

## **ANNEX A: EMAIL CORRESPONDENCE BETWEEN SCOTTISH GOVERNMENT OFFICIALS AND POLICE SCOTLAND**

### **(1): EMAIL CORRESPONDENCE, 31 MARCH 2021**

**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Sent:** 31 March 2021 08:32

**To:** ACC Partnership and Prevention <ACCPartnershipandPrevention@scotland.pnn.police.uk>

**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>; Police Scotland

(Jim.McMillan@scotland.pnn.police.uk) <Jim.McMillan@scotland.pnn.police.uk>; [Redacted

s38(1)(b)] ([Redacted s38(1)(b)]@scotland.pnn.police.uk) <[Redacted

s38(1)(b)]@scotland.pnn.police.uk>; [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Subject:** Hate Crime and Public Order (Scotland) Act 2021 - IT Issues and Commencement

Hi

During the last few months there have been various discussions on the measures necessary to implement the Hate Crime and Public Order (Scotland) Act 2021.

[Redacted s30(c)]

It would therefore be beneficial to meet up with all those involved in being able to answer questions on costs and timings in the next few weeks with the objective being to have a paper which sets out options on costs and dates for the incoming Ministers immediately after the election on 06 May.

I move on to work in a new area of work on 01 April but will be available to return to support [Redacted s38(1)(b)] at the meeting, if required.

**[Redacted s38(1)(b)]**

Hate Crime Bill Team Leader | Connected Communities | Scottish Government  
3H North | Victoria Quay | Edinburgh | EH6 6QQ

[Redacted s38(1)(b)]

**Mobile [Redacted s38(1)(b)]**

e: [Redacted s38(1)(b)]@gov.scot

[bill-as-amended-at-stage-3.pdf \(parliament.scot\)](#)



## **(2) EMAIL CORRESPONDENCE, 19-26 APRIL 2021**

**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Sent:** 26 April 2021 14:08  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>; McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

Hi [Redacted s38(1)(b)]

An update Thursday would be great. I'm off next week but I will be in Wednesday, so even if we could get something by then that would be good?

Although [Redacted s38(1)(b)] will be here!

Thanks

[Redacted s38(1)(b)]  
Hate Crime Team Leader | Connected Communities Unit  
[Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 26 April 2021 13:14  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>; McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

## **OFFICIAL**

Hi [Redacted s38(1)(b)]  
Im hoping for direction by thursday this week? Can phone you and give a verbal update then?

[Redacted s38(1)(b)]

[Redacted s38(1)(b)]  
Police Inspector  
Equality and Diversity  
Partnerships and Portfolios  
Safer Communities

(Working from home mobile: [Redacted s38(1)(b)])



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**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto: [Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 26 April 2021 13:11  
**To:** [Redacted s38(1)(b)]  
**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

Hi [Redacted s38(1)(b)]

[Redacted s30(c)] We are working on an implementation plan so keen to include some next steps on this for incoming Ministers.

Thanks!

[Redacted s38(1)(b)]

Hate Crime Team Leader | Connected Communities Unit

[Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)]  
**Sent:** 19 April 2021 11:58  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

Hi [Redacted s38(1)(b)]

Ah ok – I do have that meeting! Thanks.

We will await your response [Redacted s30(c)] and can set something up separately before 17 June if need be.

Thanks!

[Redacted s38(1)(b)]

Hate Crime Team Leader | Connected Communities Unit

[Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 19 April 2021 11:55  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

**OFFICIAL**

Hi  
[Redacted s30(c)]

The meeting on 17 June is at the request of [Redacted s38(1)(b)] and is around aggravators and disagg data etc.

[Redacted s38(1)(b)]

*[Redacted s38(1)(b)]*  
Police Inspector  
Equality and Diversity  
Partnerships and Portfolios  
Safer Communities

(Working from home mobile: [Redacted s38(1)(b)])



**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 19 April 2021 11:47  
**To:** [Redacted s38(1)(b)]  
**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot; [Redacted s38(1)(b)]@assured.systems.gov.scot  
**Subject:** RE: SG hate crime campaign [OFFICIAL]

Hi [Redacted s38(1)(b)]

Has a meeting been set up for June? I don't think I have anything in my diary. Or I might have missed it! Do you have the details to hand?

I think there will be two meetings – one on commencement and one on the new CMS categories and reporting. I think JAS were looking to set up the meeting to look at how the provisions will work in practice which I understood to be happening in June. [Redacted s30(c)]. There is a lot of overlap though! I hope I have understood this correctly – but do let me know if I have misunderstood..

Thanks

[Redacted s38(1)(b)]

Hate Crime Team Leader | Connected Communities Unit

[Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>

**Sent:** 19 April 2021 11:28

**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>; [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Subject:** RE: SG hate crime campaign [OFFICIAL]

## OFFICIAL

[Redacted s38(1)(b)]

Thanks for that

Im involved in the June meeting for commencement etc., and this timeline makes sense

[Redacted s38(1)(b)]

[Redacted s38(1)(b)]

Police Inspector

Equality and Diversity

Partnerships and Portfolios

Safer Communities

(Working from home mobile: [Redacted s38(1)(b)])



**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]

**Sent:** 19 April 2021 11:01

**To:** [Redacted s38(1)(b)]

**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot; [Redacted s38(1)(b)]@assured.systems.gov.scot

**Subject:** RE: SG hate crime campaign [OFFICIAL]

Hi [Redacted s38(1)(b)]!

I hope you had a good weekend. [Redacted s38(1)(b)] is off sick just now so I'm just picking this up in her absence.

We are currently in discussions around the next campaign which will hinge on the Bill commencement. [Redacted s30(b)(ii)].

I think we are due to meet with PS soon to pick these discussions up now [Redacted s38(1)(b)] has left.

Thanks

**[Redacted s38(1)(b)]**

Hate Crime Team Leader | Connected Communities Unit

 [Redacted s38(1)(b)]



### **(3) EMAIL CORRESPONDENCE, 29 APRIL 2021**

**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Sent:** 29 April 2021 10:50  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Subject:** RE: phone call [OFFICIAL]

Hi [Redacted s38(1)(b)]

See attached – it's at section 15.

Will aim to call you just after 3

Thanks!

[Redacted s38(1)(b)]  
Hate Crime Team Leader | Connected Communities Unit  
[Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 29 April 2021 09:18  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: phone call [OFFICIAL]

### **OFFICIAL**

[Redacted s38(1)(b)]  
COuld you send me over the agreed duty on police scotland in respect of the data provision - I only have the draft one?  
thanks  
[Redacted s38(1)(b)]

[Redacted s38(1)(b)]  
Police Inspector  
Equality and Diversity  
Partnerships and Portfolios  
Safer Communities

(Working from home mobile: [Redacted s38(1)(b)])



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**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto: [Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 29 April 2021 08:57  
**To:** [Redacted s38(1)(b)]  
**Subject:** RE: phone call [OFFICIAL]

Hi [Redacted s38(1)(b)]

Only just logging in! About to go into a meeting and I'm back to back all morning.  
Can I give you a call back this afternoon?

Thanks

[Redacted s38(1)(b)]  
Hate Crime Team Leader | Connected Communities Unit  
📞 [Redacted s38(1)(b)]



**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 29 April 2021 08:45  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** phone call [OFFICIAL]

**OFFICIAL**

Hi [Redacted s38(1)(b)] - tried your mobile - are you free for a call before 10?  
[Redacted s38(1)(b)]

[Redacted s38(1)(b)]  
Police Inspector  
Equality and Diversity  
Partnerships and Portfolios  
Safer Communities

(Working from home mobile: [Redacted s38(1)(b)])



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#### **(4) EMAIL CORRESPONDENCE, 19 MAY 2021**

**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 19 May 2021 11:35  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: Hate Crime Act - General Implementation Discussion [OFFICIAL]

#### **OFFICIAL**

so kind thank you  
[Redacted s38(1)(b)]

[Redacted s38(1)(b)]  
Police Inspector  
Equality and Diversity  
Partnerships, Prevention and Community Wellbeing

(Working from home mobile: [Redacted s38(1)(b)])



**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 19 May 2021 11:28  
**To:** [Redacted s38(1)(b)]  
**Subject:** RE: Hate Crime Act - General Implementation Discussion

No problem – have sent updated calendar invite.

Cheers,  
[Redacted s38(1)(b)]

-----Original Appointment-----

**From:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Sent:** 19 May 2021 11:18  
**To:** [Redacted s38(1)(b)]  
**Subject:** New Time Proposed: Hate Crime Act - General Implementation Discussion  
**When:** 21 May 2021 14:00-15:00 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.  
**Where:** Microsoft Teams Meeting

HI [Redacted s38(1)(b)]

Jim and I have an urgent meeting on friday so looking to push back our discussions to 1 -2 to accommodate?  
Thanks in advance -  
[Redacted s38(1)(b)]

## **(5) EMAIL CORRESPONDENCE, 25 MAY – 08 JUNE 2021**

**From:** McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>

**Sent:** 08 June 2021 16:13

**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>; [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>

**Subject:** FW: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

### **OFFICIAL**

Hello

Thanks for clarifying this for me.

In respect of the attached, this has since moved on, and a more accurate report is sitting with the Chief Constable for comment. I will let our Force Executive know of the request to implement the legislation, without the Section 15 provision.

[Redacted s30(b)(ii)].

Happy to discuss.

Jim

**Chief Inspector Jim McMillan**  
**Equality & Diversity / Prevent Delivery Unit**  
**Partnerships, Prevention & Community Wellbeing Division**  
**Police Scotland**

**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]

**Sent:** 08 June 2021 14:17

**To:** McMillan, Jim

**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot

**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

Hi Jim,

The information you have quoted is correct as it relates to section 15 of the Act [Publication of reports on hate crime recorded by police].

[Redacted s30(c)]. We do not envisage the provisions at section 15 (i.e. the data reporting provisions) to be commenced for some time after the Act's main provisions (i.e. the hate crime statutory aggravations and offences) have been commenced.

As such we are treating these as two distinct issues, with our preferred Spring 2022 commencement date referring to everything apart from the section 15 data recording provisions.

[Redacted s30(c)].

Best,  
[Redacted s38(1)(b)]

**From:** McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>

**Sent:** 08 June 2021 12:20

**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>

**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

## **OFFICIAL**

Hello

The bullet points relate to the specifics around the duty to provide ministers with information.

I have been advised of the following -

- Para 265 – We are not aware of any challenges with the duty specifically. To clarify:

Section 15A of the Hate Crime and Public Order (Scotland) Act 2012 places a duty on Scottish Ministers to publish reports on police recorded hate crime on an annual basis. The Chief Constable must provide the following information to Scottish Ministers, where it has been recorded:

- data identifying, for each hate crime, the characteristic included in the Act which the perpetrator is recorded as having targeted;
- data identifying in more detail the different group or groups a perpetrator is recorded as having targeted, for the characteristics of race (and related characteristics), age, disability, religion, sexual orientation and transgender identity;
- the age, sex and ethnicity of any person recorded as being a victim of the crime; and
- the age, sex and ethnicity of any person recorded as being a perpetrator or suspected perpetrator of the crime.

[Redacted s30(c)].

Is this correct????

Thanks

Jim

**Chief Inspector Jim McMillan**  
**Equality & Diversity / Prevent Delivery Unit**  
**Partnerships, Prevention & Community Wellbeing Division**  
**Police Scotland**

**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 03 June 2021 13:03  
**To:** McMillan, Jim  
**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot  
**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

Hi Jim,

Thanks for this. [Redacted s30(b)(ii)]

As I understand, work on Police Scotland's duty to provide info to Ministers was still to be properly fleshed out (and that these provisions won't be commenced until the launch of the new CMS anyway).

Cheers,  
[Redacted s38(1)(b)]

**From:** McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>  
**Sent:** 02 June 2021 09:30  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

## OFFICIAL

Hello

The bullet points and 'workarounds' relate to Police Scotland's duty to provide information to ministers. Another point we need to consider is what data will be expected/requested.

Take care

Jim

**Chief Inspector Jim McMillan**  
**Equality & Diversity / Prevent Delivery Unit**  
**Partnerships, Prevention & Community Wellbeing Division**  
**Police Scotland**

**From:** [Redacted s38(1)(b)]@assured.systems.gov.scot [mailto:[Redacted s38(1)(b)]@assured.systems.gov.scot]  
**Sent:** 01 June 2021 14:00  
**To:** McMillan, Jim  
**Cc:** [Redacted s38(1)(b)]@assured.systems.gov.scot  
**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

Hi Jim,

Thanks for these. Can I clarify – are the first set of bullet points related solely to the Act's data provisions (i.e. section 15)? Can I also clarify if the issues on the 'workaround' are to do with commencing the Act as a whole (and not just the data provisions)?

Thanks,  
[Redacted s38(1)(b)]

**From:** McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>  
**Sent:** 28 May 2021 15:25  
**To:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** RE: Hate Crime Act - Draft Implementation Overview - 25 May 21 [OFFICIAL]

## OFFICIAL

Hello

Here are some points for your info....

[Redacted s30(b)(1)].

Hope this helps

Jim

**Chief Inspector Jim McMillan**  
**Equality & Diversity / Prevent Delivery Unit**  
**Partnerships, Prevention & Community Wellbeing Division**  
**Police Scotland**

**From:** [Redacted s38(1)(b)]  
**Sent:** 25 May 2021 12:09  
**To:** McMillan, Jim <Jim.McMillan@scotland.pnn.police.uk>; [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@scotland.pnn.police.uk>  
**Cc:** [Redacted s38(1)(b)] <[Redacted s38(1)(b)]@gov.scot>  
**Subject:** Hate Crime Act - Draft Implementation Overview - 25 May 21

Hi Jim, [Redacted s38(1)(b)],

Thanks for yesterday's meeting, it was good to catch up.

Attached is a high-level draft implementation overview that I promised I would send over. Its purpose is to outline our thinking around how we progress implementation and what will be needed in terms of governance, deliverables and so on. It is by no means comprehensive of everything that we will need to do!

Would you be able to consider the document by Friday lunchtime and let me know any comments/changes/things to flag from your end? This document will help in our briefing for new Ministers. I will also aim to send you on Minister's views on implementation more generally once they have been fully briefed, so that this can be fed into Jim's paper that is to be considered by the Chief Constable in June.

I would be also be grateful if you could send over those bullet points this week Jim.

Happy to chat.

Cheers,  
[Redacted s38(1)(b)]

**[Redacted s38(1)(b)] | Hate Crime Act Implementation Manager**

Connected Communities, Scottish Government  
Area 3-H North, Victoria Quay, Edinburgh EH6 6QQ



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

**OFFICIAL**

**ANNEX B: ATTACHMENT INCLUDED IN EMAIL CORRESPONDENCE (1) & (5)**

In relation to your recent question on proposed date of commencement, please note the following:

[Redacted s30(b)(i)]

It should be noted that this analysis is separate to that already undertaken in relation to the requirements driven by the Hate Crime Bill for disaggregated reporting (i.e. the introduction of a sustainable approach to producing more granular statistics regarding the impact of crimes on diverse communities).

The ISCJIS Data Standards is an established agreement between partner organisations to ensure the transfer of data meets common standards and needs. Police Scotland share data with numerous partners in this structured format. Aggravators are included within the ISCJIS Data Standards.

Charge aggravators are (where applicable), included in the data exchange and the requirement exists to show each relevant aggravator relating to that accused/charge. The aggravator is a code for a crime or offence that adds to the offence code by highlighting particular circumstances relating to the specific incident as opposed to the actual charge. This data will be reported to COPFS/SCRA and recorded in CHS. Aggravators serve a purpose throughout the decision making process through to sentencing.

[Redacted s30(b)(i)]

Crime Recording and associated statistical information gathering (APU) is not within the scope of this response.

[Redacted s30(b)(i)]

**OFFICIAL**

## **ANNEX C: ATTACHMENT INCLUDED IN EMAIL CORRESPONDENCE (5)**

### **HATE CRIME AND PUBLIC ORDER (S) ACT DRAFT IMPLEMENTATION OVERVIEW FOR POLICE SCOTLAND**

#### **Purpose:**

- Implementation of the Hate Crime and Public Order (Scotland) Act 2021.

#### **Objectives:**

- To engage with a range of internal and external stakeholders to help prepare commencement and ensure effective implementation of the provisions of the Hate Crime Act.
- To work with stakeholders to develop and deliver an awareness-raising/marketing campaign to coincide with commencement of the Act, to explain what it will mean for both the general public and victims of hate crime, and to encourage greater reporting when a hate crime is witnessed/experienced.
- To work with Police Scotland, COPFS, SCTS and other justice partners to (i) ensure that they are prepared for the Act's commencement and that (ii) their systems can properly record offences that the Act provides for, as well comply with other statutory duties contained in the Act.
- To regularly monitor and evaluate the Act once its provisions have been commenced.
- [by late 2021/early 2022] To consider the need to use the Act's enabling power to add the characteristic of 'sex' to the hate crime legislative framework, if this is recommended by the Working Group on Misogyny and Criminal Justice in Scotland.

#### **Scope:**

The scope of the work is as follows:

- This project is to ensure effective implementation of the Hate Crime Act by engaging with both internal and external stakeholders. [Redacted s29(1)(a)].

The following is out of scope:

- The project will not involve any changes to the Hate Crime Act or determining whether provisions should or should not be implemented.
- The project will not involve making decisions with regards to whether the characteristic of 'sex' should be added to the hate crime framework, or how this should be defined. This is a matter for the independent Working Group on Misogyny and Criminal Justice in Scotland.
- The project will not consider wider hate crime policy and practice not directly related to the implementation of the Hate Crime Act, including the development of a new strategy to tackle hate crime.

## Constraints

[Redacted s30(c)]:

- [Redacted s30(c)]

Financial:

- The main estimated costs for the implementation of the Act are as follows:

Description	Cost
One-off implementation costs	£100,000
Recurring annual costs of Act <sup>1</sup>	£527,600
[Redacted s30(c)] <sup>2</sup>	[Redacted s30(c)]
Police recorded data provisions <sup>3</sup>	£488,000
Convictions data provisions <sup>4</sup>	-
Campaign/marketing	[Redacted s29(1)(a)]
<b>Total</b>	[Redacted s30(c)/s29(1)(a)]

[Redacted s30(b)(ii)]:

- [Redacted s30(b)(ii)].

Other:

- The high-profile nature of the Act, and the backlash to certain provisions during Bill scrutiny (i.e. the new stirring up hatred offences) means that implementation work is likely to be closely scrutinised by stakeholders and the media. We will likely receive lots of correspondence and FOIs on the topic of Bill implementation.
- It will not be clear until February 2022 whether the Working Group on Misogyny and Criminal Justice in Scotland will recommend whether 'sex' should be added to the hate crime framework or not. Should the Act be implemented early 2022 we will need to consider how best to plan for sex being included as part of commencement without cutting across or pre-empting the work of the Working Group.

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<sup>1</sup> Upper estimate used.

<sup>2</sup> [Redacted s30(c)].

<sup>3</sup> Upper estimate used.

<sup>4</sup> Too early to cost this commitment.

## Deliverables:

- SSIs to commence the Act's provisions.
- A stakeholder engagement plan.
- [Redacted s29(1)(a)].
- [Redacted s29(1)(a)].
- A hate crime public awareness/marketing campaign.
- [Redacted s29(1)(a)].
- Agreement on the information that needs to be collated to allow for effective evaluation of the Act following commencement.
- A deep dive publication on police recorded data for the year 2020/21.
- Agreement amongst stakeholders on the categories of data to be collected and reported, and the systems needing developed, to comply with the Act's provisions on police recorded data.
- Options paper in partnership with justice partners on how to progress work on the Act's provisions on convictions data.

## Key Governance Tasks

See *Annex A for overview of governance structure*

### 1. [Redacted s29(1)(a)]

- The existing [Tackling Prejudice and Building Connected Communities Action Group](#) already brings together a range of government and non-government stakeholders to provide a multi-agency strategic approach towards tackling hate crime, eradicating prejudice and building community cohesion.  
[Redacted s29(1)(a)].

### 2. [Redacted s29(1)(a)]

- [Redacted s29(1)(a)]

#### d) *Monitoring and evaluation*

- Once the Act has been commenced it will be important to monitor its impact and how it is being used on the ground by justice partners. This will be reflected in both anecdotal experience of victims and justice partners, as well as via various crime statistics publications (Police data, COPFS data etc).
- It is also likely that the Act, due to its high-profile nature, will be subject to post-legislative scrutiny.

## Other considerations

### *Enabling Power*

- The Working Group on Misogyny and Criminal Justice in Scotland may recommend that the characteristic of 'sex' is added to the hate crime

legislative framework. The Hate Crime Act therefore contains an enabling power to add the characteristic of 'sex' (section 12).

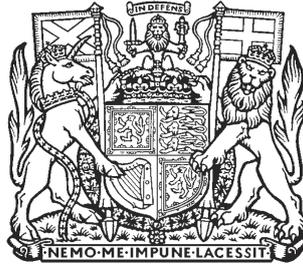
- The previous administration committed to laying draft regulations to add 'sex' to the hate crime legislative framework within one month of receiving this recommendation. The Group are expected to report in early 2022, and so work will need to be underway before then if it looks likely that this recommendation will be made.
- [Redacted s30(b)(ii)].
- Furthermore, the enabling power at section 12 of the Act provides for a super-affirmative procedure – meaning that the Scottish Government must lay draft regulations in Parliament and then have regard to any representations about the proposed draft that are made to them within a period of 40 days.  
[Redacted s30(b)(ii)].

#### *Explanatory Notes exercise*

- The previous Cabinet Secretary for Justice agreed, during Parliamentary passage of the Bill, that the Explanatory Notes (published to sit alongside the Act) would be used to provide further information on the new stirring up hatred offences (i.e. examples of what would constitute an offence of stirring up hatred under the Act).
- It was also agreed that stakeholders would be afforded the opportunity to feed into this exercise.
- This will be picked up following the Scottish General Election on 06 May and the appointment of new Ministers. The exercise is likely to be concluded, and the final version of the Explanatory notes published, in June/July this year.

[Redacted s29(1)(a)]

DRAFT



# Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

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Explanatory Notes have been produced to assist in the  
understanding of this Act and are available separately

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£6.90





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

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# 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.

## **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,
  - (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.

## 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).

### **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 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
  - (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.

## PART 4

### FURTHER PROVISION RELATING TO HATE CRIME

#### *The characteristics*

#### **11 Meaning of the characteristics**

- (1) This section applies for the interpretation of sections 1, 4 and 9.
- (2) A reference to age includes a reference to an age range.
- (3) A disability is a physical or mental impairment of any kind.
- (4) For the purposes of subsection (3) (but without prejudice to its generality), a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.
- (5) A group defined by reference to religion is a group of persons defined by reference to—
  - (a) religious belief or lack of religious belief,
  - (b) membership of or adherence to a church or religious organisation,
  - (c) support for the culture or traditions of a church or religious organisation,
  - (d) participation in activities associated with such a culture or such traditions.
- (6) A reference to sexual orientation is a reference to sexual orientation towards—
  - (a) persons of the same sex,
  - (b) persons of a different sex, or
  - (c) both persons of the same sex and persons of a different sex.
- (7) A person is a member of a group defined by reference to transgender identity if the person is—
  - (a) a female-to-male transgender person,
  - (b) a male-to-female transgender person,
  - (c) a non-binary person,
  - (d) a person who cross-dresses,
 and references to transgender identity are to be construed accordingly.
- (8) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither—
  - (a) those typically associated with males, nor

(b) those typically associated with females,  
and references to variations in sex characteristics are to be construed accordingly.

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

- (1) The Scottish Ministers may by regulations add the characteristic of sex to the list of characteristics in one or more of the following provisions—
  - (a) section 1(2),
  - (b) section 4(3),
  - (c) section 9(a).
- (2) Regulations under this section 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 under those sections.
- (3) Regulations under this section may modify section 11 by adding interpretative provision relating to the characteristic of sex.
- (4) Regulations under this section—
  - (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) may make different provision for different purposes,
  - (c) are subject to the affirmative procedure.
- (5) Before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament, the Scottish Ministers must—
  - (a) lay before the Scottish Parliament a proposed draft of the instrument,
  - (b) have regard to any representations about the proposed draft that are made to them within the period of 40 days beginning with the day on which the proposed draft is laid and make any changes to the draft instrument that they consider appropriate.
- (6) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.

### *Providers of information society services*

## **13 Provision in relation to providers of information society services**

Schedule 1 makes further provision about offences under sections 3 and 4 in relation to persons providing information society services (as defined in paragraph 4 of that schedule).

### *Reports relating to hate crime*

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

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting year, publish a report on convictions during that reporting year for—
  - (a) offences aggravated by prejudice within the meaning of section 1, and
  - (b) offences under this Act.

- (2) The Scottish Ministers must provide information about the groups to which the offences relate by including in the report—
  - (a) information about convictions for offences which, by virtue of being offences under section 3 or 4(1), relate to groups defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins,
  - (b) in respect of each conviction for an offence aggravated by prejudice within the meaning of section 1, information about the type of prejudice by which the offence was aggravated (by reference to one or more of the characteristics mentioned in section 1(2)), and
  - (c) in respect of each conviction for an offence under section 4(2), information about the characteristic to which the offence relates (by reference to one or more of the characteristics mentioned in section 4(3)).
- (3) The Scottish Ministers must—
  - (a) take reasonable steps to establish whether the information provided under subsection (2) about the groups to which the offences relate may be supplemented by information about any subgroups to which the offences relate, including (in particular) where a conviction is for an offence relating to a group defined by reference to—
    - (i) age, the particular age or age range to which the offence relates,
    - (ii) disability, the particular type of disability to which the offence relates, including whether it is a physical impairment or a mental impairment,
    - (iii) race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins to which the offence relates,
    - (iv) 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 to which the offence relates,
    - (v) sexual orientation, whether the offence relates to sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
    - (vi) transgender identity, whether the offence relates to identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses, and
  - (b) if they establish that the information provided under subsection (2) may be so supplemented, take reasonable steps to obtain that supplementary information and include it in the report.
- (4) The report must not include information in respect of any conviction—
  - (a) which identifies any individual, or
  - (b) from which the identity of any individual may be ascertained.
- (5) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (6) In this section, “reporting year” means a period of one year ending on 31 March.

**15 Publication of reports on hate crime recorded by police**

- (1) The chief constable of the Police Service must, as soon as reasonably practicable after the end of each reporting year, provide the information that the Scottish Ministers require in order to publish a report in accordance with this section.
- (2) The Scottish Ministers must, as soon as reasonably practicable after receipt of information under subsection (1), publish a report on records made by the Police Service during that reporting year of cases categorised by the Police Service as—
  - (a) offences aggravated by prejudice within the meaning of section 1, and
  - (b) offences under this Act.
- (3) The report must include the following information in respect of each recorded offence to the extent that this information has been recorded by the Police Service—
  - (a) the age, sex, and ethnic or national origins of any person recorded as being a victim of the offence,
  - (b) the age, sex, and ethnic or national origins of any person recorded as being a perpetrator or suspected perpetrator of the offence.
- (4) The report must include the following information to the extent that this information has been recorded by the Police Service—
  - (a) in respect of each record of an offence under section 3 and each record of an offence under section 4(1), the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
  - (b) in respect of each record of an offence aggravated by prejudice within the meaning of section 1 and each record of an offence under section 4(2)—
    - (i) the particular characteristic mentioned in section 1(2) or 4(3) which is recorded as being targeted,
    - (ii) where the characteristic is age, the particular age or age range recorded as being targeted,
    - (iii) where the characteristic is disability, the particular type of disability that is recorded as being targeted, including whether it is a physical impairment or a mental impairment,
    - (iv) where the characteristic is race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
    - (v) 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,
    - (vi) where the characteristic is sexual orientation, whether the sexual orientation that is recorded as being targeted is sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
    - (vii) where the characteristic is transgender identity, whether the transgender identity that is recorded as being targeted is identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses.

- (5) The report must not include information in respect of any recorded offence—
  - (a) which identifies any individual, or
  - (b) from which the identity of any individual may be ascertained.
- (6) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (7) In this section—

“Police Service” means the Police Service of Scotland,  
“reporting year” means a period of one year ending on 31 March.

## PART 5

### ABOLITION OF THE OFFENCE OF BLASPHEMY

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

The common law offence of blasphemy is abolished.

## PART 6

### GENERAL PROVISIONS

#### **17 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of this or any other Act,
  - (b) otherwise, are subject to the negative procedure.

#### **18 Modifications of enactments**

Schedule 2 contains modifications of enactments.

#### **19 Crown application: criminal offences**

- (1) Nothing in this Act makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

**20 Crown application: powers of entry**

- (1) A warrant granted under section 5 is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the “appropriate authority”).

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners)	The Crown Estate Commissioners
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Scottish Crown Estate	The person managing the land
Land an interest in which belongs to Her Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate	The office-holder in the Scottish Administration or, as the case may be, the Government department managing the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The Government department
Land an interest in which is held in trust for Her Majesty by an office-holder in the Scottish Administration for the purposes of the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The Government department

- (2) In subsection (1)—
- (a) the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
  - (b) “Government department” means a department of the Government of the United Kingdom,
  - (c) “Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies.

- (3) 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.

## **21 Commencement**

- (1) This section and sections 17 and 22 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

## **22 Short title**

The short title of this Act is the Hate Crime and Public Order (Scotland) Act 2021.

SCHEDULE 1  
*(introduced by section 13)*

OFFENCES UNDER SECTIONS 3 AND 4: INFORMATION SOCIETY SERVICES

*Exceptions for mere conduits*

- 1 (1) A service provider does not commit an offence under section 3 or 4 in respect of the information transmitted in the course of providing so much of an information society service as consists in—
  - (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,if the transmission condition is satisfied.
- (2) The transmission condition is satisfied if the service provider does not—
  - (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
  - (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 2 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider does not commit an offence under section 3 or 4 in respect of the automatic, intermediate and temporary storage of information so provided, if—
  - (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider—
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.

- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

- 3 (1) A service provider does not commit an offence under section 3 or 4 in respect of information stored in the course of providing so much of an information society service as consists of the storage of information provided by a recipient of the service, if sub-paragraph (2) or (3) is satisfied.
- (2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided that the storage of the information by the service provider constituted an offence under section 3 or 4 (as the case may be).
- (3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
- (4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

- 4 In this schedule—
- “information society services” has the meaning given in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce),
- “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible,
- “service provider” means a person providing an information society service.

SCHEDULE 2  
*(introduced by section 18)*

MODIFICATIONS OF ENACTMENTS

*Public Order Act 1986*

- 1 (1) The Public Order Act 1986 is amended in accordance with this paragraph.
- (2) Sections 18 to 21 (stirring up racial hatred) are repealed.
- (3) In section 23—
- (a) in subsection (1)(a), the words “displayed, published, distributed, or” are repealed,
  - (b) in subsection (1)(b), the words “distributed, shown, played, or” are repealed,

- (c) in subsection (2), the words “display, publication, distribution, showing, playing, or” are repealed.
- (4) In section 25(1), for paragraphs (a) and (b), substitute “an offence under section 23”.
- (5) In section 29—
  - (a) the definitions of “distribute”, “dwelling” and “publish” are repealed,
  - (b) for the definition of “recording” (including the interpretation of “play” and “show”, in relation to a recording), substitute—

““recording” means any record from which visual images or sounds may, by any means, be reproduced;”.

*Criminal Law (Consolidation) (Scotland) Act 1995*

- 2 Section 50A (racially-aggravated harassment) of the Criminal Law (Consolidation) (Scotland) Act 1995 is repealed.

*Crime and Disorder Act 1998*

- 3 Section 96 (offences racially aggravated) of the Crime and Disorder Act 1998 is repealed.

*Criminal Justice (Scotland) Act 2003*

- 4 Section 74 (offences aggravated by religious prejudice) of the Criminal Justice (Scotland) Act 2003 is repealed.

*Offences (Aggravation by Prejudice) (Scotland) Act 2009*

- 5 The Offences (Aggravation by Prejudice) (Scotland) Act 2009 is repealed.



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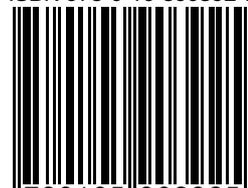
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## **ANNEX E – EXEMPTIONS APPLIED**

### Section 38(1)(b) (personal information)

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, i.e. names/contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

This exemption is not subject to the ‘public interest test’, so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

### Section 30(b)(i) (free and frank provision of advice) and section 30(b)(ii) (free and frank exchange of views for the purposes of deliberation)

An exemption under section 30(b)(i) (free and frank provision of advice) of FOISA and section 30(b)(ii) of FOISA (free and frank exchange of views for the purposes of deliberation) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for officials to have a private space within which to provide free and frank advice and undertake free and frank exchanges of views with partners, including Police Scotland, before the Scottish Government reaches a settled public view. Disclosing the content of this free and frank advice and the free and frank exchanges of views will substantially inhibit the deliberation of matters over decisions relating to the implementation of the Hate Crime and Public Order (Scotland) Act, particularly because these discussions are still ongoing and decisions have not yet been taken.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials, can share free and frank advice and undertake the free and frank exchange of views for the purposes of deliberation with partners, including Police Scotland, as part of the process of exploring and refining the Government’s position, until the Government as a whole can adopt a position that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers, officials and partners, which in turn will undermine the quality of the decision making process, which would not be in the public interest.

### Section 30(c) (prejudice to the effective conduct of public affairs)

An exemption under section 30(c) of FOISA (prejudice to effective conduct of public affairs) applies to some of the information requested. This exemption has been applied to text where disclosing this information would be prejudicial to ongoing considerations over matters pertaining to Police Scotland operational business and the implementation of the Hate Crime and Public Order (Scotland) Act. Disclosing this information would substantially prejudice our ability to fully consider, in the first instance, appropriate solutions to ongoing operational matters and change projects that will directly affect implementation of the Hate Crime and Public Order (Scotland) Act. This would constitute substantial prejudice to the effective conduct of public affairs in terms of the exemption.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government. However, there is a greater public interest in the confidence of the Scottish Government to constructively engage with partners, including Police Scotland, when reaching a final decision on implementation of legislation and being able to fully consider the impact of implementation, in the first instance, on operational matters. Premature disclosure would harm ongoing consideration of these matters.

### Section 29(1)(a) (formulation or development of government policy)

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation of the Scottish Government's policy on implementation of the Hate Crime and Public Order (Scotland) Act 2021.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on any decisions on implementation of the Hate Crime and Public Order (Scotland) Act 2021 will be disclosed in the near future, when it may undermine or constrain the Government's view on that policy while it is still under discussion and development.