Background to proposal
1. In line with Rule 9.14.3 of Standing Orders, my draft proposal for a Sentencing of Offences Aggravated by Prejudice (Scotland) Bill was lodged on October 2nd 2007. The proposal is for a bill –

to require the aggravation of an offence by prejudice on grounds of disability, sexual orientation or transgender identity to be taken into account in sentencing.

2. Section 96 of the Crime and Disorder Act 1998 requires the aggravation of an offence by racial prejudice to be taken into account in sentencing. Following publication of the report of the Scottish Executive's Working Group on Religious Hatred, in December 2002 Donald Gorrie MSP proposed an amendment to the Criminal Justice (Scotland) Bill, to require the aggravation of an offence by religious prejudice to be taken into account in sentencing. The amendment became section 74 of the Criminal Justice (Scotland) Act 2003.

3. Robin Harper MSP lodged a similar amendment to the same bill, covering offences aggravated by prejudice on other grounds, including disability and sexual orientation. The amendment was not accepted by the Executive, but at stage 3 of the bill (19th Feb 2003), the Justice Minister announced the establishment of a Working Group on Hate Crime to examine the law on offences aggravated by prejudice on other grounds.


5. On 8th October 2004, the Executive published the Working Group’s final report. Recommendation 1 of the report was that legislation on sentencing be introduced as soon as possible, similar to the existing measures for race and religion, for crimes aggravated by malice and ill-will based on disability, sexual orientation, or transgender identity.

6. On 6th September 2005, in a debate on the Scottish Executive’s legislative programme, the Justice Minister said, “We intend to clamp down on extreme pornography; to strengthen the laws that deal with hate crime; and to tackle knife crime.” On 27th April 2006, in reply to my oral question, the Deputy Minister for Justice said, “In the debate on the legislative programme on 6 September last year, I announced that we intend to strengthen the laws that deal with hate crime. That remains our intention.
The Scottish Executive is committed to tackling prejudice in all its forms, as we believe it has no place in our society.”

7. On 29th June 2006, in reply to my oral question, the First Minister said, “As we set out in last week's legislative statement, measures on hate crime will not be included in the sentencing bill. However, this Government is committed to tackling prejudice in all its forms. We will look at that again once we receive the Sentencing Commission for Scotland report on this issue in August.” No further progress was made on the issue during session 2 of the Parliament.

8. Commitments to legislate as recommended by the Working Group on Hate Crime were included in the May 2007 election manifestos of the Scottish National Party, the Liberal Democrats, and the Green Party.

Statement of reasons
9. In relation to my draft proposal for this Bill, I do not consider that further consultation is required for the following reasons.

10. The Working Group on Hate Crime comprised representatives of the Executive, Crown Office, Police, and organisations representing people facing prejudice on grounds of age, disability, gender and sexual orientation (www.scotland.gov.uk/Topics/Justice/criminal/17915/10697). Over the course of a year, it met with a number of other organisations, consulted publicly, considered the evidence on the prevalence of hate crimes, examined approaches to hate crime in other countries, and discussed in detail legislative and non-legislative approaches.

11. The consultation carried out by the Working Group (www.scotland.gov.uk/Topics/Justice/criminal/17915/10744) focussed specifically on whether legislation is needed in this area, and, if so, what form that legislation should take. The consultation paper discussed clearly a number of options for legislation. 1000 copies were printed and distributed, and the paper was also available on the web. In addition, an EasyRead version of the consultation paper was published. The consultation period was just over 13 weeks.

12. 102 responses were received to the main consultation paper, and 73 more to the EasyRead version. 101 responses were from individuals, 14 from local authorities, 8 from criminal justice organisations, and the remainder from community organisations. The report of the Working Group (www.scotland.gov.uk/Publications/2004/10/20027/44264) analysed these responses in detail.

13. A large majority of respondents to the main consultation paper said that legislation was needed, and that it should take the form of a statutory aggravation. There was clear preference for an aggravation covering malice and ill-will on grounds of disability, sexual orientation and transgender identity. The final recommendation of the Working Group was
based both on this consultation, and on the other evidence gathered by the Group.

14. Since the consultation was conducted, there has been no significant change in the law or other circumstances relating to hate crime in Scotland. Additional evidence of the value of the proposed legislation is now available from experience with similar legislation introduced in 2003 in England and Wales, and from further research conducted in Scotland (“Community Safety Partnerships’ Policies in Relation to Disabled People and LGBT People”, Disability Rights Commission Scotland, 2007).

15. I do not consider that a further consultation exercise need be conducted on my proposal for a Bill for the reasons set out above. I believe that there is ample published, recent and pertinent information to help test, develop and refine my specific proposal and proceed with the development of the Bill's policy and its eventual production.

Conclusion
16. I therefore request the committee consider this statement of reasons and confirm that it is satisfied with the reasons for not consulting further on the draft proposal.

Patrick Harvie MSP
2nd October 2007