



## EXPLANATORY NOTES

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### **Hate Crime and Public Order (Scotland) Act 2021 (asp 14)**

£6.90



# **HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Hate Crime and Public Order (Scotland) Act 2021. They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act brings together relevant hate crime laws into one place, and updates and extends some of these laws. It has six Parts.
4. Part 1 makes provision relating to the aggravation of offences by prejudice. It provides that a criminal offence is aggravated if either: the offender demonstrates malice and ill-will towards the victim based on the victim's membership of a group defined by reference to a listed characteristic, or the offence is motivated (wholly or partly) by malice and ill-will towards any such group. The listed characteristics are age, disability, race (and related characteristics), religion, sexual orientation, transgender identity and variations in sex characteristics.
5. Part 2 provides for an offence of racially aggravated harassment. This replicates the effect of the offence of racially-aggravated harassment in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, with that offence being separately repealed by the Act.
6. Part 3 creates offences of stirring up hatred against a group of persons based on the group being defined by reference to a relevant characteristic. The relevant characteristics are the same as those listed in Part 1.
7. Part 4 sets out further provision relating to hate crime. It makes provision relating to the interpretation of the characteristics listed in sections 1(2), 4(3) and 9, and provides a power for the Scottish Ministers to make regulations adding the characteristic of sex to any of those lists of characteristics. It also makes provision about the application of the offences under sections 3 and 4 to providers of information society services, and requires the Scottish Ministers to publish annual reports on hate crime convictions and hate crime recorded by the police.
8. Part 5 abolishes the common law offence of blasphemy.

9. Part 6 contains general provisions, including a power for Scottish Ministers to make ancillary provision by regulations.

## **Part 1 – Aggravation of offences by prejudice**

### ***Section 1 – Aggravation of offences by prejudice***

10. Section 1 sets out the different circumstances in which an offence can be aggravated by prejudice.

11. Section 1(1)(a) sets out one of the two ways in which an offence can be aggravated by prejudice. There requires to be a victim of an offence for this aggravation to apply.

12. Section 1(1)(a) provides that an offence is aggravated by prejudice where the offender has demonstrated malice and ill-will towards the victim based on the victim's membership (or presumed membership) of a group defined by reference to one or more characteristics mentioned in section 1(2).

13. The characteristics mentioned in section 1(2) are:

- Age;
- Disability;
- Race, colour, nationality (including citizenship), or ethnic or national origins;
- Religion or, in the case of a social or cultural group, perceived religious affiliation;
- Sexual orientation;
- Transgender identity;
- Variations in sex characteristics.

14. Section 11 (discussed below) sets out relevant definitions for these characteristics. The concept of the “group” refers to a group of people who may never have met one another but who share a listed characteristic.

15. An offence can be aggravated by prejudice under section 1(1)(a) if the offender demonstrates malice and ill-will towards a victim (of the offence) based on the victim's “presumed membership” of a group defined by reference to one of the characteristics mentioned above. Here, presumed membership means presumed by the offender (see section 1(5)). For example, if the offender assaults a person (the victim) and in so doing demonstrates malice and ill-will towards the victim based on the offender's presumption that the victim was a Muslim, then even if the victim is not in fact a Muslim the offence (assault) may still be aggravated by prejudice.

16. Section 1(1)(a) also provides that the demonstration of malice and ill-will can have occurred during the committal of the offence or immediately before or immediately after the committal of the offence. For example, if a person assaults a police officer and, immediately before committing the assault, demonstrates malice and ill-will (by shouting religious slurs towards the officer) then this can result in the offence of assault being aggravated by religious prejudice, even though the demonstration of malice and ill-will took place prior to the offence (assault) being committed.

17. Section 1(1)(b) sets out the second way in which an offence can be aggravated by prejudice. There does not require to be a specific victim of an offence for this aggravation to apply.

18. Section 1(1)(b) provides that an offence is so aggravated where the offender 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 section 1(2). The characteristics mentioned in section 1(2) are set out above in paragraph 13.

19. As the aggravation in section 1(1)(b) does not require there to be a specific victim, this means that the aggravation can be applied even in cases where the malice and ill-will is expressed towards a wider group as a whole, without the need for a specific or individual victim to have been identified. For example, where a church, synagogue or mosque is daubed with graffiti the offender might, in committing the offence of vandalism, be found to have been motivated by malice and ill-will towards people (comprising a group defined by reference to religion) who worship at those places.

20. An offence can be aggravated by prejudice under section 1(1)(a) or (b) in respect of more than one characteristic. For example, an assault may be aggravated by both race and religion. Evidence of each separate aggravation would be required.

21. Section 1(3) provides that the aggravation by prejudice arising either through the operation of section 1(1)(a) or section 1(1)(b) can apply even if the malice and ill-will is based, in part, on other factors. For example, if an offender threatens a person (the victim) and this is motivated in part for reasons unconnected to the victim's race (such as where the offender and victim worked together and the offender developed an intense dislike of the person), then the aggravation can still apply as long as either the test in section 1(1)(a) or section 1(1)(b) is met.

22. Section 1(4) provides that corroboration is not required to prove that an offence was aggravated by prejudice. Corroboration will still be required for the purposes of proving the underlying offence.

23. Section 1(5) provides that "presumed" (in the context of presumed membership of a group) in section 1(1)(a) means presumed by the offender. Section 1(5) also provides that "membership", in relation to a group, includes association with members of that group. For example, if the offender, say, shouts aggressively in a manner that amounts to threatening or abusive behaviour at a person (the victim) who was collecting money for a charity that works with the disabled and in so doing the offender demonstrates malice and ill-will towards the victim based on the victim being associated with the disability charity then that is sufficient for an offence to be aggravated by prejudice.

## ***Section 2 – Consequences of aggravation by prejudice***

24. Section 2 provides for what is required to happen when an offence is aggravated by prejudice by virtue of section 1.

25. Section 2(2)(a) and (b) provides for certain requirements falling upon the court when an aggravation has been proved.

26. The court is required to state on conviction: (i) that the offence has been aggravated by prejudice, and (ii) the type of prejudice by which the offence is aggravated, with reference to one or more of the characteristics mentioned in section 1(2) of the Act (see paragraph 13 above). These requirements also exist in respect of the recording of the conviction in official records.

27. The effect of an aggravation being proved is, by virtue of section 2(2)(c), that the court must take the aggravation into account in determining the appropriate sentence. This does not mean in itself that a sentence should be more severe than it otherwise would have been, but it does ensure the court will need to consider as a relevant sentencing factor that an offence has been aggravated by prejudice.

28. Section 2(2)(d) requires the court to explain the effect of the aggravation on the sentence imposed.

29. If the sentence is different, such as being more severe, than that which otherwise would have been imposed if no aggravation had been proved, the court must advise the extent to which the sentence is different. Equally, where there is no difference in sentence, the court must explain the reasons why this is the case in light of the offence having been aggravated by prejudice.

## **Part 2 – Offence of racially aggravated harassment**

### ***Section 3 – racially aggravated harassment***

30. Section 3 provides for an offence of racially aggravated harassment. This replicates the effect of the offence of racially-aggravated harassment in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”), which is separately repealed by paragraph 2 of schedule 2.

31. The offence can be committed in two ways; firstly, by pursuing a racially aggravated course of conduct which amounts to harassment of a person (and is intended to, or occurs in circumstances where it would appear to a reasonable person that it would, amount to such harassment) (section 3(1)(a)) and, secondly, by acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress (section 3(1)(b)). For the offence to be committed, the offender must either: demonstrate malice and ill-will towards the victim based on the victim's membership or presumed membership of a group of persons defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or be motivated by malice and ill-will towards members of such a group. Subsection (3) makes clear that it is immaterial whether or not the offender's malice and ill-will is also based on any other factor. Subsection (4) provides that a course of conduct, as mentioned in section 3(1)(a), must involve conduct on at least two occasions.

32. Subsection (5) of section 3 defines some of the words used in the section. In particular, “membership” in relation to a group is defined to include association with members of that group.

33. Subsection (6) sets out the maximum penalties for an offence under section 3. In addition to setting the maximum penalties for fines, it provides that the maximum term of imprisonment on summary conviction for an offence under section 3 is 12 months. This matches the equivalent maximum term of imprisonment on summary conviction for an

offence under section 50A of the 1995 Act, as modified by section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. On indictment, the maximum term of imprisonment for an offence under section 3 is 7 years, which, again, matches section 50A of the 1995 Act.

### **Part 3 – Offences relating to stirring up hatred**

#### ***Offences of stirring up hatred***

##### *Section 4 – Offences of stirring up hatred*

34. Section 4 creates two offences of stirring up hatred. It should be read in conjunction with section 9 of the Act (see paragraphs 57 – 65).

35. Section 4(1)(a) and (b) creates an offence of stirring up racial hatred. It provides that it is an offence for a person to behave in a manner that a reasonable person would consider to be threatening, abusive or insulting, or to communicate to another person material that a reasonable person would consider to be threatening, abusive or insulting, either with the intention 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 in circumstances where 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.

36. The phrase “a reasonable person would consider” in section 4(1)(a)(i) and (ii) makes it clear that an objective standard is to be applied as to whether the behaviour and material referred to is threatening, abusive or insulting. Similarly, the same phrase in section 4(1)(b)(ii) makes it clear that an objective standard is to be applied as to whether the behaviour or communication of material referred to is likely to result in hatred being stirred up against a group defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.

37. Section 4(2)(a) and (b) creates an offence of stirring up hatred against a group of persons defined by reference to certain characteristics. The characteristics to which this offence applies are listed in section 4(3) (discussed below). It provides that it is an offence for a person to behave in a manner that a reasonable person would consider to be threatening or abusive, or to communicate to another person material that a reasonable person would consider to be threatening or abusive, with the intention to stir up hatred against a group of persons based on the group being defined by reference to one of the listed characteristics. The phrase “a reasonable person would consider” in section 4(2)(a)(i) and (ii) makes it clear that an objective standard is to be applied as to whether the behaviour or material referred to is threatening or abusive.

38. Section 4(3) lists the characteristics by which a group may be defined, in respect of which it is an offence to stir up hatred. These are: age; disability; religion or, in the case of a social or cultural group, perceived religious affiliation; sexual orientation; transgender identity; and variations in sex characteristics.

39. Section 4(4) provides that it is a defence to an offence under section 4(1) or (2) for the accused to show that the behaviour or the communication was, in the particular circumstances, reasonable. This may apply where, for example, a person communicates a threat of serious violence made by someone else for the purpose of alerting a journalist or a journalist reporting a threat of serious violence made by another person.

40. Section 4(5) provides that, for the purposes of the operation of the reasonableness defence in section 4(4), the court should have particular regard to the importance of the right to freedom of expression in determining whether behaviour or communication of material was reasonable. The right to freedom of expression by virtue of Article 10 of the European Convention on Human Rights, which is referred to in section 4(5), includes the general principle that the right applies to the expression of information or ideas that offend, shock or disturb. In particular, Article 10.1 of the Convention states that “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”. But this right is subject to Article 10.2 which states that “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”.

41. Section 4(6) provides that, for the purposes of the defence in subsection (4), the accused is subject to an evidential burden of proof to bring forward enough evidence to raise an issue with respect to the defence. The legal burden of disproving the defence and proving that the offence has been committed remains with the prosecution.

42. Section 4(7)(a) makes it clear that a person’s behaviour for the purpose of section 4(1)(a)(i) and (2)(a)(i) includes behaviour of any kind and, in particular, things said (therefore the spoken word, unrecorded speech) or otherwise communicated (e.g. displaying a poster, placard or banner; the printed media on the internet through websites, email, blogs, podcasts etc.), as well as things done by the person.

43. Section 4(7)(b) also provides that, for the purpose of that section, the person’s behaviour may consist of a single act or a course of conduct.

44. Section 4(8) defines the different ways in which a person may communicate material to another person for the purposes of an offence under section 4. The different ways in which a person may communicate material to another person are by:

- Displaying, publishing or distributing the material e.g. on a sign; on the internet through websites, blogs, podcasts, social media etc., either directly, or by forwarding or repeating material that originates from a third party; through printed media such as magazine publications or leaflets, etc.
- Giving, sending, showing or playing the material to another person e.g. through online streaming, by email, playing a video, through public performance of a play, etc.
- Making the material available to another person in any way e.g. through the spoken word, the written word, electronic communications, etc. either directly (as the originator of the material), or by forwarding or repeating the material.

45. Section 4(9) provides for the available maximum penalties for an offence under section 4(1) and (2).



***Further provisions relating to the offences***

*Section 5 – Powers of entry etc. with warrant*

46. Section 5 provides for powers of entry etc. under warrant in circumstances where there are reasonable grounds to suspect that an offence under section 4 has been, or is being, committed at the premises or there is evidence at the premises of the commission of an offence under that section.

47. Section 5(1) provides that a sheriff or justice of the peace may, where there are such reasonable grounds, grant a warrant authorising a constable to enter the premises in question.

48. Section 5(2) provides that such a warrant remains in force for 28 days beginning with the day on which it was granted.

49. Section 5(3) sets out what such a warrant may authorise a constable to do– that is, enter the premises (by force if necessary), search the premises and any person found on the premises, and seize and detain any material found there. But material may only be seized and detained if the constable has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 4. This includes any material in the possession of a person on those premises.

50. Section 5(4) provides that the power of a constable to seize and detain material under this section includes the power to, among other things, require any electronic information to be produced or converted in a way that it can be removed from the premises.

51. Section 5(5) defines “constable” and “premises” for the purposes of section 6.

*Section 6 – Recording conviction for an offence under section 4*

52. Section 6 makes provision about the recording of a conviction for offences under section 4 (relating to stirring up hatred).

53. Where a person is convicted of an offence under section 4, section 6 requires the court to state on conviction, and to also record the conviction in a manner which shows, the particular characteristic (or characteristics) to which the offence relates.

*Section 7 – Forfeiture and disposal of material to which offence relates*

54. Section 7(1) provides for a court to order the forfeiture and disposal of any material relating to the commission of an offence under section 4 upon conviction. Section 7(2) provides that any order made under this section does not take effect until after any appeal is finally decided or abandoned or, if no such appeal is brought, after the expiry of the period within which an appeal against conviction or sentence may be brought. Section 7(3) defines the meaning of the bringing of an appeal for the purposes of section 7(2).

*Section 8 – Individual culpability where organisation commits offence*

55. Section 8 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing an offence under section 4, in addition to the organisation.

56. For that to happen, any person referred to in section 8 as a “responsible individual” must have consented to, or connived in, the organisation’s commission of the offence. Section 8(4) sets out a table explaining which type of person is a “responsible individual” in relation to different types of organisation listed in the table. For example, the director or secretary of a company, and a partner in a firm, are responsible individuals, so potentially have criminal liability for offences under section 4 committed by the company or partnership, respectively.

*Section 9 – Protection of freedom of expression*

57. Section 9 should be read in conjunction with section 4 of the Act (see paragraphs 34 – 45).

58. This section, which makes provision for the protection of freedom of expression, applies only for the purposes of the offence of stirring up hatred in section 4(2) which deals with hatred based on age, disability, religion, sexual orientation, transgender identity, or variations in sex characteristics. It does not therefore apply in relation to the offence of stirring up hatred in section 4(1) which deals with hatred based on race, colour, nationality (including citizenship), or ethnic or national origins.

59. For a person to commit an offence under section 4(2), two elements must be proved beyond a reasonable doubt—

- the first element to be proved is that the person either—
  - behaved in a manner that a reasonable person would consider to be threatening or abusive, or
  - communicated to another person material that a reasonable person would consider to be threatening or abusive,
- the second element to be proved is that, in doing this, the person intended to stir up hatred against a group of persons (based on the group being defined by reference to a characteristic mentioned in section 4(3)).

60. The first element requires the person to behave in a threatening or abusive manner, or to communicate material that is threatening or abusive. Behaviour or material which is threatening or abusive could arise in any setting, such as—

- on social media, such as Twitter, Facebook etc.,
- at the dinner table or elsewhere in the home,
- in an office or workplace,
- in a teaching environment, including religious education,
- during a religious sermon or as part of religious preaching or practice,
- in a public or private meeting,
- in a newspaper, blogpost or other media setting,
- when performing, including in a play or a show on stage or in a film.

61. Whether the behaviour or material was threatening or abusive in any particular context must be determined objectively by reference to what a “reasonable person” would consider to be threatening or abusive.

62. But for an offence to be committed under section 4(2), the second element must also be proved i.e. in doing so, there must also have been an intention to stir up hatred against a group of persons (as defined above).

63. Section 9 operates only in relation to the first element of the offence. It provides that the behaviour of, or material communicated by, a person is not to be taken to be threatening or abusive solely on the basis that it involves or includes—

- discussion or criticism of matters relating to age, disability, sexual orientation, transgender identity and variations in sex characteristics,
- discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards, religion, religious beliefs or practices, or the position of not holding religious beliefs,
- proselytising, or urging of persons to cease practising their religions.

64. Behaviour or material could not therefore be taken to be threatening or abusive solely on the basis that it involved or included, for example, discussion or criticism associated with age, disability, religion, sexual orientation, transgender identity, or variations in sex characteristics.

65. Something more is required for any such discussion or criticism to be taken to be threatening or abusive. For example, if it were proved that a reasonable person would consider that the criticism was expressed in a threatening or abusive way, or the material containing the criticism also included other threatening or abusive comments, it could still be taken to be behaviour or material that is threatening or abusive and therefore satisfy the first element of the offence. For the offence to be committed, however, the second element (i.e. the intention to stir up hatred, as mentioned earlier) would also have to be proved beyond reasonable doubt.

#### *Section 10 – Interpretation of Part 3*

66. Section 10 makes provision for the interpretation of various terms used in Part 3.

### **Part 4 – Further provision relating to hate crime**

#### ***The characteristics***

##### *Section 11 – Meaning of the characteristics*

67. Section 11 sets out further provision which is relevant to the interpretation of the characteristics listed in sections 1(2), 4(3) and 9.

68. Section 11(2) provides that a reference to “age” includes a reference to an age range. This means that, for example, an offence might be aggravated by prejudice under section 1 based on malice and ill-will towards “older people” or “adolescents” rather than the victim’s specific age.

69. Section 11(3) and (4) provides that “disability” means a physical or mental impairment of any kind, and includes a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature.

70. Section 11(5) defines what is meant by a “group defined by reference to religion”. The meaning is the same as the definition of “religious group” in section 74 of the Criminal Justice (Scotland) Act 2003, which is repealed as a consequence of this legislation (see section 18 and paragraph 4 of schedule 2).

71. Section 11(6) provides that a reference to sexual orientation is a reference to sexual orientation towards persons of the same sex, persons of a different sex or both persons of the same sex and persons of a different sex.

72. Section 11(7) defines what is meant by “transgender identity”. This definition does not only include people with a Gender Recognition Certificate or who have undergone, are undergoing, (or propose to undergo) medical or surgical interventions, but includes people whose gender identities are different from their sex at birth. This includes those who identify as male, but were registered as female at birth, those who identify as female but were registered as male at birth, non-binary people and cross-dressing people.

73. Section 11(8) defines what is meant by “variations in sex characteristics”. The existing definition of “transgender identity” in section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 includes “intersexuality” (section 2 is repealed by section 18 and paragraph 5 of schedule 2). It is now recognised that intersexuality (or a person being born with physical or biological variations in sex characteristics) is separate to a person’s transgender identity. The definition of “variations in sex characteristics” includes people that are born with characteristics not typically associated with males or females. There is a variety of terminology used with reference to variations of sex characteristics and intersex status. For example, some people prefer to use the term “differences in sex development” and some prefer to simply describe their specific variation.

#### *Section 12 – Power to add the characteristic of sex*

74. Section 12 provides for a power to make regulations adding the characteristic of sex to one or more of the lists of characteristics set out in sections 1(2), 4(3) and 9(a). Adding the characteristic of sex to the lists in section 1(2) and/or 4(3) would mean, respectively, that an offence can be aggravated by prejudice under section 1 in respect of sex and/or a person’s conduct may amount to an offence relating to stirring up hatred under section 4(2) in respect of that characteristic. Adding the characteristic of sex to the list in section 9(a) would mean that, 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 discussion or criticism of matters relating to sex.

75. Section 12(2) provides that regulations under section 12(1) 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 on hate crime convictions and hate crime recorded by the police.

76. Section 12(3) provides that regulations made under section 12(1) may modify section 11 by adding interpretative provision relating to the characteristic of sex.

77. Section 12(4) provides that the power to make regulations includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision, that different provision can be made for different purposes, and that regulations made under subsection (1) are subject to the affirmative procedure (but see paragraph 78, which explains the effect of section 12(5)).

78. Section 12(5) provides that, before laying a draft instrument containing regulations under section 12 before the Scottish Parliament, the Scottish Ministers must lay a proposed draft of the regulations before the Parliament. The Scottish Ministers must have regard to any representations that are made to them within 40 days of laying the proposed draft, and make any changes to the draft instrument that they consider appropriate.

### ***Providers of information society services***

#### *Section 13 and schedule 1 – Provision in relation to providers of information society services*

79. Section 13 introduces schedule 1, which makes further provision about offences under sections 3 and 4 in relation to providers of information society services.

80. Paragraph 1 of schedule 1 sets out the conditions under which service providers may be exempted from liability under the offences in section 3 and 4 where acting as “mere conduits” for the transmission of, or provision of access to, information. This means that, provided the conditions in paragraph 1 are met, a business providing access to the internet (e.g. a home internet service provider) is exempted from liability if the person using their service commits an offence of racially aggravated harassment or stirring up hatred while making use of the internet.

81. Paragraph 2 of schedule 1 sets out the conditions under which service providers may be exempted from liability for “caching” information, that is, for the automatic, intermediate and temporary storage of information. This means that when an internet service provider automatically makes and “caches” a local copy of a file accessed by a user of its service (which is done in order to provide a more efficient service) it is not criminally liable in the event that the information consists of material relating to racially aggravated conduct which constitutes an offence under section 3, or relevant behaviour or material which is intended (or likely in the case of an offence under section 4(1)) to stir up hatred in terms of section 4, provided the conditions in paragraph 2 are met.

82. Paragraph 3 of schedule 1 sets out the conditions under which service providers may be exempted from liability for “hosting” information, that is, storing information at the request of a recipient of the service. For example, if a person uses a social network to post racially abusive or anti-religious material, inciting hatred against a racial or religious group, then, provided the conditions in paragraph 3 are met, the social network is exempt from criminal liability.

83. Paragraph 4 of schedule 1 defines certain terms used in schedule 1.

### ***Reports relating to hate crime***

#### *Section 14 – Publication of reports on hate crime convictions*

84. Section 14 places a duty on the Scottish Ministers to publish reports, on an annual basis, on convictions for offences aggravated by prejudice within the meaning of section 1 of the Act, and offences under the Act. The reports must include information about offences under section 3 or 4(1) (which relate to the characteristic of race, colour, nationality

(including citizenship), or ethnic or national origins), about the characteristics to which offences under section 4(2) relate and about the type of prejudice by which offences aggravated by prejudice within the meaning of section 1 were aggravated.

85. Subsection (3) requires that the Scottish Ministers must take reasonable steps to establish whether supplementary information can be provided about any subgroups to which the offences relates, as set out in paragraph (a). If they establish that any such supplementary information can be provided, they must take reasonable steps to obtain it and include it in the report.

86. Subsection (4) provides that these reports must not include information which is capable of identifying an individual in relation to any of the reported matters.

87. Subsection (5) provides that the report may be in any form that the Scottish Ministers consider appropriate, and in particular may be part of another document. This would allow for reports under section 14 and section 15 to be combined.

#### *Section 15 – Publication of reports by police on recorded hate crime*

88. Section 15 places a duty on the Scottish Ministers to publish reports on police recorded hate crime on an annual basis. The Chief Constable of the Police Service of Scotland must provide the information that the Scottish Ministers require to be able to comply with this duty.

89. Subsection (2) states that the report should be based on records made by the Police Service of all offences aggravated by prejudice (within the meaning of section 1 of the Act) and all offences under the Act. This ensures that the report will cover all hate crimes which are reported to and recorded by the Police Service, not only those which ultimately result in prosecution.

90. Subsection (3) requires that, where this detail has been recorded, the report includes the age, sex, and ethnic or national origins of both the person recorded as being the victim and the person recorded as being the perpetrator. It does not place a duty on the Police Service to collect this information, but requires the Scottish Ministers to include this information in the report where it has been recorded.

91. Subsection (4) provides that the report must include (to the extent that these details have been recorded):

- the particular characteristic (from the list in section 1(2) or 4(3) of the Act) which is recorded as being targeted;
- where the characteristic is age, the particular age or age range recorded as being targeted;
- where the characteristic is disability, the particular type of disability recorded as being targeted, including whether it is a physical or mental impairment;
- where the characteristic is race (or related characteristics), the particular race (or related characteristic) recorded as being targeted;

- 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;
- where the characteristic is sexual orientation, the particular sexual orientation recorded as being targeted; and
- where the characteristic is transgender identity, the particular transgender identity recorded as being targeted.

92. Subsection (5) provides that these reports must not include information which is capable of identifying an individual in relation to any of the reported matters.

93. Subsection (6) provides that the report may be in any form that the Scottish Ministers consider appropriate, and in particular may be part of another document. This would enable these reports to be combined with, for example, reports under section 14.

94. Subsection (7) defines “Police Service” and “reporting year” for the purposes of section 15.

## **Part 5 – Abolition of the offence of blasphemy**

### ***Section 16 – Abolition of the offence of blasphemy***

95. Section 16 abolishes the common law offence of blasphemy.

## **Part 6 – General provisions**

### ***Section 17 – Ancillary provision***

96. Section 17 provides a power for the Scottish Ministers to make, by regulations, incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, in connection with or for giving full effect to the Act.

### ***Section 18 and schedule 2 – Modifications of enactments***

97. Section 18 introduces schedule 2, which contains modifications of certain enactments.

98. Paragraphs 1 to 5 of schedule 2 provides for a number of repeals and amendments consequential upon the new provision being made in the Act.

99. Paragraph 1 repeals and amends certain provisions of the Public Order Act 1986. Paragraph 2 provides that the offence of racially-aggravated harassment provided for in the Criminal Law (Consolidation) (Scotland) Act 1995 is repealed. Paragraph 3 provides that the statutory aggravation in respect of race provided for in section 96 of the Crime and Disorder Act 1998 is repealed. Paragraph 4 provides that the statutory aggravation in respect of religion provided for in section 74 of the Criminal Justice (Scotland) Act 2003 is repealed. Paragraph 5 provides that the statutory aggravations in relation to disability, sexual orientation and transgender identity provided for in the Offences (Aggravation by Prejudice) (Scotland) Act 2009 are repealed.

***Section 19 – Crown application: criminal offences***

100. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act applies to the Crown in Scotland. However, section 19(1) absolves the Crown of any criminal liability, should it be in contravention of any provision of the Act. Instead, section 19(2) provides power for the Court of Session to declare such an act to be unlawful.

***Section 20 – Crown application: powers of entry***

101. Section 20 provides that the exercise of a power of entry authorised by warrant under section 5 of the Act onto Crown land requires the consent of the “appropriate authority”.

102. Subsection (1) introduces a table that defines different types of land which constitute “Crown land” and the corresponding person from whom consent must be obtained, referred to as “the appropriate authority.” This includes land belonging to Her Majesty the Queen both in right of the Crown and in right of her private estates (such as the Balmoral estate), and land belonging to an office-holder in the Scottish Administration or department of the Government of the United Kingdom. Who constitutes the “appropriate authority” from whom consent is required depends on the ownership or management of the land, as set out in the table. For example, in the case of land belonging to Her Majesty in right of the Crown which is managed by an office-holder in the Scottish Administration, then the appropriate authority is the office-holder in the Scottish Administration.

103. Subsection (2) provides further interpretative provision.

104. Subsection (3) makes clear that 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.

***Section 21 – Commencement***

105. Section 21 provides that section 21 as well as sections 17 and 22 come into force on the day after Royal Assent. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers, and those regulations may make transitional, transitory or saving provision related to commencement. Those regulations may make different provisions for different purposes.

***Section 22 – Short title***

106. Section 22 provides that the short title of the Act is the Hate Crime and Public Order (Scotland) Act 2021.

**PARLIAMENTARY HISTORY**

107. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill’s parliamentary passage.



*These notes relate to the Hate Crime and Public Order (Scotland) Act 2021 (asp 14)  
which received Royal Assent on 23 April 2021*

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
<b>Scottish Parliament Bill page</b>	<a href="#">Hate Crime and Public Order (Scotland) Bill</a>
<b>Introduction</b>	
Bill as introduced	<a href="#">Hate Crime and Public Order (Scotland) Bill [as introduced]</a>
SPICe Briefing	<a href="#">SPICe Briefing SB 20-54</a>
<b>Stage 1</b>	
<b>Justice Committee</b>	
27 October 2020	<a href="#">Official Report, cols 1-47</a>
3 November 2020	<a href="#">Official Report, cols 2-52</a>
10 November 2020	<a href="#">Official Report, cols 2-54</a>
17 November 2020	<a href="#">Official Report, cols 1-70</a>
24 November 2020	<a href="#">Official Report, cols 2-47</a>
Report	<a href="#">Stage 1 Report on the Hate Crime and Public Order (Scotland) Bill</a>
<b>Delegated Powers and Law Reform Committee</b>	
Report	<a href="#">Hate Crime and Public Order (Scotland) Bill: Stage 1</a>
<b>Consideration by the Parliament</b>	
Stage 1 Debate, 15 December 2020	<a href="#">Official Report, cols 48-108</a>
Vote on Financial Resolution, 16 December 2020	<a href="#">Official Report, cols 77-79</a>
<b>Stage 2</b>	
<b>Justice Committee</b>	
2 February 2021	<a href="#">Official Report</a>
9 February 2021	<a href="#">Official Report, cols 1-40</a>
16 February 2021	<a href="#">Official Report, cols 1-11</a>
<b>Bill as amended at stage 2</b>	<a href="#">Hate Crime and Public Order (Scotland) Bill [as amended at stage 2]</a>
Additional meeting of the Justice Committee on Freedom of Expression, 22 February 2021	<a href="#">Official Report</a>
<b>Stage 3</b>	
10 March 2021 (amendments)	<a href="#">Official Report, cols 47-171</a>
11 March 2021 (debate)	<a href="#">Official Report, cols 26-50</a>
11 March 2021 (vote)	<a href="#">Official Report, cols 160-162</a>
<b>Bill as amended at stage 3</b>	<a href="#">Hate Crime and Public Order (Scotland) Bill [as amended at stage 3]</a>
<b>Royal Assent</b>	
23 April 2021	<a href="#">Hate Crime and Public Order (Scotland) Act 2021 (asp 14)</a>

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