

Chapter 5: Standalone offence: section 50A Criminal Law (Consolidation) (Scotland) Act 1995: racially-aggravated harassment and conduct

Racial crime remains the most commonly reported hate crime, although the most recent figures from the Crown Office show that the number of racial charges in 2016-17 was at its lowest level since 2003-04.

In chapter 3 we noted that in addition to the statutory aggravation of racial prejudice which can apply to any offence, there is a standalone offence of racially aggravated harassment and conduct under Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995.

There are two ways in which this offence may be committed:

1. A racially-aggravated course of conduct which amounts to harassment of a person. “Harassment of a person” includes causing the person alarm or distress. “Conduct” is defined as including speech and a “course of conduct” must involve conduct on at least two occasions.
2. Acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

In each case the course of conduct or the behaviour is racially aggravated if one of the same two thresholds which feature in the statutory aggravation provisions described in the previous chapter is met: (a) in the course of conduct the offender “evinces” towards the victim “malice and ill-will” relating to race; or (b) the behaviour is motivated by malice and ill-will on a racial basis.

The offence might apply, for example, where one person shouts racial abuse at another in the street and causes distress as a result. This offence was created because of concerns that the problems of racial harassment and racially motivated violence were not treated seriously enough by the criminal justice system.

In many situations the conduct caught by section 50A could also be prosecuted as another offence such as abusive and threatening behaviour with a statutory race aggravation attached. In the light of that, in the full paper we indicated that we would welcome the views of consultees as to whether there are any circumstances in which conduct presently prosecuted under section 50A could not also be prosecuted as some other offence with a statutory aggravation.

Generally speaking, in Scotland a crime has to be proved in court by evidence coming from more than one source pointing to the guilt of the accused person. This is called the need for corroboration. This applies to the standalone offence of racially aggravated harassment or conduct under section 50A. This means there must be evidence coming from more than one source pointing to the racial element in the charge. By contrast, where another offence such as assault or breach of the peace is charged with a racial aggravation, only one source of evidence is needed to prove the aggravation. This may make it easier to prove such a racially aggravated offence than a charge under section 50A.

At present, there is only a standalone harassment offence for race, and no equivalent standalone offence for harassment aggravated by religion, disability, sexual orientation or transgender identity.

Question:

Is this provision necessary? Please give reasons for your answer.

Should the concept of a standalone charge be extended to other groups? If so, which groups? Please give reasons for your answer.