

Hate Crimes and Hate Speech

Criminal Laws (Amendment) Bill 2024

What are hate crimes?

Hate crimes are criminal offences which are aggravated by the offender demonstrating hostility towards a victim based on the victim's membership, or presumed membership, of a group defined by reference to a protected characteristic. Protected characteristics include race, religion and sexual orientation.

For example, an offender who assaults a black person whilst using racial abuse would have demonstrated hostility towards the victim based on the victim's race.

What is hate speech?

Hate speech is behaviour which is intended to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic. Hate speech is also behaviour which is threatening or abusive and is likely to stir up hatred against such a group.

For example, an offender who hands out leaflets inciting violence against gay people would have demonstrated an intention to stir up hatred against this group of people based on a protected characteristic.

Are hate crimes and hate speech new?

Hate crimes and hate speech are already included in Falkland Islands law and can be found in Part 22 of the Crimes Ordinance 2014.

Hate crimes currently include offences such as racially or religiously aggravated assault, harassment or criminal damage. Hate speech offences include distributing material intended to stir up racial hatred or broadcasting a programme intended to stir up religious hatred.

Why do we need hate crimes and hate speech laws?

Hate crimes and hate speech cause additional harm to victims and create fear and anxiety amongst members of the targeted community. They are crimes which are motivated by prejudice and can damage wider society by heightening community divisions and undermining civic values such as equality and participation in public life.

What changes will be made by the Bill?

The Bill is intended to modernise current hate crimes and hate speech laws, to simplify the law, increase the number of protected characteristics and improve protections for freedom of speech.



Updating the protected characteristics

Under the current law, the protected characteristics are race, religion and sexual orientation.

The Bill aims to add disability, transgender identity and variations in sex characteristics to the list of characteristics protected by hate crimes and hate speech laws. Groups with these characteristics have been identified as being at risk of disproportionate criminal targeting and additional harm based on hatred against their membership of these groups.

The Bill is based on similar legislation from the United Kingdom.

Reforming hate crimes law

Under the current law, only a limited number of criminal offences can be aggravated by hostility towards a victim based on the victim's membership, or presumed membership, of a group defined by reference to a protected characteristic. Not all the protected characteristics are treated equally and there are gaps in the current law. For example, an assault can currently be aggravated by hostility based on race or religion, but not sexual orientation.

Many criminal offences can be aggravated by hostility towards a protected characteristic, but the current law only covers offences of assault, criminal damage, public order offences and harassment. For example, under the current law an offence of robbery which specifically targeted a person based on sexual orientation could not be charged as being aggravated by hostility.

The Bill aims to reform hate crime laws by creating a single procedure which applies to all criminal offences and all protected characteristics equally. The Bill allows the prosecution to allege that any criminal offence has been aggravated by hostility based on a protected characteristic.

Where the prosecution alleges that an offence has been aggravated by hostility the prosecution must prove this element of the allegation to the criminal standard of proof. The criminal standard of proof requires the court to be sure of guilt, which is sometimes referred to as being sure beyond all reasonable doubt.

If the prosecution proves to the court that an offence has been aggravated by hostility towards a protected characteristic the court must increase the sentence to reflect this fact.

Reforming hate speech law

Under the current law, there are twelve separate criminal offences which cover hate speech. The Bill aims to reform hate speech law by consolidating the twelve separate offences into three offences which apply to all types of hate speech behaviour.

The first offence covers behaviour intended to stir up hatred, the second offence covers behaviour which is threatening and abusive and likely to stir up hatred and the third offence covers possession of threatening or abusive material with the intention that it be used to stir up hatred.

Protecting freedom of expression

Hate speech laws can impact on the right to freedom of expression, which is a fundamental right protected by the Constitution. Freedom of expression is very important and in an open democracy people are free to hold opinions, receive and disseminate information and ideas, and enter into correspondence and communication without interference.

The right to freedom of expression is not an absolute right and it must be balanced against other rights, such as the right not to be subjected to threatening, abusive or harassing behaviour. Historically the law has placed limits on freedom of expression and these limits date back centuries. For example, the offence of breaching the peace by inciting unlawful violence dates back to the Middle Ages. In modern times, offences relating to malicious communications, hoax telephone calls and making threats to kill all place limits on freedom of expression.

The current law expressly protects freedom of expression in respect of hate speech offences and the Bill preserves this protection and aims to strengthen the law in relation to this important Constitutional right.

The Bill makes it clear that behaviour or material is not intended or likely to stir up hatred solely because it includes discussion, or the expression of views or opinions, relating to the protected characteristics. The Bill includes examples, such as expressing views or opinions about cultural or religious beliefs, a country and its political system, immigration or citizenship, the nature of marriage or the view that sex is binary and immutable. In addition, case law states that the expression of views and opinions does not require courtesy and speech does not lose protection just because the information or ideas that it conveys are offensive, disturbing or even shocking.

Ultimately, the right to freedom of expression is protected by the courts. Before a person can be convicted of an offence which engages the right to freedom of expression the court must be sure that the alleged behaviour has reached a standard where it loses the protection of freedom of expression and becomes criminal.

Protecting private conversation, media reporting and performers

Under the current law, private conversation is only protected if it takes place inside a dwelling. A private conversation elsewhere, such as in a car, is not currently protected. The Bill aims to improve the protection for private conversation by creating a defence to hate speech offences where a person reasonably intends their conversation to be private, regardless of their location.

The Bill aims to protect media reporting by creating a defence of fair journalistic reporting. This defence protects fair and accurate media reporting of matters involving hate crimes and hate speech. Fair and accurate reporting of the proceedings of the Legislative Assembly or court proceedings are also protected.

Performers who give public performances of dramatic, literary, artistic or journalistic work are also protected and are not criminally liable for hate speech solely by reason of being a performer.

How are other groups of people protected?

Other groups of people, outside of the list of protected characteristics, can also be subjected to criminal offending which is connected to a specific characteristic, such as sex and gender, or age.

For example, a fraudster may target older people because of a presumption on the part of the fraudster that older people are more likely to be tricked into being defrauded because of their age. Sexual offences can be intrinsically motivated, in whole or in part, by hostility towards sex or gender.

A review was undertaken to determine whether sex and gender, or age, should be added to the list of protected characteristics and the conclusion reached was that these characteristics should not be added at this time. The reason for this is because it has been identified that hate crime and hate speech laws are not the most effective way of protecting these groups from specific types of offending based on sex and gender, or age, characteristics. This conclusion was based in part on the recommendations of the Law Commission in England and Wales, who undertook a detailed review of this area, and the Independent Review of Hate Crime Legislation which was undertaken in Scotland. If there are developments in the law which change this position then there is the option to add sex and gender, or age, to the list of protected characteristics at a later stage.

Hate crime and hate speech offences are not the only method by which groups of people can be protected by the criminal law. In relation to age, specific criminal offences relating to offending against children and young people protect those of a young age. Sentencing guidelines protect older people who have been targeted because of their age by treating this element of the offending as an aggravating factor which increases the seriousness of the offence and the level of sentence imposed.

In relation to sex and gender, the Bill aims to give greater protection against offending connected to sex and gender by introducing specific criminal offences designed to target criminal behaviour which is connected to these characteristics. These new offences relate to sex-based harassment in public, online offending and intimate image offending.

Further information about these offences can be found in the information documents titled 'Criminal Laws (Amendment) Bill 2024 – Sex-Based Harassment in Public' and 'Criminal Laws (Amendment) Bill 2024 – Online and Intimate Image Offending'.

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