



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

PART 1

AGGRAVATION OF OFFENCES BY PREJUDICE

1 Aggravation of offences by prejudice

- (1) An offence is aggravated by prejudice if—
 - (a) where there is a specific victim of the offence—
 - (i) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates malice and ill-will towards the victim, and
 - (ii) the malice and ill-will is based on the victim's membership or presumed membership of a group defined by reference to a characteristic mentioned in subsection (2), or
 - (b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (2).
- (2) The characteristics are—
 - (a) age,
 - (b) disability,
 - (c) race, colour, nationality (including citizenship), or ethnic or national origins,
 - (d) religion or, in the case of a social or cultural group, perceived religious affiliation,
 - (e) sexual orientation,
 - (f) transgender identity,
 - (g) variations in sex characteristics.
- (3) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.

- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice.
- (5) In this section—
“membership”, in relation to a group, includes association with members of that group,
“presumed” means presumed by the offender.

2 Consequences of aggravation by prejudice

- (1) Subsection (2) applies where it is—
- (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice, and
 - (b) proved that the offence is so aggravated.
- (2) The court must—
- (a) state on conviction—
 - (i) that the offence is aggravated by prejudice, and
 - (ii) the type of prejudice by which the offence is aggravated (by reference to one or more of the characteristics mentioned in section 1(2)),
 - (b) record the conviction in a way that shows—
 - (i) that the offence is aggravated by prejudice, and
 - (ii) the type of prejudice by which the offence is aggravated (by reference to one or more of the characteristics mentioned in section 1(2)),
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.

PART 2

OFFENCE OF RACIALLY AGGRAVATED HARASSMENT

3 Racially aggravated harassment

- (1) A person commits an offence if the person—
- (a) pursues a racially aggravated course of conduct which amounts to harassment of another person and—
 - (i) is intended to amount to harassment of that person, or
 - (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person, or
 - (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, another person alarm or distress.
- (2) A course of conduct or an action is racially aggravated if—
- (a) at the time of carrying out the course of conduct or action, or immediately before or after doing so—

Status: This is the original version (as it was originally enacted).

- (i) the offender demonstrates malice and ill-will towards the victim, and
 - (ii) the malice and ill-will is based on the victim’s membership or presumed membership of a group defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or
 - (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.
- (3) It is immaterial whether or not the offender’s malice and ill-will is also based (to any extent) on any other factor.
- (4) A course of conduct must involve conduct on at least two occasions.
- (5) In this section—
- “conduct” includes speech,
 - “harassment” of a person includes causing the person alarm or distress,
 - “membership”, in relation to a group, includes association with members of that group,
 - “presumed” means presumed by the offender.
- (6) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

PART 3

OFFENCES RELATING TO STIRRING UP HATRED

Offences of stirring up hatred

4 Offences of stirring up hatred

- (1) A person commits an offence if—
- (a) the person—
 - (i) behaves in a manner that a reasonable person would consider to be threatening, abusive or insulting, or
 - (ii) communicates to another person material that a reasonable person would consider to be threatening, abusive or insulting, and
 - (b) either—
 - (i) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or
 - (ii) a reasonable person would consider the behaviour or the communication of the material to be likely to result in hatred being stirred up against such a group.
- (2) A person commits an offence if—

Status: This is the original version (as it was originally enacted).

- (a) the person—
 - (i) behaves in a manner that a reasonable person would consider to be threatening or abusive, or
 - (ii) communicates to another person material that a reasonable person would consider to be threatening or abusive, and
 - (b) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3).
- (3) The characteristics are—
- (a) age,
 - (b) disability,
 - (c) religion or, in the case of a social or cultural group, perceived religious affiliation,
 - (d) sexual orientation,
 - (e) transgender identity,
 - (f) variations in sex characteristics.
- (4) It is a defence for a person charged with an offence under this section to show that the behaviour or the communication of the material was, in the particular circumstances, reasonable.
- (5) For the purposes of subsection (4), in determining whether behaviour or communication was reasonable, particular regard must be had to the importance of the right to freedom of expression by virtue of Article 10 of the European Convention on Human Rights, including the general principle that the right applies to the expression of information or ideas that offend, shock or disturb.
- (6) For the purposes of subsection (4), it is shown that the behaviour or the communication of the material was, in the particular circumstances, reasonable if—
- (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.
- (7) For the purposes of subsections (1)(a)(i) and (2)(a)(i), a person’s behaviour—
- (a) includes behaviour of any kind and, in particular, things that the person says, or otherwise communicates, as well as things that the person does,
 - (b) may consist of—
 - (i) a single act, or
 - (ii) a course of conduct.
- (8) For the purposes of subsections (1)(a)(ii) and (2)(a)(ii), the ways in which a person may communicate material to another person are by—
- (a) displaying, publishing or distributing the material,
 - (b) giving, sending, showing or playing the material to another person,
 - (c) making the material available to another person in any other way.
- (9) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

Further provision relating to the offences

5 Powers of entry etc. with warrant

- (1) A sheriff or justice of the peace may grant a warrant under this section authorising a constable to enter premises if the sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting—
 - (a) that an offence under section 4 has been, or is being, committed at the premises, or
 - (b) that there is evidence at the premises of the commission of an offence under section 4.
- (2) A warrant granted under this section remains in force for a period of 28 days beginning with the day on which it was granted.
- (3) A warrant granted under this section may authorise a constable to—
 - (a) enter the premises by force if necessary,
 - (b) search the premises and any person found in the premises,
 - (c) seize and detain any material found on the premises, or on any person in the premises, if the constable has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 4.
- (4) A constable who is authorised by a warrant granted under this section to seize and detain material may, if the material 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.
- (5) In this section—
 - (a) “constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
 - (b) “premises” means any place and includes any—
 - (i) land or building,
 - (ii) vehicle, vessel, trailer, aircraft or hovercraft,
 - (iii) tent or moveable structure.

6 Recording conviction for offence under section 4

Where a person is convicted of an offence under section 4, the court must—

- (a) state on conviction, and
- (b) record the conviction in a way that shows,

the characteristic (or characteristics) to which the offence relates (by reference to it being an offence under section 4(1) or by reference to one or more of the characteristics mentioned in section 4(3)).

7 Forfeiture and disposal of material to which offence relates

- (1) Where a person is convicted of an offence under section 4—

- (a) the court may order the forfeiture of any material to which the offence relates, and
 - (b) the court may order that any of the forfeited material be disposed of in such manner as the court may direct.
- (2) An order made under subsection (1)(b) does not take effect until—
- (a) if an appeal is brought against the conviction or sentence, after the appeal is finally decided or abandoned, or
 - (b) otherwise, after the expiry of the period within which an appeal against the conviction or sentence may be brought.
- (3) For the purposes of subsection (2), the lodging of an application for a stated case or note of appeal against sentence is to be treated as the bringing of an appeal.

8 Individual culpability where organisation commits offence

- (1) This section applies where—
- (a) an offence under section 4 is committed by a relevant organisation, and
 - (b) the commission of the offence involves consent or connivance on the part of a responsible individual.
- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
- (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
 - (b) “responsible individual” means, in relation to a relevant organisation—
 - (i) an individual falling within the corresponding entry in the second column of the table in subsection (4), or
 - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

<i>Relevant organisation</i>	<i>Individual</i>
company as mentioned in section 1 of the Companies Act 2006	director, manager, secretary or other similar officer member, where the company’s affairs are managed by its members
limited liability partnership	member
other partnership	partner
any other body or association	individual who is concerned in the management or control of its affairs

9 Protection of freedom of expression

For the purposes of section 4(2), behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes—

- (a) discussion or criticism of matters relating to—

Status: This is the original version (as it was originally enacted).

- (i) age,
 - (ii) disability,
 - (iii) sexual orientation,
 - (iv) transgender identity,
 - (v) variations in sex characteristics,
- (b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards—
- (i) religion, whether religions generally or a particular religion,
 - (ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,
 - (iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,
- (c) proselytising, or
- (d) urging of persons to cease practising their religions.

10 Interpretation of Part 3

- (1) This section applies for the interpretation of this Part.
- (2) “European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.
- (3) “Material” means anything that is capable of being looked at, read, watched or listened to, either directly or after conversion from data stored in another form.
- (4) References to an offence under a particular section include references to an offence of—
 - (a) attempting to commit an offence under that section,
 - (b) aiding, abetting, counselling, procuring or inciting the commission of an offence under that section,
 - (c) conspiring to commit an offence under that section.

PART 4

FURTHER PROVISION RELATING TO HATE CRIME

The characteristics

11 Meaning of the characteristics

- (1) This section applies for the interpretation of sections 1, 4 and 9.
- (2) A reference to age includes a reference to an age range.
- (3) A disability is a physical or mental impairment of any kind.
- (4) For the purposes of subsection (3) (but without prejudice to its generality), a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.

- (5) A group defined by reference to religion is a group of persons defined by reference to—
- (a) religious belief or lack of religious belief,
 - (b) membership of or adherence to a church or religious organisation,
 - (c) support for the culture or traditions of a church or religious organisation,
 - (d) participation in activities associated with such a culture or such traditions.
- (6) A reference to sexual orientation is a reference to sexual orientation towards—
- (a) persons of the same sex,
 - (b) persons of a different sex, or
 - (c) both persons of the same sex and persons of a different sex.
- (7) A person is a member of a group defined by reference to transgender identity if the person is—
- (a) a female-to-male transgender person,
 - (b) a male-to-female transgender person,
 - (c) a non-binary person,
 - (d) a person who cross-dresses,
- and references to transgender identity are to be construed accordingly.
- (8) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither—
- (a) those typically associated with males, nor
 - (b) those typically associated with females,
- and references to variations in sex characteristics are to be construed accordingly.

12 Power to add the characteristic of sex

- (1) The Scottish Ministers may by regulations add the characteristic of sex to the list of characteristics in one or more of the following provisions—
- (a) section 1(2),
 - (b) section 4(3),
 - (c) section 9(a).
- (2) Regulations under this section may modify sections 14(3) and 15(4) by making provision about the information relating to the characteristic of sex which may require to be included in reports under those sections.
- (3) Regulations under this section may modify section 11 by adding interpretative provision relating to the characteristic of sex.
- (4) Regulations under this section—
- (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) may make different provision for different purposes,
 - (c) are subject to the affirmative procedure.
- (5) Before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament, the Scottish Ministers must—

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- (a) lay before the Scottish Parliament a proposed draft of the instrument,
 - (b) have regard to any representations about the proposed draft that are made to them within the period of 40 days beginning with the day on which the proposed draft is laid and make any changes to the draft instrument that they consider appropriate.
- (6) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.

Providers of information society services

13 Provision in relation to providers of information society services

Schedule 1 makes further provision about offences under sections 3 and 4 in relation to persons providing information society services (as defined in paragraph 4 of that schedule).

Reports relating to hate crime

14 Publication of reports on hate crime convictions

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting year, publish a report on convictions during that reporting year for—
- (a) offences aggravated by prejudice within the meaning of section 1, and
 - (b) offences under this Act.
- (2) The Scottish Ministers must provide information about the groups to which the offences relate by including in the report—
- (a) information about convictions for offences which, by virtue of being offences under section 3 or 4(1), relate to groups defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins,
 - (b) in respect of each conviction for an offence aggravated by prejudice within the meaning of section 1, information about the type of prejudice by which the offence was aggravated (by reference to one or more of the characteristics mentioned in section 1(2)), and
 - (c) in respect of each conviction for an offence under section 4(2), information about the characteristic to which the offence relates (by reference to one or more of the characteristics mentioned in section 4(3)).
- (3) The Scottish Ministers must—
- (a) take reasonable steps to establish whether the information provided under subsection (2) about the groups to which the offences relate may be supplemented by information about any subgroups to which the offences relate, including (in particular) where a conviction is for an offence relating to a group defined by reference to—
 - (i) age, the particular age or age range to which the offence relates,
 - (ii) disability, the particular type of disability to which the offence relates, including whether it is a physical impairment or a mental impairment,
 - (iii) race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins to which the offence relates,

- (iv) religion or, in the case of a social or cultural group, perceived religious affiliation, the particular religion (including lack of religious belief) or religious affiliation to which the offence relates,
 - (v) sexual orientation, whether the offence relates to sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
 - (vi) transgender identity, whether the offence relates to identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses, and
- (b) if they establish that the information provided under subsection (2) may be so supplemented, take reasonable steps to obtain that supplementary information and include it in the report.
- (4) The report must not include information in respect of any conviction—
- (a) which identifies any individual, or
 - (b) from which the identity of any individual may be ascertained.
- (5) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (6) In this section, “reporting year” means a period of one year ending on 31 March.

15 Publication of reports on hate crime recorded by police

- (1) The chief constable of the Police Service must, as soon as reasonably practicable after the end of each reporting year, provide the information that the Scottish Ministers require in order to publish a report in accordance with this section.
- (2) The Scottish Ministers must, as soon as reasonably practicable after receipt of information under subsection (1), publish a report on records made by the Police Service during that reporting year of cases categorised by the Police Service as—
- (a) offences aggravated by prejudice within the meaning of section 1, and
 - (b) offences under this Act.
- (3) The report must include the following information in respect of each recorded offence to the extent that this information has been recorded by the Police Service—
- (a) the age, sex, and ethnic or national origins of any person recorded as being a victim of the offence,
 - (b) the age, sex, and ethnic or national origins of any person recorded as being a perpetrator or suspected perpetrator of the offence.
- (4) The report must include the following information to the extent that this information has been recorded by the Police Service—
- (a) in respect of each record of an offence under section 3 and each record of an offence under section 4(1), the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
 - (b) in respect of each record of an offence aggravated by prejudice within the meaning of section 1 and each record of an offence under section 4(2)—
 - (i) the particular characteristic mentioned in section 1(2) or 4(3) which is recorded as being targeted,
 - (ii) where the characteristic is age, the particular age or age range recorded as being targeted,

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- (iii) where the characteristic is disability, the particular type of disability that is recorded as being targeted, including whether it is a physical impairment or a mental impairment,
 - (iv) where the characteristic is race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
 - (v) where the characteristic is religion or, in the case of a social or cultural group, perceived religious affiliation, the particular religion (including lack of religious belief) or religious affiliation recorded as being targeted,
 - (vi) where the characteristic is sexual orientation, whether the sexual orientation that is recorded as being targeted is sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
 - (vii) where the characteristic is transgender identity, whether the transgender identity that is recorded as being targeted is identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses.
- (5) The report must not include information in respect of any recorded offence—
- (a) which identifies any individual, or
 - (b) from which the identity of any individual may be ascertained.
- (6) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (7) In this section—
- “Police Service” means the Police Service of Scotland,
 - “reporting year” means a period of one year ending on 31 March.

PART 5

ABOLITION OF THE OFFENCE OF BLASPHEMY

16 Abolition of the offence of blasphemy

The common law offence of blasphemy is abolished.

PART 6

GENERAL PROVISIONS

17 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—

Status: This is the original version (as it was originally enacted).

- (a) make different provision for different purposes,
- (b) modify any enactment (including this Act).

(3) Regulations under this section—

- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of this or any other Act,
- (b) otherwise, are subject to the negative procedure.

18 Modifications of enactments

Schedule 2 contains modifications of enactments.

19 Crown application: criminal offences

- (1) Nothing in this Act makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

20 Crown application: powers of entry

- (1) A warrant granted under section 5 is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the “appropriate authority”).

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners)	The Crown Estate Commissioners
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Scottish Crown Estate	The person managing the land
Land an interest in which belongs to Her Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate	The office-holder in the Scottish Administration or, as the case may be, the Government department managing the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The office-holder in the Scottish Administration

Status: This is the original version (as it was originally enacted).

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to a Government department	The Government department
Land an interest in which is held in trust for Her Majesty by an office-holder in the Scottish Administration for the purposes of the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The Government department

- (2) In subsection (1)—
- (a) the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
 - (b) “Government department” means a department of the Government of the United Kingdom,
 - (c) “Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies.
- (3) It is for the Scottish Ministers to determine any question that arises as to who in accordance with subsection (1) is the appropriate authority in relation to any land, and their decision is final.

21 Commencement

- (1) This section and sections 17 and 22 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

22 Short title

The short title of this Act is the Hate Crime and Public Order (Scotland) Act 2021.