice Scotland estimates that on average people aged 75-79 lose £4,500 to scams, and that people aged 61-80 are more likely to be victims of investment fraud.

It is important to note, however, that not all older people are vulnerable, and the language of the any such aggravation should not stigmatise older people as helpless in need of protection, rather punish those who target older people because of a perceived vulnerability.

**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::**

Age Scotland firmly believes that such a statutory aggravation should be applied to, but not limited to, the following circumstances:

• Financial abuse, from strangers and family members

This should include doorstep crime. By adding a further offence to this behaviour the Scottish Government have an opportunity to tackle the fact that 7 in 10 older people in Scotland are too embarrassed to contact the organisations scammers have been impersonating, or sharing details with the police so that these criminals are held accountable. We also know that due to the prevalence of loneliness and isolation, that 200,000 older people in Scotland go half a week or more without human contact means. We have heard anecdotally of older people who prefer to knowingly talk to scammers on the phone just so they have someone to talk to. Someone who takes advantage of this vulnerability should be held accountable and a statutory aggravation can help to bring justice to victims, and to act as a deterrent to would-be scammers.

Older people may also fall victim to financial abuse from their own family members, such as their children or grandchildren, or people supposed to be providing support and services who are financially grooming older people to leave them money in their will. These people are in a position of trust and often power especially when the perpetrator has caring responsibilities. This sort of exploitation of someone’s vulnerability for financial gains should not be taken lightly.

• Robbery, including violent crime

When an older person is targeted for what can be a violent crime such as robbery because of their perceived vulnerability, for example, due to being frail or unsteady on their feet this should be covered by such an aggravation.

**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. :**

**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?**

Unsure

**Please provide details::**

Whist we understand the policy intention behind this we do not feel we are experts in this field and are able to comment.

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

Unsure

**Please provide details::**

Whilst Age Scotland does provide a Freephone helpline, we are not experienced in providing support to victims of hate crime and therefore feel other third sector

organisations are better qualified to answer this.

**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

**Want to find out more?**

As Scotland’s national charity supporting people over the age of 50, Age Scotland works to improve older people’s lives and promote their rights and interests. We aim to help people love later life, whatever their circumstances. We want Scotland to be the best place in the world to grow older.

Our Policy, Communications and Campaigns team research, analyse and comment on a wide range of public policy issues affecting older people in Scotland.

Our work is guided by the views and needs of older people themselves.

**Further information**

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