



Offences (Aggravation By Prejudice) (Scotland) Bill

Bill Number:	SP Bill 9
Introduced on:	19 May 2008
Introduced by:	Patrick Harvie (Member's Bill)
Passed:	3 June 2009
Royal Assent:	8 July 2009

Passage of the Bill

On 2 October 2007, Patrick Harvie MSP lodged a draft proposal for a Bill dealing with offences motivated by prejudice towards a person's sexual orientation or disability. On 15 January 2008, the Scottish Government announced that it would be giving its backing to Patrick Harvie's proposal and that the Bill would be taken forward as a 'Handout Bill' – a member's bill which is sponsored and supported by the Government. The resulting [Offences \(Aggravation By Prejudice\) \(Scotland\) Bill](#) was introduced on 19 May 2008 by Patrick Harvie MSP.

The Justice Committee was designated as lead Committee for the Bill and commenced taking Stage 1 oral evidence on the general principles of the Bill on 13 January 2009. The Equal Opportunities Committee was designated as secondary committee and was tasked with examining whether the Bill's proposals should be extended to include age and gender.

The Stage 1 debate took place on 18 March 2009. No amendments were lodged at Stage 2 and the Stage 3 debate was held on 3 June 2009. As at Stage 2, no amendments were lodged at Stage 3 and the Bill was passed.

Purpose and objectives of the Bill

The Bill seeks to ensure that, where it can be proven that an offence has been motivated by malice and ill-will based on the victim's actual or presumed sexual orientation, transgender identity or disability, the court must take that motivation into account when determining sentence. These aggravations also extend to situations where an offender in committing an offence demonstrates malice and ill-will towards a particular group as a whole without the need for an individual victim to be identified. The Bill does not introduce any new offences.

It is already possible, at common law, for Scottish courts to take the motivation of an offender into account when determining sentence. However, the proposed statutory aggravations would ensure that the courts must

consider evidence that the offender was motivated by hatred towards those groups included in the Bill.

Provisions of the Bill

The Bill is a short one containing only three sections. Section 1 of the Bill relates to prejudice relating to disability and applies where it has been proven that an offence was motivated by prejudice relating to disability. Section 2 of the Bill applies in the same way to prejudice relating to sexual orientation or transgender identity. Section 3 deals with commencement and the short title of the Bill.

Subsection 1(2) sets out when an offence is aggravated by prejudice relating to disability. There are two types of situation where this can arise. First, where an offender has demonstrated prejudice towards the victim based on their actual or presumed disability and secondly, where the offence was motivated by general malice and ill-will towards people who have a disability or particular disability. The Explanatory Notes to the Bill point out that this means that the aggravation can be applied even in cases where the malice and ill-will is expressed towards a wider group as a whole, without the need for a specific or individual victim to have been identified. For example, where a building used by disability organisations is vandalised or daubed with graffiti that suggests prejudice against disabled people. The prejudice may have been demonstrated before, during or after the offence was committed. Subsection 2(2) of the Bill applies in the same way where offenders have demonstrated prejudice towards victims based on their actual or presumed sexual orientation or transgender identity.

Parliamentary consideration

The Bill proved to be uncontroversial during its progress through the Parliament. The Justice Committee agreed, on balance, to recommend that the Parliament agree to the general principles of the Bill at Stage 1 and, unusually, no amendments were lodged at either Stage 2 or Stage 3 of the Bill.

In its Stage 1 report, the Equal Opportunities Committee recommended that the Bill should not be amended to include aggravations based on either age or gender. However, the Equal Opportunities Committee did recommend that the Justice Committee consider amending the Bill to include a delegated power provision that would allow protection to be extended to other groups by statutory instrument if evidence emerged that such groups would benefit from the measures being proposed in the Bill. The Justice Committee did not support this recommendation believing that any proposed extension to criminal legislation should only be established through primary legislation.

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