



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 11th March 2021 and received Royal Assent on 23rd April 2021

An Act of the Scottish Parliament to make provision about the aggravation of offences by prejudice; to make provision about an offence of racially aggravated harassment; to make provision about offences relating to stirring up hatred against a group of persons; to abolish the common law offence of blasphemy; and for connected purposes.

PROSPECTIVE

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,

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Changes to legislation: There are currently no known outstanding effects for the Hate Crime and Public Order (Scotland) Act 2021. (See end of Document for details)

- (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.

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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—
 - (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).

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PROSPECTIVE

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).
- (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

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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