

Hate Crime and Public Order (Scotland) Act 2021

General Information Note



November 2023



**POLICE
SCOTLAND**
Keeping people safe

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1. Introduction



Following almost a year of scrutiny, the Hate Crime and Public Order (Scotland) Act (the 2021 Act) was passed by the Scottish Parliament on 11 March 2021 and received Royal Assent on 23 April 2021.¹ The 2021 Act modernises, consolidates and extends existing hate crime law in Scotland. The Scottish Government is working closely with justice partners to implement the 2021 Act on the 1 April 2024. This information note explains the current law and what will change once the 2021 Act comes into force.

Hate crime legislation is an essential element of our wider approach to tackling hate crime. It makes clear the type of behaviour that is not acceptable in society.

We know that legislation in and of itself is not enough to build the inclusive and equal society that Scotland aspires to, however having clear legislation about hate crime sends a strong message. In particular, it makes it clear to victims, perpetrators, and communities that offences motivated by prejudice will be treated more seriously and will not be tolerated.

To support implementation of the 2021 Act, the Scottish Government published a new [Hate Crime Strategy](#) on 24 March 2023. The strategy sets out a vision for a Scotland where everyone lives free from hatred and prejudice and where our communities are empowered, inclusive and safe. It makes a number of commitments including ensuring improved support for victims, improving data and evidence developing effective approaches to prevention.

¹ The development of the Act was informed by Lord Bracadale's [Independent Review of Hate Crime Legislation in Scotland](#) and the Scottish Government's subsequent engagement with stakeholders including via the [One Scotland: consultation on current hate crime legislation](#).

2. Review of hate crime legislation



Lord Bracadale led an Independent Review of Hate Crime Legislation in Scotland and published a report in May 2018. The final report contained 22 recommendations.

In response to this review, the Scottish Government launched its 'One Scotland: Hate Has No Home Here' consultation, which ran from 14 November 2018 to 24 February 2019. It sought views on the recommendations made by Lord Bracadale including through public events across Scotland involving communities affected by hate crime, stakeholders representing equality groups and legal bodies.

3. Existing hate crime law



In Scotland, the law currently recognises hate crime based on prejudice towards the following characteristics: race, religion, disability, transgender identity and sexual orientation.

Hate crime can target a particular person or an entire group. Where a crime is committed against a person, you don't have to be a member of the targeted group/s to be a victim of hate crime, as the law applies to crimes based on someone's belief about your identity, even if that is incorrect.

Hate crime can be verbal, physical or written and can take place anywhere in public or in private – including online.

The current law addresses offences in three main ways. First, an aggravated offence. Any offence may be “aggravated” by hatred towards individuals with the characteristics listed above. This means that an offence is committed, such as breach of the peace or assault, which is motivated by prejudice towards a person's identity. There are also two standalone offences: racially aggravated harassment and stirring up of racial hatred.

4. What has changed?



Aggravated offences – additional characteristics

The 2021 Act maintains the existing legislative protections from crimes aggravated by prejudice towards race, religion, disability, transgender identity and sexual orientation. The 2021 Act will introduce new protections against offences aggravated by prejudice towards a person's age. It will also update the definition of transgender identity, including the removal of 'intersexuality' from the definition to create a separate characteristic of 'variations in sex characteristics'.

As noted above, current hate crime law can, where there is a specific victim, apply where someone presumes you are a member of one of the groups listed above (even if you are not). The 2021 extends this protection to include anyone who has an association with one, or more, of the characteristics listed above. So, for example, if a person is assaulted because they socialise with a person with a disability this would be an offence aggravated by prejudice based on disability.

Some people will belong to or identify with more than one protected group. For some, a combination of characteristics will mean that they experience hate crime in a specific way – what is referred to as intersectionality. Intersectionality can significantly impact how people experience hate crime.

Age

Although we expect age related prejudice to make up a relatively small proportion of crimes, we want to ensure that that these crimes are treated in the same way as other hate crimes.

The characteristic of age will cover persons of any age. Therefore this would mean that it does not apply only to a particular age group such as elderly persons or children and young people.

Transgender identity and variations in sex characteristics

The 2021 Act removes the term 'intersexuality' from the current definition of 'transgender identity' given the clear differences between intersex/variations in sex characteristics and transgender identities. The 2021 Act includes 'variations in sex characteristics' as a separate characteristic within hate crime law, to maintain protection for this group of people.

Variations in sex characteristics relate to diverse physical and biological characteristics of the body, whereas transgender identity relates to a person's gender identity.

The 2021 Act defines 'transgender identity' to include 'a female-to-male transgender person' and 'a male-to-female transgender person'. It also includes non-binary people as they are currently protected by the existing definition's use of 'any other gender identity that is not standard male or female gender identity'. The terms 'transsexualism' and 'transvestitism' are widely understood to be outdated and are therefore also removed from the 2021 Act's definition of transgender identity but cross-dressing people are included to ensure the protection provided by the word 'transvestitism' is not lost.

New stirring up offences

The 2021 Act maintains the existing stirring up of racial hatred offence, with some minor modifications.

The test for the offence remains the same as it is under the Public Order Act 1986, so that for a stirring up racial hatred offence to be committed, a person must behave in a manner that:

- a reasonable person would consider to be threatening, abusive or insulting, or communicates to another person material that a reasonable person would consider to be threatening, abusive or insulting, and
- either–
 - 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
 - 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.

The 2021 Act also creates new stirring up of hatred offences for each of the following characteristics:

- Disability,
- Religion,
- Sexual orientation,
- Transgender identity,
- Age,
- Variations in sex characteristics.

For these characteristics, an offence is committed when a person behaves in a manner that:

- a reasonable person would consider to be threatening or abusive, or communicates to another person material that a reasonable person would consider to be threatening or abusive, and
- 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 as listed:
 - age,
 - disability
 - religion or, in the case of a social or cultural group, perceived religious affiliation,
 - sexual orientation,
 - transgender identity,
 - variations in sex characteristics.

There is a defence to all offences of stirring up hatred where a person can show the behaviour or communication of material was, in the particular circumstances, reasonable.

There are protections for individuals' rights in respect to freedom of expression for the operation of the stirring up hatred.

Characteristic of Sex

We know that women's experiences of hate crime can be amplified by misogyny, however we recognise that tackling misogyny requires a distinct approach in criminal law. That is being progressed through separate legislation that is expected to be introduced into the Scottish Parliament in 2024.

Blasphemy

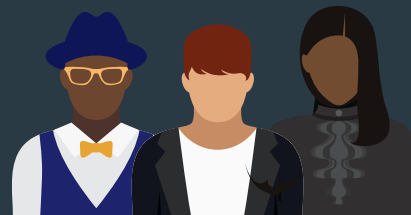
The 2021 Act will abolish the common law of blasphemy which has not been prosecuted in Scotland for a very considerable length of time (the last reported prosecutions for blasphemy were in 1843). England, Wales and Ireland and other countries around the world have already repealed their blasphemy law. In Scotland, there are more recent laws for crimes aggravated by religious hatred, such as the Criminal Justice (Scotland) Act 2003.

Building better information about hate crime

The 2021 Act requires information about police recorded hate crime and hate crime convictions to be published annually, with greater detail where known.² We recognise that having robust data and evidence on hate crime is essential to help us more effectively prevent and tackle it in Scotland. It needs to show a greater level of disaggregation and tell us more about victims and perpetrators. Therefore, Police Scotland's new crime and case management system has been built to ensure that further information on the perceived prejudice shown by perpetrators can be recorded by police.

2 Developed in response to Recommendation 16 of the [UN Committee on the Elimination of Racial Discrimination \(CERD\)](#) 2016 to "Systematically collect disaggregated data on hate crimes".

5. Further Information



Further information on the Hate Crime Act 2021 can be found on the [Scottish Government](#) and the [Scottish Parliament](#) websites.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-593-7 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1382174 (011/23)

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