

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

**Justice Committee call for views -**

**Written Response from the Coalition for Racial Equality and Rights, July 2020**

**Supported by SCOREscotland, SEMPERscotland and Active Life Club**

### **General**

- 1. Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?**

CRER believes that there is merit in gathering all the relevant statutory aggravations together in a single piece of legislation (excluding the standalone offence for racially-aggravated harassment and conduct, as we support the retention of Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995). However, we would urge the following legislative provisions and non-legislative measures also be adopted to further strengthen the Scottish Government's approach to hate crime:

#### **Additional provision - A defined reporting requirement embedded within the Bill**

There should be a reporting requirement placed within the Hate Crime and Public Order (Scotland) Bill, similar to the reporting requirement that is present within the Domestic Abuse (Scotland) Act 2018.<sup>1</sup> Particularly, we would want there to be a provision that Scottish Ministers are required to prepare a report annually on the offences outlined in the Hate Crime and Public Order (Scotland) Bill that includes but is not limited to:

- The method of reporting the incident
- The number of previous charges filed against the accused
- The number of charges filed, disaggregated for each characteristic listed in the Bill, within each council area
- The number of charges filed, disaggregated for each characteristic listed in the Bill, by place of incident e.g. shop or dwelling house
- The number of charges which subsequently lead to conviction, disaggregated for each characteristic listed in the Bill and each individual charge type
- The number of charges and convictions disaggregated by the ethnicity of the

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<sup>1</sup> Crown. (2018). [Domestic Abuse \(Scotland\) Act 2018](#).

victim and accused using the Census 2021 ethnicity categories

Although the current consultation does not encompass amendments to the standalone offence of racially-aggravated harassment, we would be in favour of a similar reporting duty for this. We acknowledge that some of this data is already available through the Crown Office and Procurator Fiscal Service (COPFS)<sup>2</sup> and Interim Vulnerable Persons Database (IVPD)<sup>3</sup> for Scotland, yet this data is sparse and does not cover all the topic areas outlined above. Subsequently, CRER believes that having a reporting requirement embedded within the legislation to ensure all the relevant information was contained within one annual report would be a useful basis to monitor the application of this legislation.

### **Additional provision: A duty to promote reporting**

Given the significant underreporting of hate crime as highlighted in Lord Bracadale's review,<sup>4</sup> a provision should be included whereby Scottish Ministers have a duty to promote the reporting of hate crime. Similar to the provisions in the Social Security (Scotland) Act 2018 where Scottish Ministers have a duty to promote social security take-up,<sup>5</sup> this provision should require Scottish Ministers to keep under consideration what steps they can take to ensure that individuals are given support and assistance in both reporting hate crime and in the processes they go through thereafter. If appropriate Scottish Ministers should undertake steps to meet this aim. Steps undertaken must also include the provision, or ensuring the provision of, accessible independent advice, information and advocacy (including dedicated on-going casework support) for those who report hate crime.

As stated in our submission to the Independent Review of Hate Crime Legislation, we have concerns about the effectiveness of Third-Party Reporting Centres and also about the risk that reliance on this approach increases the gap between police and communities. The Scottish Crime and Justice Survey 2018/19 shows only 40% of violent crimes and assaults are reported to the Police, and this may be exacerbated for hate crime as the Independent Review received evidence that the concept and criteria for this is poorly understood. Subsequently, the provision to promote reporting should also include a requirement for Scottish Ministers to prepare and publish a strategy to promote reporting of hate crime, similar to the requirement for Scottish Ministers to develop strategy to promote social security take-up that is in the Social Security (Scotland) Act 2018.<sup>6</sup> The preparation of this strategy should involve input from those who have experienced hate crime and organisations which support and/or advocate for those who have experienced hate crime.

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<sup>2</sup> Crown Office and Procurator Fiscal Service. (no date). [Equality and Diversity: Hate Crime in Scotland.](#)

<sup>3</sup> Scottish Government. (2019). [Hate crime: availability of information recorded by the police in Scotland.](#)

<sup>4</sup> Scottish Government. (2018). [Independent review of hate crime legislation in Scotland: final report](#)

<sup>5</sup> Crown. (2018). [Social Security \(Scotland\) Act.](#)

<sup>6</sup> Crown. (2018). [Social Security \(Scotland\) Act.](#)

## **Additional non-legislative measure: Detailed recording of statistics on hate crime, disaggregated by ethnicity.**

The UN Committee on the Elimination of Racial Discrimination in their concluding observations on the 21<sup>st</sup> to 23<sup>rd</sup> periodic reports of the UK “recommends that the State party, including the governments of Northern Ireland, Scotland, Wales, [...]:  
(b) 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”.<sup>7</sup>

Currently, the most recent data on hate crime in Scotland comes from the Crown Office and Procurator Fiscal Service (COPFS) and only provides data at a national and Procurator Fiscal Office level. Moreover, the COPFS annual report does not disaggregate the data by ethnicity (or the presumed ethnicity) of the victim meaning it impossible to know who is being impacted by hate crime in Scotland and form targeted strategies to mitigate this.<sup>8</sup> This also means that we cannot meet the UN Committee on the Elimination of Racial Discrimination’s recommendation 16 (b) since we have insufficient information on who the “affected groups” are’:

“(c) Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system”<sup>9</sup>

Subsequently, CRER would urge COPFS and other organisations/agencies reporting on racist hate crime to release data on ethnicity or presumed ethnicity of victims and accused at national level, detailing this for the full range of Census 2021 ethnicity categories.

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<sup>7</sup> Committee on the Elimination of Racial Discrimination (2016). [Concluding Observations on the Twenty-First to Twenty-Third Periodic Reports of United Kingdom.](#)

<sup>8</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20.](#)

<sup>9</sup> Committee on the Elimination of Racial Discrimination (2016). [Concluding Observations on the Twenty-First to Twenty-Third Periodic Reports of United Kingdom.](#)

## Consolidation

### **2. The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?**

CRER believes that there is merit in gathering all the relevant statutory aggravations together in a single piece of legislation, excluding the standalone offence for racially-aggravated harassment and conduct as we support the retention of Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. This would send a clear message regarding what society finds as intolerable attitudes and beliefs, provide consistency across the legislation, and offer clarity to communities who may struggle to understand the current piecemeal approach to hate crime legislation.

We urge for the following to be considered when examining how to move forward with consolidated legislation:

- Implementing a commitment within the legislation for a full review of the impact on individual equality groups of consolidated hate crime legislation within a particular timeframe.
- Introducing a transitional period for prosecutors and the public to become familiar with the new legislation and any new terms and/or legal thresholds.
- Committing to at least annual publication of disaggregated data relating to reported hate crimes as outlined in our answer to Question 1.

## How to prosecute hate crime?

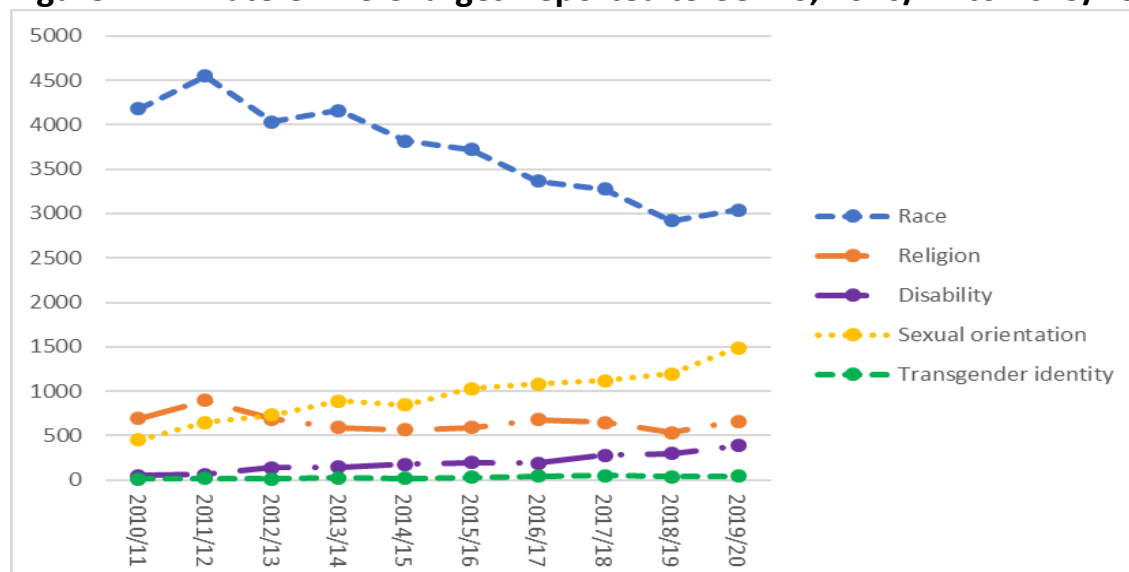
### **3. Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?**

We support the proposed approach within the Bill and particularly welcome the retention of Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. As described in more detail in our answer to Question 9, the standalone offence of Section 50A (racially aggravated harassment) constitutes a sizeable amount of hate crime charges and convictions. Maintaining every available legal avenue for justice for victims of racialised crime is even more critical when, according to the latest data from the Crown Office & Procurator Fiscal Service (COPFS), charges for racialised hate crime are actually increasing in Scotland for the first time in ten years (see Figure 1).<sup>10</sup>

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<sup>10</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20](#).

**Figure 1: All Hate Crime Charges Reported to COPFS, 2010/11 to 2019/20**



Source: COPFS (2020), Hate Crime in Scotland 2019-20.

There has also been a sizeable increase at local level. For example, as highlighted in Appendix 1, there has been an increase in all racist hate crime charges in over half (23 of the 41) of the COPFS offices in Scotland between 2018/19 and 2019/20 financial years and over one-quarter (12 of the 41) between 2010/11 and 2019/20 financial years.<sup>11</sup> These figures are alarming, and it is concerning that several of these offices are in rural parts of Scotland with smaller BME populations and could represent a significant increase per capita – although further analysis would be required to establish this.

**4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?**

N/A

### Other forms of crime not included in the Bill

**5. Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?**

N/A

<sup>11</sup> Crown Office and Procurator Fiscal Service (2020), [Hate Crime in Scotland 2010-11 to 2019-20 \(breakdown by Procurator Fiscal Office\)](#)

## **Stirring up offences**

### **6. Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?**

We would not oppose the creation of separate offences pertaining to the stirring up of hatred for certain groups if evidence is provided to show its need and usefulness. Moreover, we welcome that the new offence has not been consolidated with the existing offence of stirring up of racial hatred, as to do so would weaken the important, essential, and particular message this offence conveys.

Increasing reports of grooming by far-right organisations in Scotland and the rise in counter-terrorism activity in this area means that the offence of stirring up racial hatred is of significant importance in the current climate.<sup>12</sup>

As detailed further in our response to Question 3, there has been an increase in charges for racist hate crime within the last financial year, both at national and local level in Scotland. This is a particular situation compared to other protected groups, and as such we welcome the decision that stirring up of racial hatred should remain a separate offence.

### **7. Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?**

CRER welcomes the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred and, as stated in our previous consultation responses, we strongly disagreed with Lord Bracadale's views that 'insulting' should be removed.

The Scottish Government's Equality Impact Assessment of the Hate Crime and Public Order (Scotland) Bill noted that: "Removal of insulting could be perceived as suggesting it was in some way acceptable to insult on the basis of race in a manner that previously it would not have been. Such a perception, even if based on an incomplete understanding of the operation of criminal law, is not a perception that the Scottish Government is willing to risk arising".<sup>13</sup> Furthermore, it was reasoned in the assessment that "its removal could be particularly damaging in terms of tackling racial hatred within Scottish society if such a removal could be perceived as a weakening of criminal law protection in the area of race. The Scottish Government is of the view that, due to the historical and structural nature of racism, the prevalence

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<sup>12</sup> Moncur, J. (2019). [Terror expert warns far-right extremists are 'clear and present threat' in Scotland](#). Daily Record, 13<sup>th</sup> November 2019

<sup>13</sup> Scottish Government. (2020). [Hate Crime and Public Order \(Scotland\) Bill - Equality Impact Assessment](#)

and seriousness of race hate crime and the impact that this has on community cohesion, a separate approach is justified”.<sup>14</sup> We feel that the explanation given in the Bill’s accompanying policy memorandum<sup>15</sup> reflects the Scottish Government’s EQIA and we welcome this as positive evidence of mitigating action taken following an Equality Impact Assessment.

## Other issues

### **8. Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?**

N/A

### **9. Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?**

As Lord Bracadale’s consultation document noted, Section 50A came about due to concerns that the problems of racial harassment and racially-motivated violence were not treated seriously enough by the criminal justice system. Over 20 years on, BME communities still share these concerns. During the 2<sup>nd</sup> reading of the Crime and Disorder Bill 1998 which created this offence prior to its transference into devolved legislation, Baroness Amos stated, “I have seen the impact of repeated acts of victimisation and violence on individuals and families and I have seen the build-up of anger, fear, and resentment within ethnic minority communities... We need to instil in our communities confidence that crimes of racial violence and racial harassment will be dealt with seriously. That is why I welcome the Government’s commitment to tackling racial violence and harassment and their determination that the criminal law should be adequate to protect victims of crime which is motivated by intentions amounting to racial hatred.” The justification raised in 1997 still holds true today; this specific charge is needed to protect victims of crime and to convey the serious nature (and state condemnation) of racial harassment.

CRER strongly agrees that Section 50A should be retained. We opposed repealing this important piece of legislation in our previous consultation response for the following reasons:

- It would have ignored the scale and unique position of racism and racist hate crime as something which goes far beyond an attack on an individual; racist hate crime is founded on white supremacy and as such, undermines an individual’s family, community, and culture.

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<sup>14</sup> Scottish Government. (2020). [Hate Crime and Public Order \(Scotland\) Bill - Equality Impact Assessment](#)

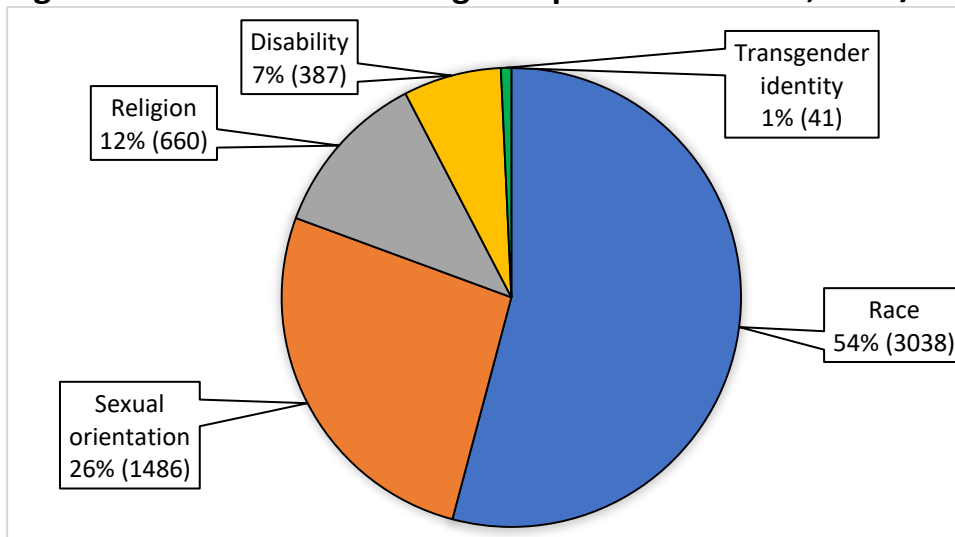
<sup>15</sup> Scottish Parliamentary Corporate Body. (2020). [Hate Crime and Public Order \(Scotland\) Bill – Policy Memorandum](#).



- It would have greatly harmed the relationship between Scotland’s BME communities and institutions in power as it would have sent a clear message that racism did not matter to the Scottish Government.
- Repeal would have risked increasing levels of underreporting and decreasing the overall engagement levels of Scotland’s BME communities.
- Despite being harder to prove (requiring two sources of corroboration as opposed to one for a hate crime aggravation), Section 50A is an effective tool against racist hate crime, currently making up almost half of the charges of all racist hate crime and convictions for racially aggravated harassment/threatening or abusive behaviour.
- Section 50A is potentially broader in scope than Section 38 with a racial aggravation, prohibiting different forms of conduct; this indicated that a repeal of Section 50A could result in a gap in legal protections for Scotland’s BME communities.

As was the case in our previous consultation response on this issue, racist hate crime remains the most commonly reported hate crime. According to most recent COPFS data, in 2019/20 there were 3,038 racist hate crime charges, or 54% of all hate crime charges (see Figure 2).<sup>16</sup>

**Figure 2: All Hate Crime Charges Reported to COPFS, 2019/20**



Source: COPFS (2020), Hate Crime in Scotland 2019-20.

As highlighted in our previous consultation response, significant proportions of hate crime charges are Section 50A charges. According to the most recent COPFS data, Section 50A comprised just over a fifth of all hate crime charges in 2019/20 (see Figure 3).<sup>17</sup> Moreover, in 2019/20, Section 50A comprised 40% (1208) of all racist hate crime charges (see Figure 4).<sup>18</sup>

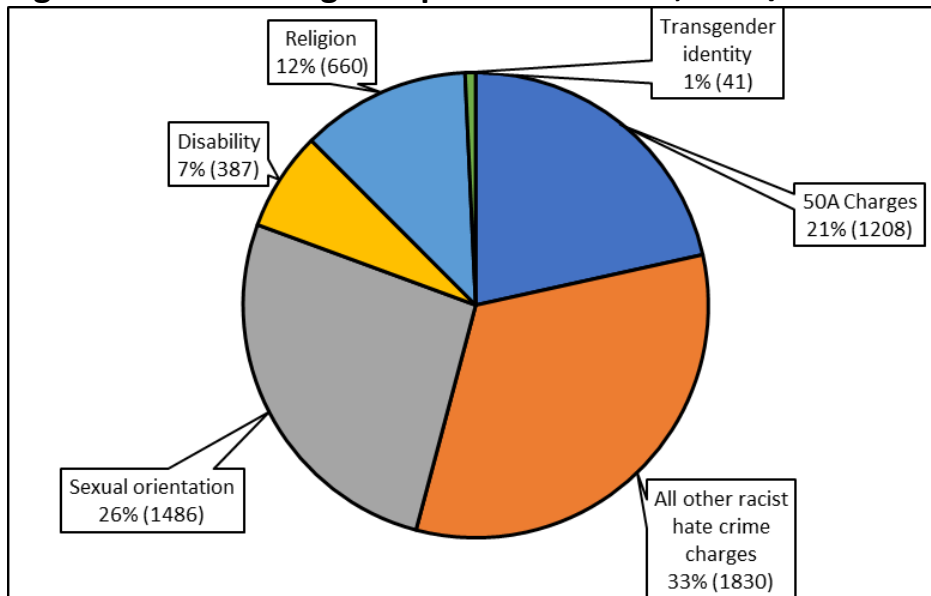
<sup>16</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20](#).

<sup>17</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20](#).

<sup>18</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20](#).

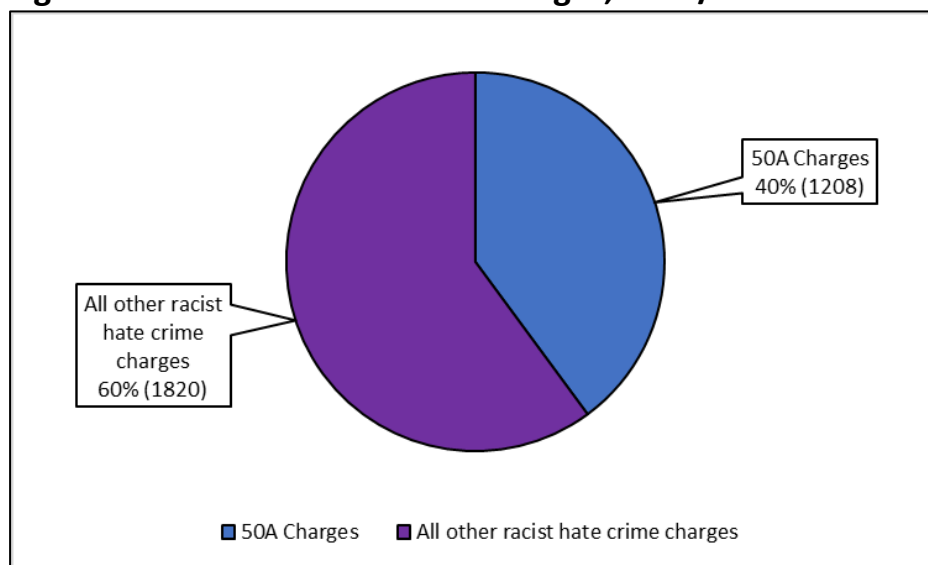


**Figure 3: Crime Charges Reported to COPFS, 2019/20**



Source: COPFS (2020), Hate Crime in Scotland 2019-20

**Figure 4: All Racist Hate Crime Charges, 2019/20**



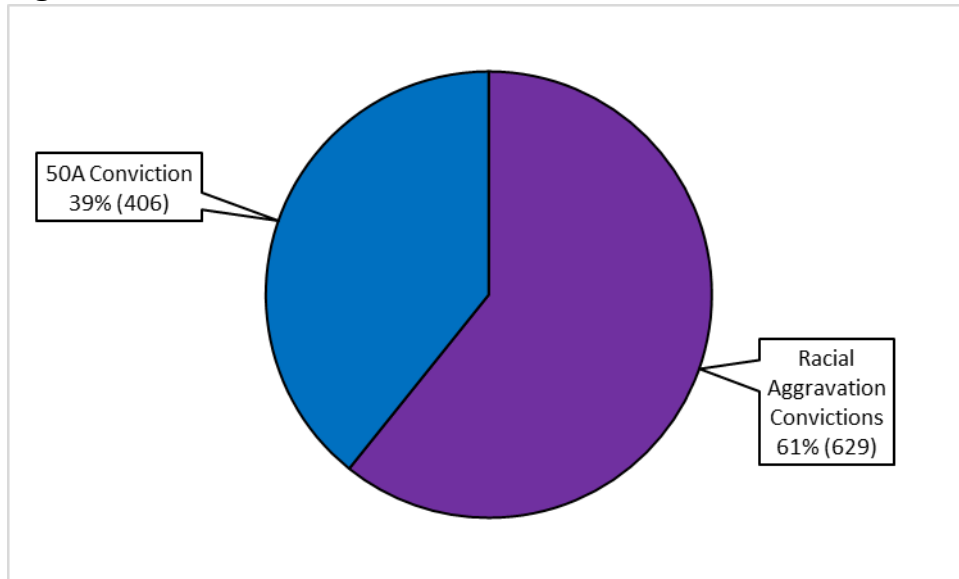
Source: COPFS (2020), Hate Crime in Scotland 2019-20

The most recent available data for specific convictions for Section 50A and racial aggravation is from the 2018/19 year. This data shows that the proportion of convictions under Section 50A (as a percentage of all racist hate crime convictions) is almost equivalent to the proportion of charges under Section 50A (as a percentage of all racist hate crime charges). Specifically, while Section 50A represented 41% (1204) of all racist hate crime charges in 2018/19,<sup>19</sup> it resulted in 39% (406) of all racist hate crime convictions in 2018/19 (see Figure 5).<sup>20</sup>

<sup>19</sup> Crown Office and Procurator Fiscal Service (2020). [Hate Crime in Scotland 2019-20](#).

<sup>20</sup> Scottish Government (2020). [Criminal Proceedings in Scotland 2018-19](#); (combined with data obtained through correspondence)

**Figure 5: All Racist Hate Convictions, 2018/19**



Source: Scottish Government (2020). Criminal Proceedings in Scotland 2018-19 (combined with data obtained through correspondence)

We welcome the explanation given in the Bill’s accompanying policy memorandum on retaining Section 50A.<sup>21</sup> This reflects the results of the Scottish Government’s Equality Impact Assessment, and much of the evidence provided by CRER during consultation.

**10. What is your view on the plans for the abolition of the offence of blasphemy?**

N/A

<sup>21</sup> Scottish Parliamentary Corporate Body. (2020). [Hate Crime and Public Order \(Scotland\) Bill – Policy Memorandum.](#)

## Appendix 1: Increase in Racist Hate Crime Charges by Procurator Fiscal Office

	2010/11 - 2019/20	2018/19 - 2019/20	BME % Population*
↑ indicates an increase in racist hate crime charges			
*Population of the Local Authority in which the PF office is located (2011)			
Aberdeen		↑	8.1%
Airdrie			2.1%
Alloa	↑	↑	1.5%
Ayr		↑	1.3%
Banff		↑	1.5%
Campbeltown			1.2%
Dumbarton	↑	↑	1.6%
Dumfries			1.2%
Dundee		↑	6.0%
Dunfermline	↑	↑	2.4%
Dunoon	↑	↑	1.2%
Edinburgh		↑	8.3%
Elgin			1.1%
Falkirk		↑	1.9%
Forfar	↑		1.3%
Fort William	↑	↑	1.4%
Glasgow			11.6%
Greenock	↑	↑	1.4%
Hamilton		↑	2.3%
Inverness			1.4%
Jedburgh			1.3%
Kilmarnock			1.1%
Kirkcaldy	↑		2.4%
Kirkcudbright			1.2%
Kirkwall			0.7%
Lanark		↑	2.3%
Lerwick	↑	↑	1.5%
Livingston			2.4%
Lochmaddy			0.9%
Oban			1.2%
Paisley		↑	2.7%
Perth		↑	2.0%
Peterhead	↑	↑	1.5%
Portree	↑	↑	1.4%
Rothesay			1.2%
Selkirk	↑	↑	1.3%
Stirling			3.2%
Stornoway		↑	0.9%
Stranraer		↑	1.2%
Tain			1.4%
Wick		↑	1.4%

Source: COPFS (2020), Hate Crime in Scotland 2010-11 to 2019-20 (breakdown by Procurator Fiscal Office); National Records of Scotland (2011), Scottish Census 2011