

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Hate Crime and Public Order (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Hate Crime and Public Order (Scotland) Bill, introduced in the Scottish Parliament on 23 April 2020

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 67-EN);
- a Policy Memorandum (SP Bill 67-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 67-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

The Bill

4. This Bill provides for the modernising, consolidating and extending of hate crime legislation in Scotland. Legislation in this area has evolved over time in a fragmented manner with the result that different elements of hate crime law are located in different statutes, there is a lack of consistency, and the relevant legislation is not as user-friendly as it could be. The new hate crime legislation will provide greater clarity, transparency and consistency.

5. In addition to consolidation, the Bill seeks to modernise and extend existing hate crime legislation by:

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

- including age as an additional characteristic in new provisions for the aggravation of offences by prejudice under Part 1 of the Bill (existing aggravations, which the new provisions will replace, apply only in relation to disability, race, religion, sexual orientation and transgender identity);
- creating new offences relating to stirring up hatred in Part 2 of the Bill that will apply in relation to all listed characteristics, including age, disability, race, religion, sexual orientation, transgender identity and variations in sex characteristics (existing offences, which these new offences largely replace, apply only in relation to race);
- updating the definition of transgender identity in Parts 1 and 2 of the Bill, including the removal of 'intersexuality' and creating a separate category for variations in sex characteristics; and
- including a power to enable the characteristic of sex to be added to the lists of characteristics referred to in Parts 1 and 2 of the Bill by regulations at a later date, once the Bill has passed.

6. In addition, the Bill will abolish the common law offence of blasphemy. The offence has not been prosecuted in Scotland for more than 175 years and is no longer considered necessary or appropriate.

Context

7. Scotland's diversity is its strength; and all communities are valued and their contribution welcomed. Hate crime and prejudice threaten community cohesion and have a corrosive impact on Scotland's communities as well as broader society. Hate crime and prejudice is never acceptable and the Scottish Government is committed to tackling it.

8. A cohesive society is one with a common vision and a sense of belonging for all communities; a society in which the diversity of people's backgrounds, beliefs and circumstances are appreciated and valued, and similar life opportunities are available to all. It is through this lens that the Scottish Government has considered the recommendations from Lord Bracadale's 'Independent Review of Hate Crime Legislation in Scotland'¹ in

¹ <https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

order to inform the modernisation and reform of hate crime legislation in Scotland.

9. To ensure a consistent overarching approach, the Scottish Government identified a set of three principles to inform and guide policy decision making and development of hate crime legislation. These principles are:

- Standardisation and consistency of approach: across the characteristics, apart from where there is good reason to justify an exception. For example, in principle the Scottish Government have sought to ensure a consistent approach across the characteristics, including any new characteristics. This would involve a standard approach to how, for example, the statutory aggravations are applied, and would also help ensure there is not a perceived (or real) hierarchy between the characteristics.
- Future proofing of legislation: to reflect society in Scotland within the 21st Century whilst ensuring as far as possible that the law remains fit for purpose for the future. It is essential that the form and structure of the legislation is correct for current policy, but it would also be useful to ensure as appropriate that the legislation is set up so that it can be amended in the future. In particular, while the focus of the legislation is on addressing hate crime in today's society, such as racial and religious hatred, provision is also included to enable the characteristic of sex to be added into the new legislative framework established by the Bill, at a later date by mean of regulations. It is also crucial that the legislation is robust and deliverable, ensuring that barriers and ambiguity are not created that will impede its application in order to help ensure the legislation can stand the test of time.
- Contribution to a modern Scotland: to build a more equal and inclusive Scotland. For example, hate crime legislation plays its role as part of wider efforts to ensure people feel safe and can live free from discrimination, through ensuring hate crime is enforceable with clear consequences, and where people have a greater and clearer understanding of hate crime and its consequences.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Hate Crime Definition

10. There is no single accepted definition of hate crime with different definitions produced for different purposes, however Lord Bracadale stated in his review²: “Hate crime is the term used to describe behaviour which is both criminal and rooted in prejudice”.

11. Hate crime can take many different forms and has hugely damaging effects on the victims, their families and communities. Lord Bracadale provides an example of what would currently constitute hate crime in Scotland:

“A man who was annoyed at the noise his gay neighbour made putting out the bins in the early morning engaged in abusive shouting, in the course of which he made comments about the neighbour's sexual orientation including hoping that “people like you die of AIDS”. This would amount to a breach of the peace aggravated by prejudice in relation to sexual orientation in terms of section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009.”³

Rationale for Hate Crime Legislation

12. Hate crime legislation helps recognise the particular impact and harm caused by hate crime. Harm can be caused to the victim, the group the victim belongs to and to wider society. Hate crime legislation makes it clear that such behaviour is not acceptable and sends a message to victims, perpetrators and wider society that hate crime is not acceptable and will not be tolerated.

13. The courts take it into consideration when offences are motivated by prejudice when determining sentences. Recording of convictions for hate crimes (whether aggravations of offences by prejudice or offences relating to stirring up hatred) ensures that levels of hate crime are recorded and trends can be identified and monitored.

Costs

14. As can be seen in chart 1, there has been a downward trend in hate crimes reported to the Crown Office and Procurator Fiscal Service

²https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/user_uploads/sct08182935681.pdf

³ Ibid., page 9

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

(COPFS) over the past five years, particularly in relation to the decrease in reporting of racially aggravated crime, which has seen a decrease of around 1,000 crimes from over 4,000 in each of the four years from 2010-11 to under 2,900 in 2018-19. This should be seen in the context of a 30% fall in levels of recorded crime more generally over the same period (see page 97 of 'Recorded Crime In Scotland, 2018-19').⁴

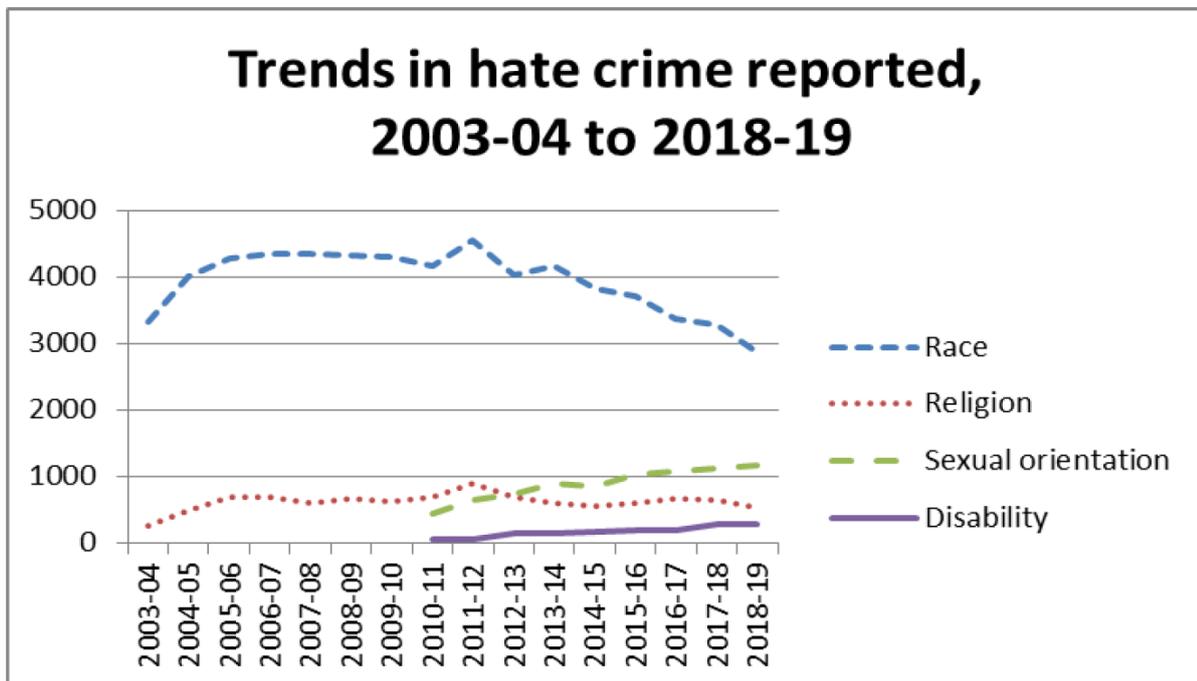
15. Note that the COPFS data shows the number of separate charges for hate crime, whereas the Scottish Government's Criminal Proceedings data used in subsequent tables and analyses only counts the main charge.

16. The main charge is the charge in a set of multiple charges that received the most severe non-court disposal or penalty in court, or had the most serious crime or offence if the disposals were the same for the different charges.

17. The main charge is used in the Criminal Proceedings data, because it counts the number of persons proceeded against or given non-court disposals by the police or COPFS.

⁴<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded-crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf>.

Chart 1 – Trends in Hate Crimes Reported to COPFS



Source: COPFS, Hate Crime in Scotland 2018-19⁵

18. Over the same period, offences aggravated by religious prejudice reported to COPFS have also fallen while the rate of sexual orientation and disability aggravated crimes have risen – although the scale of the changes is significantly less than it has been for racially aggravated crime, which typically accounted for two thirds of these crimes over the past five years. Therefore, trends in reports of racially motivated Hate Crimes data has tended to drive the overall trends in reporting, as seen in the Table 1.

Table 1 provides a breakdown of the data presented in this chart, and shows changes over a five year span.

⁵

<https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 1 – Charges Reported to COPFS – Aggravated Crime

Charges Reported to COPFS - Aggravated Crimes			
Type of Aggravation	2014-15	2018-19	% change
Racial	3,820	2,880	-25%
Religious	567	529	-7%
Disability aggravated crime	176	289	+64%
Sexual Orientation	848	1,176	+39%
Transgender	21	40	+90%
Sub-Total*	5,203	4,616	-11 figure for total charges is not the sum of the figures for individual a%

Source: COPFS, Hate Crime in Scotland 2018-19

*The figure for total charges is not the sum of the figures for individual aggravations, since a single charge can have more than one aggravation.

19. This trend has been seen in the context of awareness raising campaigns and other initiatives to promote the reporting of hate crimes. These figures suggest that the impact on the justice system of hate crimes has reduced over the past five years, which should be taken account of as part of the consideration of the financial impacts of the Bill, although this may be partly offset by the increasing complexity of some cases that are dealt with.

Modernisation, Consolidation and Extension of Legislative Framework

20. The modernisation, consolidation and extension of the legislative framework may result in one-off costs for the criminal justice system: the Crown Office and Procurator Fiscal’s Office, the Scottish Courts and Tribunal Service, the Scottish Legal Aid Board, Police Scotland and the Scottish Prisons Service, relating to updating training materials, guidance and IT Systems. The main costs relate to the creating of training materials for Scottish Police and Crown Office staff of around £50,000 each amounting to at most around £100,000 as this type of activity can be

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

accommodated within the regular review and update processes justice agencies undertake rather than requiring significant one-off items of expenditure.

21. The extension of hate crime legislation includes the creation of a new statutory aggravation in relation to prejudice based on age. This is likely to have a financial impact on the criminal justice system as cases with an aggravation are more likely to be prosecuted in court more often than cases without aggravations.

22. This legislation also removes 'intersex' from within the 'transgender' characteristic to create a separate statutory aggravation for variations in sex characteristics. The removal of 'intersexuality' from the transgender characteristic to form a separate variations in sex characteristics statutory aggravation may result in one-off costs relating to updating training materials, guidance and IT Systems. These costs are likely to be minimal given that they could likely be accommodated within regular review and update processes.

23. The Bill also includes an enabling power to allow an additional characteristic of sex to be added in the future.

24. The modernisation, consolidation and extension of hate crime legislation also includes new offences relating to stirring up hatred that will apply to all listed characteristics in the Bill (currently these offences only relate to racial hatred).

Offences relating to Stirring Up Hatred

25. The creation of new offences relating to stirring up hatred under sections 3 and 5 of the Bill is likely to have relatively small cost implications arising from the Bill. The key factor which will determine the specific cost implications will be the number of new investigations and prosecutions arising as a result of the new offences.

26. In assessing the impact of the creation of the new offences, it is important to bear in mind that in many cases conduct amounting to the stirring up of hatred can already be prosecuted in Scottish courts using existing laws. The new offences will more accurately define the conduct in question (which is a key policy driver for creating them), but it is the case

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

that the conduct in question would already constitute existing criminal offences such as breach of the peace or threatening or abusive behaviour.

27. Currently, in Scotland, statutory offences relating to stirring up hatred only exist in relation to racial hatred. These are contained in sections 18 to 23 of the Public Order Act 1986 ('the 1986 Act'), which is a UK statute with certain provisions extending to Scotland. The 1986 Act captures conduct that is threatening, abusive or insulting, if the perpetrator intends thereby to stir up racial hatred, or having regard to all the circumstances racial hatred is likely to be stirred up thereby.

28. The Bill introduces new offences relating to stirring up hatred under sections 3(2) and 5(2) of the Bill which involve hatred against a group of persons based on the group being defined by reference to age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics ("the new characteristics").

29. In line with Lord Bracadale's recommendation, these new offences will require conduct which is threatening or abusive. In addition, they require an intention to stir up hatred against a group of persons defined by reference to one or more of the new characteristics or that hatred is likely to be stirred up against the group. However, in relation to the new offences under sections 3(1) and 5(1) of the Bill (which involve hatred against a group of persons based on the group being defined by reference to race, colour, nationality, or ethnic or national origins), these offences will continue to apply more widely in relation to conduct that is threatening, abusive or insulting.

30. Table 2 sets out the number of proceedings relating to existing stirring up of racial hatred offences from 2011-12 to 2017-18. The number is low with only eight proceedings over the last seven years. As noted above, this in part reflects that the conduct amounting to stirring up racial hatred is also criminalised under other existing laws. Of these proceedings under the stirring up of racial hatred offences, there were six convictions resulting in one community payback order, two fines and three admonishments as sentencing disposals.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 2 - Stirring Up Offences - Persons Proceeded Against in Scotland by Year

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Public Order Act 1986 Section 18	-	1	-	3	-	-	-
Public Order Act 1986 Section 19	1	1	2	-	-	-	-

Source: SG, Proceedings data

31. Another area to consider as to the potential scale of how many new cases would be prosecuted would be to consider prosecutions under the now repealed offence at section 6(1) (as read with subsection (5)) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012⁶ ('the 2012 Act'). This offence related to where a person communicated material to another person where the material was threatening and the person communicating it intended by so doing to stir up hatred on religious grounds. By looking at this now repealed offence, this may give an indication of the likely volume of stirring up religious hatred offences – albeit that offence was narrower in scope than the one that the Bill is proposing to introduce and so any estimates prepared on this basis should be treated with caution.

32. As can be seen in Table 3, the offence that was in section 6(1) (as read with subsection (5)) of the 2012 Act was prosecuted seven times over the period from 2011-12 to 2017-18. Of these proceedings, there were six convictions resulting in two short custodial sentences (average length 10.5 months), two community payback orders, one fine and one admonishment.

33. Table 3 provides a breakdown of the number of proceedings under section 6(1) (as read with subsection (5)) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

⁶ <http://www.legislation.gov.uk/asp/2012/1/section/6/enacted>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 3 - Offensive Behaviour at Football etc. Act - Persons Proceeded Against in Scotland by Year

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Section 6 (5) Threatening communications (Offensive behaviour at football etc. Act)	0	0	3	2	0	0	2

34. The law in England and Wales⁷ covers stirring up of hatred on the grounds of religion or sexual orientation (and so is wider than the current law in Scotland which only covers racial hatred) and has seen 15 cases prosecuted from 2014-15 to 2017-18.

35. Based on these figures, and understanding that the new offences under section 3(1) and 5(1) criminalise conduct that is already criminal under existing laws, creating new offences relating to stirring up hatred under section 3(2) and 5(2) involving hatred based on age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with the criminal justice system resulting in a fairly small financial impact as set out in Table 4.

Table 4 sets out the scenarios for the additional number of new stirring up cases.

⁷<https://www.cps.gov.uk/sites/default/files/documents/publications/cps-hate-crime-report-2018.pdf>, <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-hate-crime-report-data-2017.pdf#page=24>, and https://www.cps.gov.uk/sites/default/files/documents/publications/cps_hate_crime_report_2016.pdf

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 4 – Scenarios for additional stirring up cases as a result of the Bill

Scenario	Number of additional New Stirring Up Cases
Scenario 1	1
Scenario 2	2
Scenario 3	3

New Statutory Aggravations

36. Current hate crime legislation in Scotland allows any existing offence to be aggravated by prejudice in respect of one or more of the characteristics of race, religion, disability, sexual orientation and transgender identity.

37. This approach does not involve the creation of new offences; rather it involves an existing offence (e.g. murder, assault, breach of the peace) being 'aggravated' where the perpetrator evinces (or is motivated by) malice and ill-will in respect of one or more of the above characteristics.

38. This ensures that levels of hate crime are recorded and it sends a signal that society does not accept this form of conduct. It also reassures victims and their families that the fact an offence was motivated by prejudice has been formally acknowledged and taken into account in sentencing.

39. In Scotland, the law currently recognises hate crimes as motivated by prejudice for statutory aggravations based on race (section 96 of the Crime and Disorder Act 1998), religion (section 74 of the Criminal Justice (Scotland) Act 2003) disability, sexual orientation and transgender identity (sections 1 and 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009).

40. This legislation makes provision for aggravated offences, requiring courts to take such aggravations into account when determining sentence.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

41. The Bill will add a new statutory aggravation in relation to age, and include an enabling power to allow the characteristic of sex to be added in the future to the characteristics listed in sections 1(2), 3(3) and/or 5(3) of the Bill. It also updates the definition of transgender identity in Parts 1 and 2 of the Bill including the removal of 'intersexuality', and creates a separate category for variations in sex characteristics.

42. The creation of the new aggravation of age could have a financial impact on the criminal justice system as can be seen from Table 5 cases with an aggravation are more likely to be prosecuted in court more often than cases without aggravations.

43. As the Bill includes an enabling power to allow the characteristic of sex to be added in the future, this Financial Memorandum, when estimating the costs of new aggravations, includes costs for age and sex.

44. There is clear evidence that cases with an aggravation are prosecuted more often than cases without an aggravation. The proportion of offences with an aggravation that resulted in a non-court disposal is extremely low compared to those offences that don't involve an aggravation.

45. Criminal proceedings data shows aggravated cases are prosecuted in court more than cases where there is no aggravation. Cases with no aggravation have a higher proportion of cases dealt with using Police or COPFS non-court disposal. Table 5 shows outcomes for the four crimes and offences most commonly associated with an aggravation - common assault, breach of the peace, common assault on an emergency worker and threatening or abusive behaviour.

46. Note that over half (over 19,000 of near 38,000 total) of charges without an aggravation receive a non-court disposal – around 14,000 non-court disposals from Police Scotland and around 5,000 non-court disposals from COPFS.

47. By comparison, less than 30 of the 1,500 main offence charges linked with a statutory aggravation resulted in a non-court disposal from either Police Scotland or COPFS.

48. Table 5 provides a breakdown of the average number of aggravated and non-aggravated offences over a three-year span. The table breaks

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

down the number of offences by non-court disposals and proceedings discontinued and those that a verdict was reached.

Table 5 – Average Court Volumes for Aggravated and Non-Aggravated Offences⁸ (2015-16 to 2017-18)

Volumes						Ratios		
	Total main offences	Non-court disposals*		Proceedings		% of main offence charges		% of trials continued
		Police	COPFS	Proceedings discontinued	Verdict reached	Trial concluded	End with a conviction	End with a conviction
No aggravation	37,692	14,102	4,642	3,270	15,678	42%	32%	77%
Aggravated for selected characteristic*	1,483	16	12	129	1,316	89%	62%	70%

*This terminology is used to refer to Recorded Police Warnings in the case of Police Scotland. In the case of COPFS, a non-court disposal could represent a decision by the Procurator Fiscal to offer a Fiscal Fine, Compensation or diversion etc.

**Aggravations concerning disability, sexual orientation, religious prejudice, race, or transgender identity.

49. Where a non-court disposal has not been pursued, and proceedings have been commenced, there is limited evidence on whether or not crimes

⁸ The table contains data on common assault, breach of the peace, common assault on an emergency worker and threatening or abusive behaviour, which make up the majority of crimes with the current aggravations for disability, sexual orientation, religious prejudice, race, or transgender identity (1,424 of 1,776 or 80% of crimes/offences with those aggravations where proceedings initiated in 2017-18) drawn from the criminal proceedings dataset, available at: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCrimProc>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

with an aggravation receive different sentences than crimes without an aggravation. It is worth noting that an aggravation does not mean a harsher penalty is required, but it does require a court to consider the aggravation when sentencing. Looking at criminal proceedings data there is not a major difference in sentence per proceeding – either in terms of the percentage of cases receiving different types of penalty, or the average custodial sentences that these crimes receive.

50. A slightly higher percentage of proceedings with an aggravation receive a custodial or community sentence (11% vs 4% without). However charges with an aggravation are associated with a slightly lower average custodial sentence length relative to those that do not have an aggravation (152 days versus 186 days – Table 6 below).

51. Overall, this doesn’t suggest that there is a single obvious factor driving differences in sentencing – for example it is not at all obvious that the lack of non-court disposals can be translated into a larger number of fines. Instead it appears as if all court disposals are more likely where a crime is associated with an aggravation.

Table 6 provides a breakdown of the number of custodial sentences over a two-year period.

Table 6 - Custodial Sentencing (2015-16 to 2016-17)

	% of cases getting custodial sentence	Average Custodial Sentence (Days)		
		Per conviction	Per court proceeding	Per number of main offences ¹
No Aggravation	4%	184	13.6	6.8
Aggravation for selected characteristic ²	11%	152	16.9	16.5

1. This includes persons given a non-court disposal by the police or COPFS or proceeded against in court.
2. Disability, sexual orientation, religious prejudice, racial prejudice, or transgender.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

52. This evidence base informs the costings which are set out in Table 7 below. The first order costs of the policy are assumed to involve costs generated by having more proceedings. The second order effects are assumed to be the presence of more sentences (as opposed to by having longer or more severe sentences) as a result of this.

Volume of 'New' Offences or Aggravations

53. The evidence regarding how many new aggravations that the Scottish Government could expect to see is far less strong than the evidence base regarding the justice pathways of aggravated offences. The introduction of new aggravations does not, unlike the stirring up offences, lead to the 'creation' of new crimes – a crime has to take place before an aggravation can be associated with it.

54. As such the main effect of the new aggravations could reasonably be expected to affect cases which are already being reported and where the existence of an aggravation may cause a different decision to be made in respect of appropriate action e.g. a case is prosecuted rather than dealt via some other means such as a non-court disposal. This would involve modelling based on the marginal costs of an aggravation. However, the Bill may lead to some increased reporting of cases that currently do not get reported – for example via the perception of some people that the justice system is taking these crimes 'more seriously'.

55. The costings in Table 7 are informed by a series of scenarios. These scenarios are based largely on stakeholder feedback, due to the lack of a strong evidence base regarding the potential scale of incidents that could attract one of the new aggravations. Each scenario assumes 80% of cases affected are offences which are currently reported, with 20% being new offences being reported for the first time.

56. It is intended that the scenarios reflect a reasonable estimate of additional aggravations that could happen as a result of both age and (potentially in due course) sex aggravations being introduced.

57. Therefore, this represents an attempt to model a situation both where a new age aggravation will be introduced and where an enabling power within the Bill may subsequently be used to create a sex aggravation. It should be noted that no decisions have yet been made on the use of this enabling power.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

58. The impacts of a sex aggravation are included because it is important that the Financial Memorandum gives an illustration of the scale of financial considerations involved if the enabling power were to be used. If the enabling power were not used to create a sex aggravation, it would be reasonable to expect a significant decrease in the volumes of additional aggravations created, and therefore the costs that these aggravations would lead to. Stakeholder engagement suggested that sex was likely to lead to a higher number of additional aggravations than age would, although this was anecdotal.

59. This costing is largely based on the premise that any additional workload will likely resemble the existing hate crime caseload. If the Bill were to be used to target a specific type of hate crime that doesn't resemble existing cases, other factors would need to be included in an analysis. For example, if the presence of a new aggravation meant increased focus on specific types of evidence (e.g. cyber) then the relative complexity of dealing with this evidence would need to be considered. However, a significant increase in the complexity of dealing with such evidence is not anticipated.

Table 7 sets out the scenarios for the additional main offences as a result of the new aggravations.

Table 7 - Scenarios for additional main offences with aggravations as a result of the Bill

Scenario	Total Additional Aggravations	Of which relate to existing reported crimes	Of which relate to newly reported crimes
One	50	40	10
Two	100	80	20
Three	200	160	40

Costs Associated with ‘New’ Offences or Aggravations

60. Once these scenarios are created, the costing depends on the costs associated with first order effects (greater numbers of court cases) and second order effects (the increased flow of cases leading to an increase in the number of sentences issued). In both cases, data is taken from the

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

costs of the criminal justice system in Scotland dataset to estimate these costs. Table 8 sets out the costs associated with a typical court proceeding, broken down by type of court.

Table 8 – Average Costs associated with different courts in Scotland (2016-17)⁹

	Average prosecution costs by forum	Average court costs by forum (1)	Average legal assistance costs by forum (2)	Sub-Total
High Court of Justiciary	£67,658	£16,650	£16,080	£100,388
Sheriff Court solemn	£4,363	£2,190	£1,622	£8,175
Sheriff Court summary (includes Stipendiary cases)	£444*	£430	£604	£1,478
Justice of the Peace Court (Excludes Stipendiary cases)		£243	£321	£564

*Please note this figure represents the average cost of procedure for the Sheriff Court Summary and Justice of the Peace Court.

(1) SCTS Average cost of procedure is a weighted average using the volume of procedures.
The figure includes depreciation.

⁹ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

(2) Scottish Legal Aid Board figures are average cost per legal aid certificate (per individual) where the case finished at the procedure shown in the table. These figures are calculated by dividing total legal aid costs for cases which finish at each procedure by the corresponding number of legal aid certificates. Where a case progresses through several procedures, all legal assistance costs are included in the costs of the final procedure. SLAB figures are based on cases with their main payment in financial year 2016-17. SLAB introduced a new accounts system in 2016-17. This allows a separate figure to be provided for Solemn 'Guilty plea at trial diet'. The figures provided this year may be slightly low because data is only available for more recent cases. It should also be noted that the figure for High Court 'Guilty plea at trial diet' is based on only 29 cases.

61. Second order effects will be felt in terms of the length of sentences that are imposed. This costing therefore uses the average custodial sentence of aggravated offences above as a substitute for sentencing cost – combined with the SPS assessment of the average cost of a prison year – which is around £35,000¹⁰. Where a community sentence is likely to be issued, it is weighted according to the average costs associated with a Community Payback Order (£1,771), drawn from the same dataset.

62. Taking both of the above, and weighting the various costs by the chances of a main offence leading to a court proceeding, and subsequently a conviction, community sentence or prison sentence would suggest the following costs in Table 9 would be incurred:

¹⁰ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot>

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 9 sets out the modelled cost of estimated crime cases by main offence charge.

Table 9 - Modelled cost of aggravated crime cases – per main offence charge

	Estimated prosecution costs per main charge	Estimated court costs per main charge	Estimated legal assistance costs per main charge	Estimated prison costs per main charge	Estimated social work costs per main charge	Sub Total
Average Aggravated Offence* Main Charge (A)	£637	£474	£624	£1,816	£262	£3,813
Average Non-Aggravated Offence Main Charge (B)	£303	£209	£265	£752	£167	£1,697
Additional Costs associated with an Aggravated Offence** Main Charge (A-B)	£333	£265	£359	£1,064	£94	£2,116

* Based on weighted average of common assault, common assault on an emergency worker, breach of the peace and threatening and abusive behaviour charges.

** In this context 'additional' means the costs associated with the difference between the average cost of an aggravated and non-aggravated offence.

63. The two cost figures are given per main charge. The average aggravated offence cost is £3,813 – based on the average cost of a main offence charge with an aggravation. Costs are weighted, so for example the £637 cost of prosecution represents typical prosecution costs of each court, weighted by the proportion of aggravated assault proceedings going through each court, and adjusted to reflect the fact some cases never make it to court.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

64. Similarly, the £1,816 of prison costs is based on the average cost of each main offence charge – a 14 day sentence (although in practice there are many other disposal types and the average sentence length per main charge is dramatically less than the average sentence length where there is a custodial conviction because of the large number of other outcomes that can result from a proceeding. Table 9 also presents the difference between the average cost of an aggravated and non-aggravated main offence of £2,116.

65. In order to cost the effect of the new aggravation however, this needs to be combined with a forecast of how many aggravations may be seen in practice – as well as how many may be new offences being reported for the first time entirely versus how many would already have been reported as offences, and now will be reported as aggravated offences which then may lead to the offence more likely to be prosecuted.

Table 10 sets out an estimate of the financial impact of the new aggravation on the criminal justice system.

Table 10 - Modelled cost of aggravated crime cases – total (rounded)

Main Offence Charges	COPFS Costs	SCTS Costs	SLAB Costs	SPS Costs	SCJSWS Costs	Total
50, of which 10 'new'	£20,000	£15,000	£21,000	£61,000	£6,000	£123,000
100, of which 20 'new'	£39,000	£31,000	£41,000	£121,000	£13,000	£245,000
200, of which 40 'new'	£79,000	£61,000	£82,000	£243,000	£26,000	£491,000

66. The cost scenarios range from £123,000 to £491,000, with SPS accounting for a larger proportion of these costs (just under 50%) than any

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

other justice organisation. As part of the calculation of the financial impacts in Tables 7 through 11, the financial modelling effectively works on the basis of costs – forecasting the average costs associated with aggravated offence main charge as the cost of ‘new’ charges, and the difference between an aggravated and non-aggravated charge as the cost of the non ‘new’ main charges.

67. This could also reasonably be thought of in terms of additional court proceedings (which will mainly be held primarily in the Sheriff Summary Court), the additional prison places and the additional number of community payback orders (CPOs) that will be undertaken by the Scottish Criminal Justice Social Work Services (SCJSWS).

Table 11 translates these financial estimates into estimates of additional proceedings, prison places and CPOs.

Table 11 – Additional number of court proceedings, prison places and CPOs

Main Offences	Additional Proceedings (mainly Sheriff Summary*, per annum)	Additional prison places (per annum)	Additional no of CPOs (per annum)
50, of which 10 ‘new’	28	2	3
100, of which 20 ‘new’	55	3	6
200, of which 40 ‘new’	111	10	13
* Costs are not solely based on Sheriff Summary, but are weighted by the level of court that proceedings are typically heard at. However in practice 95% of these proceedings will be heard in Sheriff Summary.			

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

New Statutory Aggravation for Variations in Sex Characteristics

68. Currently the definition of the transgender characteristic in hate crime legislation contains 'intersexuality'. The Bill removes 'intersexuality' from the transgender characteristic and creates the new characteristic of 'variations in sex characteristics'. The new statutory aggravation of 'variations in sex characteristics' may result in one-off costs relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

Costs on the Scottish administration

69. The main criminal justice organisations that will be impacted by the Bill are: the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service, the Scottish Legal Aid Board, Scottish Prisons Service and Police Scotland.

Modernisation, Consolidation and Extension of Legislative Framework

70. The modernisation, consolidation and extension of the legislative framework may result in one-off costs for the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service and the Scottish Prisons Service relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

Offences relating to Stirring Up Hatred

Crown Office and Procurator Fiscal Service

71. As discussed above, it is likely that some of the cases that may be reported to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution using the new stirring up offence will not be 'new' cases, i.e. cases that previously would not have come to the attention of the police, but instead will be cases that are currently reported to COPFS by the police for a range of conduct where different existing general offences e.g. breach of peace, common assault and threatening or abusive behaviour are considered for use in prosecuting.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

72. Based on the figures set out in Tables 2 and 3, creating new offences relating to stirring up hatred under sections 3(2) and 5(2) involving hatred based on age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with by COPFS. Based on the costings undertaken in this paper and set out in Table 10, and the scenarios set out in Table 4 the financial impact for COPFS is set out in Table 12.

Table 12 sets out the scenarios for the costs of new stirring up offences for COPFS.

Table 12 - Modelled cost of aggravated crime cases for COPFS (rounded)

Total Charges	COPFS Costs
1 'new' charge	£2,000
2 'new' charges	£4,000
3 'new' charges	£6,000

73. Training, guidance and public information documents will require updating in relation to this legislation. For example, the training material for Crown Office's internal training 'Victims and Witnesses' course and guidance relating to stirring up offences will require to be updated. For a number of these materials, the long lead in to the 'coming into effect' date enable most of these changes to be accommodated within the regular review and update processes associated with such materials.

74. One-off changes will also be required to The COPFS Case Management System IT systems and Police Scotland 'Criminal History System' interface which is an interface with the COPFS and SCTS however these should be no more than £50,000 for all Bill related changes as they can be planned to occur during the regular updates.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Scottish Courts and Tribunal Service

75. There may be minimal additional costs likely to be met from the Scottish Courts and Tribunal Service (SCTS) as a result of additional cases going to court.

76. Based on the figures set out in Tables 2 and 3, creating new offences relating to stirring up hatred involved hatred based on age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with by SCTS. Based on the costings undertaken in this paper and set out in Table 10, and the scenarios set out in Table 4 the financial impact for SCTS is set out in Table 13.

Table 13 sets out the scenarios for the costs of new stirring up offences for SCTS.

Table 13 - Modelled cost of aggravated crime cases for SCTS (rounded)

Total Charges	SCTS Costs
1 'new' charge	£1,600
2 'new' charges	£3,200
3 'new' charges	£4,800

77. The training material for the SCTS 'Criminal Procedures' course and guidance relating to stirring up offences will require to be updated, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update processes.

78. One-off changes will also be required to their 'Criminal Operating Programme', however these should be minimal as they can be planned to occur during the regular updates.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Scottish Legal Aid Board

79. New stirring up offences could result in additional costs for the Scottish Legal Aid Board (SLAB) due to an increase in the number of people granted criminal legal aid and issued with a legal aid certificate.

80. Based on the figures set out in Tables 2 and 3, creating new offences relating to stirring up hatred involving hatred based on age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with by SLAB. Based on the costings undertaken in this paper and set out in Table 10, and the scenarios set out in Table 4 the financial impact for SLAB is set out in Table 14.

Table 14 sets out the scenarios for the costs of new stirring up offences for SLAB.

Table 14 - Modelled cost of aggravated crime cases for SLAB (rounded)

Total Charges	SLAB Costs
1 'new' charge	£2,000
2 'new' charges	£4,000
3 'new' charges	£6,000

81. There will be one-off costs in updating training course notes and guidance relating to the new stirring up offences, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update processes.

Scottish Prisons Service

82. New stirring up offences could result in additional costs for the Scottish Prisons Service (SPS) due to an increase in the number of people given a prison sentence.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

83. Based on the figures set out in Tables 2 and 3, creating new offences relating to stirring up hatred involving hatred based on age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with by SPS. Based on the costings undertaken in this paper and set out in Table 10, and the scenarios set out in Table 5 the financial impact for SPS is set out in Table 15.

Table 15 sets out the scenarios for the costs of new stirring up offences for SPS.

Table 15 - Modelled cost of aggravated crime cases for SPS (rounded)

Total Charges	SPS Costs
1 'new' charge	£6,000
2 'new' charges	£12,000
3 'new' charges	£18,000

84. There will be one-off costs in updating training course notes and guidance relating to stirring up offences, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update processes.

Police Scotland

85. The new offences may result in more incidents being reported. Additionally increased awareness of what constitutes hate crime may lead to an increase in reports being made to the police. However, as stated in Tables 2 and 3 earlier these numbers are likely to be minimal and could be accommodated within the normal day to day activities.

86. There will be one-off costs in updating the training and standard operating procedures in time for the introduction of the new offence for the

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

police. The training will be undertaken by officers in-house and will have a notional cost as the officers will not be available for duty during the approximate two hours of training on changes to the Bill. There may also be one-off costs of upgrading the 'crime recording and vulnerable persons' database and the 'third party reporting system' portal, but if planned to fit in with regular upgrade releases they should be minimum.

87. There may also be costs relating to updating the Police Scotland 'Criminal History System' which has an interface with the Crown Office and Procurator Fiscal Service, however these should be no more than £50,000 for all Bill related changes as they can be planned to occur during the regular updates.

New Statutory Aggravations for Age and Sex

88. The Bill creates a new statutory aggravation in relation to the characteristic of age and provides the power to, in effect, add a new statutory aggravation in relation to the characteristic of sex in the future.

Crown Office and Procurator Fiscal Service

89. The introduction of new aggravations does not, unlike the new stirring up offences, lead to the 'creation' of new crimes – a crime has to take place before an aggravation can be associated with it.

90. The new statutory aggravations will ensure that the aggravation is noted in statistics as part of the offence, but it is not anticipated that there will be a large amount of additional costs falling on the Crown Office and Procurator Fiscal Service (COPFS).

91. Based on the costings undertaken in this paper and set out in Table 10, the financial impact for COPFS is set out in Table 16.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 16 sets out the scenarios for the costs of new aggravated crimes for COPFS.

Table 16 - Modelled cost of aggravated crime cases for COPFS (rounded)

Total Charges	COPFS Costs
50, of which 10 'new'	£20,000
100, of which 20 'new'	£39,000
200, of which 40 'new'	£79,000

92. The training material for COPFS 'Victims and Witnesses' course and guidance relating to statutory aggravations will require to be updated, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update Justice IT processes.

93. One-off changes will also be required to the COPFS Case Management System IT systems and Police Scotland 'Criminal History System' interface which is an interface with the COPFS and SCTS however these should be no more than £50,000 for all Bill related changes as they can be planned to occur during the regular updates.

Scottish Courts and Tribunal Service

94. New aggravations in relation to the characteristic of age and, if added, the characteristic of sex will require the courts to take account of the aggravations when sentencing.

95. Although these are new aggravations, the Court can currently take cognisance of a person's age and sex when prosecuting the initial offence. Only a relatively small number of offences that might involve new aggravations in relation to age or sex, but would otherwise have been dealt

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

with using non-court disposals issued by the police or COPFS, would be expected to go to court. There may also be costs relating to the consideration of sentencing aggravation issues.

96. Although the statutory aggravations will formally require the court to consider what sentence is required in any given case, the aggravation does not increase the maximum sentence available for any given offence.

97. The new statutory aggravations will ensure that the aggravations are noted in statistics as part of the offence, but it is not thought new costs will arise. There may be minimal additional costs likely to be met from the Scottish Courts and Tribunal Service (SCTS) relating to additional cases going to court.

98. Based on the costings undertaken in this paper and set out in Table 10, the financial impact for SCTS is set out in Table 17:

Table 17 sets out the scenarios for the costs of new aggravated crimes for SCTS.

Table 17 - Modelled cost of aggravated crime cases for SCTS (rounded)

Total Charges	SCTS Costs
50, of which 10 'new'	£15,000
100, of which 20 'new'	£31,000
200, of which 40 'new'	£61,000

99. The training material for SCTS 'Criminal Procedures' course and guidance relating to aggravations that will require to be updated, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update processes.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

100. One-off changes will also be required to their ‘Criminal Operating Programme’, however these should be minimal as they can be planned to occur during the regular updates.

Scottish Legal Aid Board

101. New aggravations for age and sex could result in additional cases for the Scottish Legal Aid Board (SLAB).

102. Based on the costings undertaken in this paper and set out in Table 10, the financial impact for SLAB is set out in Table 18.

Table 18 sets out the scenarios for the costs of new aggravated crimes for SLAB.

Table 18 - Modelled cost of aggravated crime cases for SLAB (rounded)

Total Charges	SLAB Costs
50, of which 10 ‘new’	£21,000
100, of which 20 ‘new’	£41,000
200, of which 40 ‘new’	£82,000

Scottish Prisons Service

103. The new age and sex aggravations could result in additional costs for the Scottish Prison Service due to two different outcomes: an increase in number of people given a prison sentence and, an increase in the length of the sentence.

104. Based on the costings undertaken in this paper and set out in Table 10, the financial impact for SLAB is set out in Table 19.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Table 19 sets out the scenarios for the costs of new aggravated crimes for SPS.

Table 19 - Modelled cost of aggravated crime cases for SPS (rounded)

Total Charges	SPS Costs
50, of which 10 'new'	£61,000
100, of which 20 'new'	£121,000
200, of which 40 'new'	£243,000

105. There will be one-off costs in updating training course notes and guidance relating to stirring up offences, but given the long lead in to the 'coming into effect' date these should be accommodated within the regular review and update processes.

Police Scotland

106. The new aggravations may result in more offences being reported. Additionally, increased awareness of what constitutes hate crime may lead to an increase in reports being made to the police. However, the Scottish Government expects that the police currently record a victim's age and sex when prosecuting the initial offence.

107. It is therefore anticipated that there will be not be a large amount of additional costs falling on the Police Scotland and that these could be accommodated within the normal day-to-day activities.

108. There will be one-off costs in updating the training and standard operating procedures in time for the introduction of the new offences for the police. The training will be undertaken by officers in-house and will have a notional cost as the officers will not be available for duty during the approximate two hours of training on changes to the Bill. There may also

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

be one-off costs of upgrading the 'crime recording and vulnerable persons' database and the 'third party reporting system' portal, but if planned to fit in with regular upgrade releases they will be minimum.

109. There may also be costs relating to updating the Police Scotland 'Criminal History System' which has an interface with the Crown Office and Procurator Fiscal Service, however these should be no more than £50,000 for all Bill related changes as they can be planned to occur during the regular updates.

New Statutory Aggravation for Variations in Sex Characteristics

110. Updating the definition of the characteristic of 'transgender identity', and establishing a separate new characteristic of 'variations in sex characteristics' may result in some one-off costs for the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service.

111. The Scottish Prisons Service and Police Scotland relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Summary of costs to the Scottish administration

ESTIMATED COSTS TO SCOTTISH ADMINISTRATION (ROUNDED)			
New Stirring Up Offences			
	1 'new' Charges	2 'new' Charges	3 'new' Charges
COPFS Costs	£2,000	£4,000	£6,000
SCTS Costs	£1,600	£3,200	£4,800
SLAB Costs	£2,000	£4,000	£6,000
SPS Costs	£6,000	£12,000	£18,000
Subtotal	£11,600	£23,200	£34,800
New Statutory Aggravations			
	50, of which 10 'new' Charges	100, of which 20 'new' Charges	200, of which 40 'new' Charges
COPFS Costs	£20,000	£39,000	£79,000
SCTS Costs	£15,000	£31,000	£61,000
SLAB Costs	£21,000	£41,000	£82,000
SPS Costs	£61,000	£121,000	£243,000
Subtotal	£117,000	£232,000	£465,000
Total annual recurring costs	£128,600	£255,200	£499,800
One-off implementation costs			
COPFS Costs	£50,000		
PS Costs	£50,000		
Total one-off implementation costs	£100,000		

Note: Annual costs are presented as static. Clearly in actuality they will vary somewhat however the modelling presented here is high level and based on averaging (relatively limited) data over multiple years to improve data reliability. Therefore modelling in any annual costs for each financial year separately would not be justified. This should be seen in the context of a 30% fall in levels of recorded crime more generally over the same period (see page 97 of 'Recorded Crime In Scotland, 2018-19').¹¹

¹¹<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded->

Costs on local authorities

Modernisation, Consolidation and Extension of Legislative Framework

112. The modernisation, consolidation and extension of the legislative framework may result in one-off costs relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

Offences of Stirring Up Hatred Offences

113. Based on the figures set out in Tables 2 and 3, creating new offences of stirring up hatred involving hatred based on age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics (and any new characteristic of sex) is not likely to result in a large number of additional cases being dealt with by the Scottish Criminal Justice Social Work Services (SCJSWS). Based on the costings undertaken in this paper and set out in Table 10, and the scenarios set out in Table 4 the financial impact for SCJSWS is set out in Table 20.

Table 20 sets out the scenarios for the costs of new aggravated crimes for SCJSWS.

Table 20 - Modelled cost of aggravated crime cases for SCJSWS (rounded)

Total Charges	SCJSWS Costs
1 'new' charge	£600
2 'new' charges	£1,200
3 'new' charges	£1,800

[crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf](https://www.gov.scot/document/recorded-crime-scotland-2018-19).

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

114. Discussions with local authorities have identified that there are two main areas where there may be financial costs: the training of the community justice workforce and building capacity to undertake preventative work to ensure the success of the legislation.

115. There will likely also be one-off costs relating to website updates, training course text and guidance. These minimal costs should be accommodated within the regular review and update processes.

New Statutory Aggravations for Age and Sex

116. The new Age aggravations could result in additional costs for local authorities due to an additional number of community payback orders (CPOs) that will be undertaken by the Scottish Criminal Justice Social Work Services (SCJSWS).

117. Based on the costings undertaken in this paper and set out in Table 10, the financial impact for SCJSWS is set out in Table 21.

Table 21 sets out the scenarios for the costs of new aggravated crimes for SCJSWS.

Table 21 - Modelled cost of aggravated crime cases for SCJSWS (rounded)

Total Charges	SCJSWS Costs
50, of which 10 'new'	£6,000
100, of which 20 'new'	£13,000
200, of which 40 'new'	£26,000

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

118. Discussions with local authorities have identified that there are two main areas where there may be financial costs: the training of the community justice workforce and building capacity to undertake preventative work to ensure the success of the legislation. There will likely also be one-off costs relating to website updates, training course text and guidance.

New Statutory Aggravation for Variations in Sex Characteristics

119. Update the definition of the characteristic of 'transgender identify', and establishing a separate new characteristic of 'variations in sex characteristics' may result in some one-off costs for local authorities relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

Summary of costs to local authorities

ESTIMATED COSTS TO LOCAL AUTHORITIES (ROUNDED)			
New Stirring Up Offences			
	1 'new' Charge	2 'new' Charges	3 'new' Charges
SCJSWS Costs	£600	£1,200	£1,800
Subtotal	£600	£1,200	£1,800
New Statutory Aggravations			
	50, of which 10 'new' Charges	100, of which 20 'new' Charges	200, of which 40 'new' Charges
Cost of community payback orders	£6,000	£13,000	£26,000
Subtotal	£6,000	£13,000	£26,000
Total annual recurring costs	£6,600	£14,200	£27,800

Note: Annual costs are presented as static. Clearly in actuality they will vary somewhat however the modelling presented here is high level and based on averaging (relatively limited) data over multiple years to improve data reliability. Therefore modelling in any annual costs for each financial year separately would not be justified.” This should be seen in the context of a 30% fall in levels of recorded crime more generally over the same period (see page 97 of ‘Recorded Crime In Scotland, 2018-19’).¹²

¹²

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded->

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Costs on other bodies, individuals and businesses

120. The main organisation that will be impacted in this section is Scottish Association for the Care and Resettlement of Offenders (Sacro).

Modernisation, Consolidation and Extension of Legislative Framework

121. The modernisation, consolidation and extension of the legislative framework may result in one-off costs relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

Stirring Up of Hatred Offences for all Characteristics

Third Sector

122. Sacro deliver a service Sacro Tackling Offending Prejudices (STOP) which utilises a CBT programme to bring about attitudinal and behaviour changes in perpetrators of hate crimes. The service is funded by Scottish Government and is available in Lanarkshire, Glasgow and East Dunbartonshire to individuals aged 8+.

123. They have stated that the changes to hate crime legislation will increase the demand for STOP but do not foresee any significant financial implications beyond the requirement to update information and promotion materials.

124. There may be one-off costs in updating the training and guidance in time for the introduction of the new offence for third sector organisations that support victims.

Other Bodies, Individuals and Business

125. It is not anticipated that there will be any new costs falling on any other bodies, individuals or businesses as a result of the new offence.

[crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf](https://www.gov.scot/document/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf)

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

New Statutory Aggravations for Age and Sex

Third Sector

126. Sacro deliver a service (STOP) which utilises a CBT programme to bring about attitudinal and behaviour changes in perpetrators of hate crimes. The service is funded by Scottish Government and is available in Lanarkshire, Glasgow and East Dunbartonshire to individuals aged 8+.

127. They have stated that the changes to hate crime legislation will increase the demand for STOP but do not foresee any significant financial implications beyond the requirement to update information and promotion materials which should be accommodated within the regular review and update processes.

128. There may be one-off costs in updating the training and guidance in time for the introduction of the new offences for third sector organisations that support victims. These minimal costs should be accommodated within the regular review and update processes.

Other Bodies, Individuals and Business

129. It is not anticipated that there will be any new costs falling on any other bodies, individuals or businesses as a result of the new statutory aggravation.

Separate Statutory Aggravation for Variations in sex Characteristics

130. Updating the definition of the characteristic of 'transgender identify', and establishing a separate characteristic of 'variations in sex characteristics' may result in some one-off costs for Third Sector organisations relating to updating training materials, guidance and IT Systems. These minimal costs should be accommodated within the regular review and update processes.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Summary of costs

ESTIMATED COSTS OF THE BILL (ROUNDED)			
New Stirring up Offences			
	1 'new' Charge	2 'new' Charges	3 'new' Charges
COPFS Costs	£2,000	£4,000	£6,000
SCTS Costs	£1,600	£3,200	£4,800
SLAB Costs	£2,000	£4,000	£6,000
SPS Costs	£6,000	£12,000	£18,000
SCJSWS Costs	£600	£1,200	£1,800
Subtotal	£12,200	£24,400	£36,600
New Statutory Aggravations			
	50, of which 10 'new' Charges	100, of which 20 'new' Charges	200, of which 40 'new' Charges
COPFS Costs	£20,000	£39,000	£79,000
SCTS Costs	£15,000	£31,000	£61,000
SLAB Costs	£21,000	£41,000	£82,000
SPS Costs	£61,000	£121,000	£243,000
SCJSWS Costs	£6,000	£13,000	£26,000
Subtotal	£123,000	£245,000	£491,000
Total annual recurring costs	£135,200	£269,400	£527,600
One-off implementation costs			
COPFS Costs	£50,000		
PS Costs	£50,000		
Total one-off implementation costs	£100,000		

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Note: Annual costs are presented as static. Clearly in actuality they will vary somewhat however the modelling presented here is high level and based on averaging (relatively limited) data over multiple years to improve data reliability. Therefore modelling in any annual costs for each financial year separately would not be justified. This should be seen in the context of a 30% fall in levels of recorded crime more generally over the same period (see page 97 of 'Recorded Crime In Scotland, 2018-19').¹³

¹³.<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded-crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf>.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

Hate Crime and Public Order (Scotland) Bill

Financial Memorandum

□ Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -

www.scottish.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.scottish.parliament.scot/documents