

Briefing for the Public Petitions Committee

Petition Number: [PE01727](#)

Main Petitioner: Frances Nixon

Subject: Reporting crime in Scotland

Calls on the Parliament to urge the Scottish Government to introduce legislation that would ensure all citizens in Scotland have a legal duty to report a crime they have witnessed.

Background

The petitioner has called for a “law of omissions” bill to be introduced in order to “incorporate moral and civic omissions with criminal omissions” which would confer a legal duty on individuals to report crimes which they have witnessed.

The law of omissions can be described simply as applying to situations where a person has failed to act in circumstances where there is some societal expectation placed upon that person to act.

Currently, there is no blanket legal duty imposed on individuals or other bodies to report a crime that they have witnessed, or which they suspect has taken place. There are, however, some exceptions to this general rule.

For example, Part 7 of the Proceeds of Crime Act 2002 obliges an individual to report to the National Crime Agency where there are reasonable grounds to know or suspect that a person is engaged in money laundering. Although this requirement to submit what are known as “suspicious activity reports” applies to any individual, such reports are mostly made by businesses in the regulated sector, such as banks, other financial institutions and accountants.

Similarly, section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015 places a duty on specified Scottish public authorities to notify the Chief Constable (i.e. Police Scotland) about a person who is or appears to be, a victim of the offence of human trafficking or slavery, servitude and forced or compulsory labour.

While there may be a moral argument that such a legal duty should be imposed on everyone, regardless of the type or seriousness of criminal activity which has taken place, there are various reasons as to why such an approach may prove to be problematic. These are discussed below.

The first thing to consider is the type of crime where reporting may prove to be difficult, or have a detrimental effect on a victim, or cause practical difficulties for investigating authorities. An obvious example here would be in cases of domestic abuse where many victims of such abuse are subject to coercive control and who may, as a result, feel unable or fearful to report that a crime had been committed.

Similarly, if a child or young person was a witness to domestic abuse, they may feel that reporting would further endanger the person who was subject to the abuse and as such, refrain from reporting. It is difficult to envisage a scenario where criminal liability or other form of sanction would be imposed on someone who failed to report in such circumstances should the crime subsequently come to light. (It should be noted that the petitioner has not suggested that criminal liability or any other form of sanction should be imposed on someone who fails to report, but a “legal duty to report” implies that some form of action would be taken where an individual failed to report).

Another consideration may be the potential impact on authorities tasked with investigating crime if individuals were under a duty to report all instances of criminal behaviour, including less serious criminal behaviour. For example, littering is a criminal offence and imposing a legal duty to report such behaviour could potentially involve a significant number of calls being made to the police every day to report littering. This could, potentially, divert resources from the investigation of more serious offences.

The petition appears to apply to all types of crime, and given the above, it may be worth considering whether there would be merit in looking at a duty to report based on the seriousness of the offending behaviour in question. Again, however, such an approach is not without difficulties. For example, if assault was to be included in a list of reportable offences and antisocial behaviour was not, would a member of the public be able to differentiate between an assault, as currently constituted in Scots common law, and something which may only amount to antisocial behaviour?

Scottish Government Action

The Scottish Government has not taken any action to introduce mandatory reporting of crime for individual citizens.

Scottish Parliament Action

The Scottish Parliament has not considered mandatory reporting of crime for individual citizens.

Graham Ross
Senior Researcher
8 August 2019

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