

**DEFINITION OF SECTARIANISM WORKING GROUP:
SUMMARY OF LEGISLATION WITH POTENTIAL RELEVANCE TO
INVESTIGATING THE LEGAL DEFINITION OF SECTARIANISM**

INFORMATION PAPER

1. This paper details the current known legislation, applicable to Scotland as a jurisdiction, that Group members may wish to take note of.
2. The information in this paper highlights the relevant legislation that was revealed to us following a trawl of policy areas. We therefore accept that the legislation listed in Annex A is not extensive, and will treat this paper as a living document adding more information about legislation as we become aware of it.
3. Group members are invited to note the content of Annex A.

**The Scottish Government
March 2018**

SUMMARY OF LEGISLATION

Section 1 – Education

Section 21 of the Education (Scotland) Act 1980

What it does:

- Legislation around the management of denominational schools and the process for teachers applying for approval for denominational schools.
- It states that all teachers in denominational schools must be fully qualified and registered with the General Teaching Council for Scotland.
- They also require to be approved as regards their religious belief and character by representatives of the Church or denominational body in whose faith the school operates.
- In the case of Catholic schools, the denominational body is the Scottish Catholic Education Service.

Link to Legislation:

<http://www.legislation.gov.uk/ukpga/1980/44/section/21>

Section 17 (2) of the Education (Scotland) Act 1980

What it does:

- Legislation around the provision, maintenance and equipment of schools and other buildings.
- This gives an authority the power to establish a new denominational school for any church or denominational body if it is satisfied that such a school is required, either in response to representations made to it, or on its own initiative.

Link to Legislation:

<http://www.legislation.gov.uk/ukpga/1980/44/section/17>

Section 2 – Human Rights and Equality

European Convention on Human Rights (ECHR)

What it does:

- Although not strictly speaking legislation, the UK is a signatory to the convention and there is a judicial element – the European Court of Human Rights could potentially find Scotland (as part of the UK) in violation of the convention.
- Entered into force on 3 September 1953, the convention is an international treaty to protect human rights and fundamental freedoms in Europe.
- In particular, the following may be relevant in this context:
 - **Article 9** – The right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".
 - **Article 10** – The right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.
 - **Article 14** – Prohibition of discrimination. Specifically prohibits discrimination based on "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". The "other status" reference allows the court to extend Article 14 protection to other grounds not specifically mentioned, such as has been done regarding discrimination based on a person's sexual orientation.
 - **Article 17** - prohibition of abuse of rights. This addresses instances where states seek to restrict a human right in the name of another human right, or where individuals rely on a human right to undermine other human rights (for example where an individual issues a death threat).
 - **Protocol to the Convention – Article 2** – Protects the right to education. No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.
 - **Protocol No. 12 – Article 1** - General prohibition of discrimination. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Link to Information:

<http://www.coe.int/web/coe-portal/what-we-do/human-rights/european-convention?dynLink=true&layoutId=20&dlgroupId=10226&fromArticleId>

Human Rights Act 1998

What it does:

- Brings ECHR into the domestic sphere in terms of right of individual position and remedy.
- Came into force in the United Kingdom in October 2000. It is composed of a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law.

Link to legislation:

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

Link to Information:

<http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

Equality Act 2010

What it does:

- The Act brings together for the first time all the legal requirements on equality that the private, public and voluntary sectors need to follow.
- It protects people from discrimination on the basis of certain protected characteristics.
- It replaces all the existing equality law including:
 - The Equal Pay Act 1970
 - The Sex Discrimination Act 1975
 - The Race Relations Act 1976
 - The Disability Discrimination Act 1995

Link to Legislation:

<http://www.legislation.gov.uk/ukpga/2010/15/introduction>

Other Resources:

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/>

Section 3 – Hate Crime

Overview:

- Traditionally, hate crimes (including those involving a sectarian or racist element) have been dealt with by the courts using their general powers to have regard to particular circumstances of an offence as an aggravating factor when sentencing someone for any offence.
 - Thus, for example, evidence that a common law assault was motivated by sectarian hatred could be taken into account when sentencing the offender.
 - Therefore, the common law crimes of Assault, Breach of the Peace and Uttering Threats are also relevant.
 - However, in recent years, a number of **statutory provisions**, which have effect in Scotland, have been introduced to specifically address such offending:
-

Part III of the Public Order Act 1986

What it does:

- Introduced offences relating to the incitement of racial hatred for which the maximum penalty is an unlimited fine or seven years imprisonment – racial hatred means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins.

Link to Legislation:

<http://www.legislation.gov.uk/ukpga/1986/64/part/III>

Section 33 of the Crime and Disorder Act 1998

What it does:

- Relates to racially-aggravated offences in Scotland.
- Introduced offences of pursuing a racially-aggravated course of conduct which amounts to harassment of a person and acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress – the maximum penalty is an unlimited fine or seven years imprisonment.

Link to legislation:

<http://www.legislation.gov.uk/ukpga/1998/37/section/33>

Section 96 of the Crime and Disorder Act 1998

What it does:

- Makes provision for offences which are racially-aggravated, requiring courts to take such aggravations into account when determining sentence.

Link to legislation:

<http://www.legislation.gov.uk/ukpga/1998/37/section/96>

Section 74 of the Criminal Justice (Scotland) Act 2003

What it does:

- Relates to offences aggravated by religious prejudice.
- Made provision for offences aggravated by religious prejudice, requiring courts to take such aggravation into account when determining sentence and also to state the extent of and reasons for any consequent difference in sentence.

Link to legislation:

<http://www.legislation.gov.uk/asp/2003/7/section/74>

Section 25 of The Criminal Justice and Licensing (Scotland) Act 2010

What it does:

- Relates to offences aggravated by racial or religious prejudice.
- Made provision to harmonise the application of hate crimes legislation across the statute book and also improved the recording of racially and religiously aggravated offences and convictions.

Link to legislation:

<http://www.legislation.gov.uk/asp/2010/13/section/25>

Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010

What it does:

- Relates to threatening or abusive behaviour.
- Makes provision for the offence of threatening and abusive behaviour.

Link to legislation:

<http://www.legislation.gov.uk/asp/2010/13/section/38>

The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

What it does:

- Creates offences concerning offensive behaviour in relation to certain football matches, and concerning the communication of certain threatening material.
- Includes offensive behaviour at a regulated football match relating to expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or group defined by reference to a characteristic listed in subsection (4) (for example, by engaging in sectarian chanting or singing);

Link to legislation:

<http://www.legislation.gov.uk/asp/2012/1/contents/enacted>

Other Resources:

Scottish Parliament information page on the Bill:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29678.aspx>

**Research briefing paper by the Scottish Parliament Information Centre (SPICe)
– somewhat outdated but useful overview of issues:**

<http://www.scottish.parliament.uk/parliamentarybusiness/30167.aspx>

Lord Advocate's Guidelines on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012:

<http://www.copfs.gov.uk/Publications/2012/02/Lord-Advocate%E2%80%99s-Guidelines-Offensive-Behaviour-Football-and-Threatening-Communications-Scotland-Act>

Communications Act 2003 – c. 21 – Part II – Chapter 1 – Offences relating to networks and services – Section 127

What it does:

- Relates to the improper use of public electronic communications network (UK-wide Act).

Link to Legislation:

<http://www.legislation.gov.uk/ukpga/2003/21/section/127?view=extent>

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) Part II - Chapter 1 – Football Banning Orders

What it does:

- Relates to Football Banning Orders (FBOs) where instead of, or in addition to, any sentence which it could impose, the court which deals with the person in respect of the offence may, if satisfied as to the matters mentioned in subsection (3), make a football banning order against the person.

Link to Legislation:

<http://www.legislation.gov.uk/asp/2006/10/part/2/chapter/1>
