

Hate Crime and Public Order (Scotland) Bill

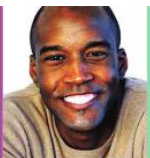
BEMIS Scotland Response

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Attention of Justice Committee, Scottish Parliament

July 2020



BEMIS

Empowering Scotland's Ethnic and
Cultural Minority Communities

BEMIS SCOTLAND:

BEMIS is the national Ethnic Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland and the communities that this sector represents.

As a strategic national infrastructure organisation, we are committed to promoting inclusion, democratic active citizenship, recognition of diversity, human rights education, and wider representation, as well as effecting a proactive role in maintaining and enhancing pathways to influence government policy in regards to equality and human rights at local, Scottish, UK and EU levels.

Our vision is of a Scotland that is equal, inclusive and responsive, a society where people from the diverse communities are

- valued, treated with dignity and respect,
- have equal citizenship, opportunities and equality of life, and
- who actively participate in civic society.

For the last 20 years, BEMIS has and continues to be a major partner in supporting and advancing human rights, race equality and diversity agendas in Scotland and beyond.

Scotland & Race Hate Crime, *what do we know 2003–2020?*

Scotland's ethnic minority population based on the 2011 Scottish Census and including all communities identified as something other than 'White Scottish' or 'White other British' is 8.2%¹ of the Scottish population. This includes the categories White Irish, White Polish, White other, Asian, Asian Scottish, Asian British, and Other Ethnic Group.

Therefore, in numerical terms the population of ethnic and cultural minority communities in Scotland is 434,223.² It is sometimes said that Scotland is

¹ <http://www.scotlandscensus.gov.uk/ods-web/area.html>

² <http://www.scotlandscensus.gov.uk/ods-web/area.html>

not as diverse as England. This is inaccurate. Scotland's diversity is just different – reflected in our unique experience of immigration over centuries.

- Race Hate crime in Scotland continues to be a significant concern. Over the last 8 years where data is available 33,087 race related charges have been progressed by the COPFS (Crown Office and Procurator Fiscal Service).³
- Race Hate crime affects every ethnic minority community in Scotland, including but not reserved to Pakistani, Gypsy Traveller, Polish, African, Chinese and Indian citizens.
- Trends in the nature of racially aggravated hate crime show a continuation of discrimination directed towards people of colour, including African, Caribbean and Black citizens. 687 reported incidents in 2013/14 and 5,808 incidents between 2004/05 and 2013/14.⁴
- There continues to be prevalence to conflate religious aggravations as 'racial' and 'racial' aggravations as religious. This may be most acutely true for the multi-generational Pakistani and Irish communities.
- In 2013/14 racial incidents involving the Pakistani community totalled 1,107. From 2004/05–2013/14, 14,825 reported incidents took place which involved the Pakistani community as either victim or complainer.⁵
- In the reporting period 2012/13–2015/16, 333 crimes were prosecuted as religiously aggravated against Muslims⁶
- The significant differentiation between crimes targeting Pakistani community members 'ethnicity' and perceived 'religion' may suggest an erroneous recognition of the nature of the aggravation. Certainly,

³ <http://www.crownoffice.gov.uk/publications/equality-and-diversity>

⁴ <http://www.gov.scot/Resource/0048/00484559.pdf> (see Appendix, Table 1)

⁵ *ibid*

⁶ <http://www.gov.scot/Resource/0050/00501327.pdf> (See Appendix, Table 2)

an additional component is necessary to appreciate the scale of hate crime directed overwhelmingly towards the Pakistani minority.

- Between 2004/05 and 2013/14, 996 incidents occurred where the victim or witness of an incident was of Irish ethnicity⁷. During the period 2012/13–2015/16, 1,382 charges were progressed by COPFS based upon an anti-Catholic religious aggravation⁸.
- There has been a trend in Scotland to conflate Catholic and Irish and progress charges which are based upon ethnicity as ‘religious’ aggravations. While representing 16% of the national population, ‘anti-Catholic’ hate crime represents over 50% of all religiously aggravated crime over years where data is available. The additional component of ethnicity may represent a characteristic as to why disparity between population percentage and hate crime aggravations remains so high towards this community.
- The Scottish Council for Jewish Communities have outlined concerns in relation to the increase of anti-Semitic incidents between 2013 and 2016⁹. In 2015/16 physical assault accounted for 11% of anti-Semitic hate crimes, slightly above the national average of 8%.

It has been widely reported that since the Brexit decision, there has been a marked increase in race hate crime towards European minority communities and ethnic minority communities in general.¹⁰

While the increase in hate crime as a result of Brexit hasn’t been reported in Scotland¹¹ there should be continued vigilance given the percentage increase in hate crime directed towards ‘Gypsy Traveller/Polish/Other White’ – 2.5% in 2003/04 and 11% in 2014/15¹².

⁷ See no. 3

⁸ See no. 5 (See Appendix, Table 1)

⁹ http://www.scojec.org/news/2014/14viii_antisemitism/antisemitism.html

¹⁰ <https://www.theguardian.com/society/2016/sep/07/hate-surged-after-eu-referendum-police-figures-show>

¹¹ <http://www.mirror.co.uk/news/uk-news/post-brexit-racism-truth-hate-8787243>

¹² <http://www.gov.scot/Resource/0048/00484559.pdf> (See Appendix, Table 1)

This in part may be due to an increase in A2 and A8 country migration to Scotland in the intervening years.

In short, Scotland is not immune to racism or prejudice. Concerning levels of racism persist within day to day life having a detrimental impact on the wellbeing, health, potential and human rights of individuals and ethnic minority communities. A responsive and good hate crime law has a fundamental role to play but it cannot be an isolated standalone instrument.

BEMIS support the Bill's principles

BEMIS Scotland support the general principles of the bill to ensure hate crime legislation is consolidated into a single piece of legislation. This should make the law easier to understand, more accessible and enable us to use the evidence developed from the Bill (Acts) implementation to measure the type and nature of hate crime that is persevering in Scotland.

Why data is so important – we must do better!

Racially aggravated hate crime remains Scotland's dominant issue of prejudiced criminal behaviour. However, since the amalgamation of Police Scotland, we have not been able to identify the specific nature of racist incidents and hate crime in Scotland.

This is due to legacy computer systems from the previous regional forces not operating in harmony with each other. Thus, race hate crime data is hugely difficult to extrapolate and disaggregate.

As a temporary measure, BEMIS Scotland agreed with Police Scotland and the Scottish Government that statisticians should conduct what is termed a "deep dive" analysis of crime reports available on the 'Vulnerable Persons Database' (VPD). The VPD holds narrative on the nature of racist incidents and reports, but it is not in and of itself a bespoke evidence tool for gathering robust, easily accessible, and publicly available information on the nature of racist hate crime in Scotland.

The temporary measure would give us an indication of the nature of racist hate crime in Scotland but would not in the medium to long term provide an adequate or legally compliant system of hate crime disaggregation. Due to the ongoing COVID-19 challenges, this work has been suspended.

As a direct result, in relation to data development and publication on racist and religiously aggravated hate crimes the Scottish Government and Police Scotland are non-compliant with the devolved administration's responsibilities to the international human rights law treaty system.

The committee should be aware that the legal definition of racially aggravated hate crime integrated into our domestic legal system is a direct incorporation of the provisions of racial discrimination as articulated in **Article 1 of the International Convention on the Elimination of all forms of Racial Discrimination (CERD)**¹³. **In this context Scottish Ministers are compliant with their international duties.**

Where the devolved functions fall short is in the collation and disaggregation of race hate crime data that is necessary to track trends of racist hate crime, identify the prevalence of different types of racism and inform an intelligence picture that stimulates non-legislative community measures. The lack of sufficient and credible data in Scotland has now been identified by the UN Committee on the Elimination of all forms of Racial Discrimination¹⁴

- **BEMIS Scotland call for a legal requirement to be integrated into the Bill that places a duty on the Scottish Government, Police Scotland, and any other relevant duty bearers to develop a bespoke system of Racist and Religiously aggravated hate crime data collation and disaggregation.** This data should be published on at least an annual basis and be broken down to reflect all of the ethnicity options inherent in the Scottish census. Were we

¹³ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195 – Article 1

“In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on **race, colour, descent, or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”

¹⁴ CERD/C/GBR/CO/21-23, para. 16 – (b): the state party should ‘Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness’

to integrate this requirement into the Bill, Scotland would become an example of international best practice in using data to take a joined-up approach to tackling hate crime that involves and informs both legislative and non-legislative interventions. An integration of data collation and disaggregation as a legal requirement would ensure that Scotland's institutions were operating in compliance with the International Convention on the Elimination of All forms of Racial Discrimination and provide society with a much clearer picture of the nature and prevalence of the different types of racism that manifest in Scotland on a daily basis on the grounds of religious hatred or colour, nationality, ethnic or national origin¹⁵.

- The right of the victim remains to identify the nature of any crime. This fundamental basis of remedy, for the victim, must remain.
- **Human Rights compliance and education must underpin the development of the Act.** This must include both technical legal compliance with the European Convention on Human Rights, the continuation of integration of International Human Rights Law into the domestic regime and an upskilling of citizens via capacity development for them to understand the act and how to use it.
- A future racial statutory aggravation should reflect precisely the coverage extended by the pre-existing wording **inherent in international human rights law.**
- A future racial statutory aggravation should reflect precisely coverage extended by the pre-existing wording **inherent in Scottish criminal and UK equalities law.**
- The wording and definition of race hate crime statutory aggravation should be: **“a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins”.**
- **In accordance with the international and legal definitions above it must be made explicit that pre-dating case law, which affects**

¹⁵ This call is endorsed by Ando Glaso, Najra Helping Hands, Licketyspit Theatre Company, Fife Arabic Society, Freedom From Torture, African and Caribbean Women's Association, Article 12, Empower Women for Change, Community Interfaith Society, Sikh Sanjog, Aberlour, Scottish Trans

the defining characteristics of ‘Race’ colour, nationality etc. – are continued into the interpretation of any future act.

- **BEMIS reject in its entirety the proposal to create a ‘sectarian aggravation’ notion.** It is clear in the case law and analysis of Lord Bracadale that current legal protections suffice via the racial and religious aggravators. Furthermore, the proposal lacks credibility in the communities it supposedly seeks to protect. The proposal does not respond to the general ‘tidy up’ principles of Bracadale’s review and risks reinforcing discrimination by categorising people and communities as sectarian when they evidently are not.
- ‘Sectarianisation’ equates the ‘malice and ill will’ of the perpetrator with the cultural identity of the ‘victim’. **In doing so ‘sectarianisation’ punishes the victim for expressing intrinsic elements of their identity which do not, will not and cannot be the focus of criminal law unless the threshold of the offence is set at an alarmingly low level that risks pandering to racist and religious hatred.** This is precisely what happened with section 12 (e), covering offense to a reasonable person, within the Offensive Behaviour at Football and Threatening Communication Act (Scotland) 2012 (OBTCA). The sectarian aggravation proposal holds chilling echoes of the rationale which drove that now repealed legislation.

Beyond the law

BEMIS believe that Race Equality must move beyond a sole emphasis on anti-racism or remedies via the courts to the reality of hate crime.

While this is a valid and important legal instrument, additional opportunities and programmes of progressing race equality must be initiated. Race equality, aside from taking a firm stance on racism, must include, for example:

- Representative institutions and employment
- Access to safe, clean and affordable housing
- Participation and recognition within cultural life

- Anti-poverty initiatives which combat the disparity in ethnic minority communities who live in poverty and to alleviate poverty for all who must contend with it
- Fair work and fair pay including closing the gender pay gap and the lack of minority communities in positions of authority in local and national government

This strategic intention has been outlined in the co-designed Scottish Race Equality Framework 2016–2030. This includes a sequence of recommendations and action points relevant to broader civic society and government.

REF APPENDIX and TABLE BELOW:

Appendix

Table 1: Ethnic group of victims/complainers of racist incidents, Scotland, 2004/05–2013/14

Ethnic Group ^{2,3}	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14
White British	826	1,030	983	1,030	1,095	1,158	1,048	1,295	1,139	1,423
White Irish	63	91	139	121	124	87	131	95	75	70
Gypsy/Traveller, Polish White and Other White	130	122	414	477	509	534	546	700	706	663
Mixed	127	149	170	152	150	129	248	151	173	153
Pakistani	1,773	1,545	1,833	1,654	1,584	1,458	1,376	1,357	1,155	1,107
Indian	443	431	507	488	609	557	536	486	367	340
Bangladeshi	67	26	67	48	54	62	95	57	43	41
Chinese	151	153	183	117	152	127	110	153	84	95
Other Asian	508	984	532	559	505	497	503	520	395	405
African	321	325	404	443	478	505	416	539	476	452
Caribbean	92	171	59	53	59	46	46	35	24	88
Other Black	118	68	111	181	160	115	249	174	140	147
Other	295	379	339	290	290	323	335	327	227	246
Unknown	145	346	222	177	226	185	267	422	308	396
Total	5,059	5,820	5,963	5,790	5,995	5,783	5,906	6,311	5,312	5,626

BEMIS (Scotland) is a registered charity in Scotland and a company limited by guarantee.
 Company Number: SC200547 Scottish Charity Number: SC027692

Appendix

Table 2: Religiously Aggravated Crime Scotland 2012–2016

Religion targeted	2012-13		2013-14		2014-15		2015-16	
	No. of charges	%	No. charges	%	No. of charges	%	No. of charges	%
Roman Catholicism	388	57	367	63	328	58	299	51
Protestantism	199	29	169	29	145	25	141	24
Islam	80	12	48	8	71	12	134	23
Judaism	27	4	9	2	25	4	18	3
Christianity (general)	5	1	4	1	6	1	0	0
Unknown	4	1	5	1	9	2	0	0
Other	3	0.4	2	0.3	1	0.2	0	0

* Charges do not add up to the total number reported as some charges related to conduct that targeted more than one religious group.