EQUAL OPPORTUNITIES COMMITTEE

OFFENCES (AGGRAVATION BY PREJUDICE) (SCOTLAND) BILL

WRITTEN SUBMISSION FROM THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

1. Thank you for your letter of 11 September 2008 inviting COPFS to submit written evidence in respect of the Offences (Aggravation by Prejudice) (Scotland) Bill. I note that this invitation is issued on behalf of both the Justice and Equal Opportunities Committees and can advise a separate answer will be submitted to the Justice Committee in due course.

2. In respect of the matters to be considered by the Equal Opportunities Committee, given the function of the COPFS, as part of the Scottish Government, but as the independent prosecution service rather than having policy responsibility for the definition of offences, it would be inappropriate for me to comment on the principle of extending the Bill to incorporate aggravations in respect of age and gender.

3. It may, however, be helpful if I explain how cases are presently handled.

4. I can advise that, when prosecuting offences at present, notice is taken of considerations associated with gender-based violence and with age. The Domestic Abuse Protocol is gender neutral, but there is recognition of the gender issues in our training and domestic violence is regarded as an aggravated form of assault which is flagged up to the court accordingly. In addition, any conviction for domestic abuse contains a text attached to the substantive charge which indicates this was a domestic incident. This appears in an accused person’s previous convictions and is available to the court when it is considering a disposal in the matter. A similar situation applies in relation to offences committed against a child.

5. In relation to the elderly, in prosecutions where it is considered that they have been deliberately targeted, this fact will be indicated to the court in the narration of facts to the court, which is of course, considered during sentence.

6. On a purely practical level, extension of the Bill to include aggravations in respect of age and gender could have significant implications for the IT systems in COPFS. At present, our system is capable of recording a maximum of six aggravations against each individual charge on the database. The extension of the Offences (Aggravation by Prejudice) (Scotland) Bill to include age and gender may involve this capacity being exceeded and require the underlying database to be changed, which would require significant work.

Norman McFadyen
Crown Agent and Chief Executive
Crown Office and Procurator Fiscal Service
21 October 2008