

## Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2047](#): Make false allegations a hate crime, lodged by Frances Anne Nixon

### Brief overview of issues raised by the petition

The [petition](#) calls for the Scottish Government to consider legislation to ensure that malicious false allegations are considered hate crimes and dealt with as such.

A [similar petition](#) was lodged by the petitioner in 2019, which was considered by the previous Public Petitions Committee on 12 September 2019.

### Existing offences and legislation

#### *False accusation*

A false accusation of criminal behaviour may itself amount to a crime under the common law. Gordon's Criminal Law notes that it is "a crime falsely to accuse someone else of a crime" (para 55.36).<sup>1</sup> Whilst the Stair Memorial Encyclopaedia states that it is "a crime at common law to make a false accusation of a crime against a person" (para 494).<sup>2</sup>

Police Scotland is able to charge those who make these false allegations with the crime of [false allegation/accusation](#) (p 372). The definition of this states that "any person who makes a false accusation of crime against a named individual commits a crime at common law."

#### *False reporting*

Making a false report to the police may also amount to a crime under the common law, even if it doesn't involve accusations directed at a particular individual. The Stair Memorial Encyclopaedia notes that:

"The crime of false accusation discussed above involves accusing a named person of a criminal offence. In the twentieth century, a separate crime of making a false report to the police has developed. For such an offence it is not necessary to name the individual being

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<sup>1</sup> The Criminal Law of Scotland, 4th ed, vol II, 2017 by J Chalmers and F Leverick.

<sup>2</sup> The Laws of Scotland, Stair Memorial Encyclopaedia, Criminal Law (Reissue).

accused, or even to provide a means to identify him. Nor is it necessary to allege that a crime has taken place.” (para 499)

Police Scotland is able to charge those who make these false reports with the crime of [wasting police time](#) (p 372). This charge applies to “any person who maliciously makes a false statement to the police with the intention and effect of causing police investigation”.

### ***Perjury***

If false allegations of criminal behaviour lead to a trial, at which the person making the allegations gives evidence, there is also the possibility of a charge of perjury. Gordon’s Criminal Law states that:

“Perjury is committed by wilfully giving false evidence on oath or affirmation in any judicial proceedings. Perjury was at one time dealt with in a number of now repealed Scots statutes, and it can today be prosecuted under particular provisions of the Criminal Law (Consolidation) (Scotland) Act 1995, but in practice it is always dealt with at common law.” (para 55.02)

[Section 44 of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#) deals with the offence of perjury. If convicted of perjury the person can be imprisoned for a term of up to five years, receive a fine, or both.

### ***Hate crime***

In [Lord Bracadale’s final report of the Independent Review of Hate Crime Legislation in Scotland](#), he used the following working definition of a hate crime:

“Offences ‘which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ordinary crimes’.” (para 2.10)

Under the above definition, a false accusation of criminal behaviour could amount to a hate crime, but only if motivated as indicated.

Currently, hate crime is governed by a several Acts in Scotland and covers offences motivated by prejudice relating to race, religion, disability, sexual orientation and transgender identity.

The [Hate Crime and Public Order \(Scotland\) Act 2021](#) brought together all hate crime legislation under a single Act. It is not currently in force. When it is implemented, it will cover the protected characteristics of:

- age
- disability
- race, colour, nationality, or ethnic and national origins
- religion, or perceived religious affiliation
- sexual orientation
- transgender identity

- variations in sex characteristics.

The Act also includes the power to add the characteristic of sex to this list.

Therefore, a false accusation of criminal behaviour could amount to a hate crime but only, as is outlined above, if it is motivated by prejudice in terms of one of these protected characteristics.

### ***Defamation***

Depending on the facts, a false accusation of criminal behaviour could also amount to defamation. The law in this area is found in the Defamation and Malicious Publication (Scotland) Act 2021.

To be defamatory, a statement must be made public and cause (or be likely to cause) serious harm to someone's reputation – that is “if it tends to lower the person's reputation in the estimation of ordinary persons”. There are various defences to an allegation of defamation, including that the statement is true.

Defamation is a civil, rather than criminal matter. It would therefore be up to the individual affected to raise court action to challenge the statement in question. The usual result of successful court action would be a requirement to pay compensation. The court may also make orders to restrict further publication of the statement.

## **Outcome of previous petition**

The previous petition ([PE01728](#)) was considered by the Public Petitions Committee on 12 September 2019. The Scottish Government, in their response to the petition, stated that they were of the view that “existing criminal law provides proper coverage to tackle false allegations and we have no plans at this time to extend the definition of hate crime in the manner proposed by the petitioner at this time”. The petitioner indicated that they wished to withdraw their petition on 18 December 2019.

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

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