

OFFENCES (AGGRAVATION BY PREJUDICE) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by Patrick Harvie MSP with the assistance of the Scottish Government. Its purpose is to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Standing Orders, of a provision in the Offences (Aggravation by Prejudice) (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of the provision and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are the responsibility of Patrick Harvie MSP and have not been endorsed by the Scottish Parliament.

OUTLINE OF THE BILL

3. The Bill provides for the creation of new statutory aggravations to protect victims of crime who are targeted on the basis of hatred of their actual or presumed sexual orientation, transgender identity or disability. Such statutory aggravations already exist to protect individuals targeted on racial or religious grounds.

4. The new provisions will provide that evidence from a single source is sufficient to prove the aggravation and that the court must take the aggravation into account in determining sentence. Where the eventual sentence is different as a result of the aggravation, the court will be required to state and record the extent of, and reasons for, that difference.

APPROACH TO USE OF DELEGATED POWERS

5. The Bill contains only one delegated power provision, which is explained in more detail below. Patrick Harvie (with the assistance of the Scottish Government) has had regard when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill to—

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- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

6. The delegated power in this Bill is restricted to the commencement of the resulting Act, which does not normally attract procedure (and the power is discussed further below).

DELEGATED POWERS

7. Section 3(1) provides for the provisions of the Bill to come into force on the day appointed by the Scottish Ministers. Section 3(2) allows the commencement order to make transitional or saving provision. This is to ensure that commencement takes place in an orderly fashion.

8. It is not intended that the Bill will apply to offences committed before the Bill (once enacted) comes into force, and some transitional and saving provision may be necessary to ensure the appropriate application of the Bill by reference to commencement.

9. In addition, appropriate arrangements and procedures (including the updating of relevant IT systems) need to be in place to fulfil the requirements of the Bill. The Scottish Government is continuing to consider these practical arrangements in conjunction with Crown Office and the Scottish Court Service and with this in mind it is appropriate to have some flexibility of approach with reference to those arrangements being in place.

Section 3 - Short title and commencement

Power conferred on:	Scottish Ministers
Power exercisable:	Order made by Statutory Instrument
Parliamentary procedure:	No procedure

10. As is the usual practice, commencement orders under this provision will not be subject to parliamentary procedure.

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