



## **Hate Crime and Public Order (Scotland) Bill**

### **Amendments to be moved at Stage 2**

#### **List of amendments**

Section 2, Page 2, line 21, leave out <and> to end line 21

Section 6, Page 6, line 11, at end insert

< () where the conversion or production of such material is required, a constable or a member of police staff will require to act reasonably with regard to time permitted for such conversion or production to take place and the form in which such conversion or production of material is to take. Any costs incurred in connection with the conversion or production of such material will be borne by those instructing a constable or member of police staff to seize or detain such material.>

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Section 2, Page 2, line 21, leave out <and> to end line 21

#### Effect

The amendment removes the requirement to state how the sentence is different from that which the court would have imposed if the offence were not aggravated, the extent of and the reasons for that difference or the reasons for there being no difference.

#### Reason

Lord Bracadale in the “Independent Review of Hate Crime Legislation in Scotland” recommended that this practice should be discontinued since it complicated the sentencing process.

This practice may give rise to potential appeals and to a perception of, if not actual, inconsistencies in sentencing where victims may feel aggrieved if they felt that the sentence did not properly reflect the aggravation.

Understanding sentencing in relation to offending behaviour is crucial in preventing hate crimes. The factors involved in sentencing are complex and relate partly to deterrence by sending out a message to those who have offended and public denunciation of the offending behaviour to those who have been the victims. Consistency of sentencing across Scotland is

vital. This role is best achieved by Scottish Sentencing Council (in ensuring that a balance is maintained between freedom of expression and other human rights).

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#### Effect

The amendment ensures the reasonable exercise of the powers under section 6(3) of the Bill that require the conversion or production of material being seized for the constable or officer member of police staff.

#### Reason

Section 6(3) of the Bill is very wide where material being seized is only “capable of being looked at, read, watched or listened to (as the case may be) after conversion from data stored in another form, require that the material (a) be converted into such a form in a way which enables it to be taken away, or (b) be produced in a form which is capable of being taken away and from which it can be readily converted.”

The amendment to act reasonably is appropriate to ensure that such conversion or production is afforded time for those requiring to convert or to produce such material and in relation to the form that the conversion or production is to take. Costs if any too should be borne by Police Scotland or those instructing the search.