



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

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—
- (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).

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- (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

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- (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—
 - (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.