

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

[As amended at Stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Hate Crime and Public Order (Scotland) Bill, as amended at stage 2. Text has been added or amended as necessary to reflect amendments made at Stage 2 and these changes are indicated by sidelining in the right margin.
2. The following other accompanying documents are published separately:
 - a supplementary Financial Memorandum (67A-FM)
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

5. The Bill has six Parts.

6. Part 1 makes provision relating to the aggravation of offences by prejudice. It provides that a criminal offence is aggravated if either: the offender demonstrates malice and ill-will towards the victim based on the victim's membership of a group defined by reference to a listed characteristic, or the offence is motivated (wholly or partly) by malice and ill-will towards any such group. The listed characteristics are age, disability, race (and related characteristics), religion, sexual orientation, transgender identity and variations in sex characteristics.

7. Part 1A creates an offence of racially aggravated harassment. This replicates the effect of the offence of racially-aggravated harassment in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, with that offence being separately repealed by the Bill. The purpose is to bring that existing offence into the Bill so that all relevant hate crime laws are brought together in one place.

8. Part 2 creates offences of stirring up hatred against a group of persons based on the group being defined by reference to a listed characteristic. The listed characteristics are the same as those in Part 1.

9. Part 3 sets out further provision relating to hate crime. It makes provision relating to the interpretation of the characteristics listed in sections 1(2) and 3(3), and provides a power for the Scottish Ministers to make regulations adding the characteristic of sex to either or both of these lists of characteristics. It also makes provision about the application of the offences under sections 2A and 3 to providers of information society services, and requires the Police Service of Scotland to publish annual reports on recorded hate crime.

10. Part 4 abolishes the common law offence of blasphemy.

11. Part 5 contains general provisions, including a power for Scottish Ministers to make ancillary provision by regulations.

Part 1 – Aggravation of offences by prejudice

Section 1 – Aggravation of offences by prejudice

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

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

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

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

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

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

17. An offence can be aggravated by prejudice under section 1(1)(a) if the offender demonstrates malice and ill-will towards a victim (of the offence) based on the victim's "presumed membership" of a group defined by reference to one of the characteristics mentioned above. Here, presumed membership means presumed by the offender (see section 1(5)). For example, if the offender assaults a person (the victim) and in so doing demonstrates malice and ill-will towards the victim based on the

offender's presumption that the victim was a Muslim, then even if the victim is not in fact a Muslim the offence (assault) may still be aggravated by prejudice.

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

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

20. Section 1(1)(b) provides that an offence is so aggravated where the offender is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to a characteristic mentioned in section 1(2). The characteristics mentioned in section 1(2) are set out above in paragraph 14.

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

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

23. Section 1(3) provides that the aggravation by prejudice arising either through the operation of section 1(1)(a) or section 1(1)(b) can apply even if

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

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

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

Section 2 – Consequences of aggravation by prejudice

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

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

28. The court is required to state on conviction that: i) the offence has been aggravated by prejudice, and ii) the type of prejudice by which the offence is aggravated, with reference to one or more of the characteristics mentioned in section 1(2) of the Bill (see paragraph 15 above). These requirements also exist in respect of the recording of the conviction in official records.

29. The effect of an aggravation being proven is, by virtue of section 2(2)(c), that the court must take the aggravation into account in determining the appropriate sentence. This does not mean in itself that a sentence should be more severe than it otherwise would have been, but it does

ensure the court will need to consider as a relevant sentencing factor that an offence has been aggravated by prejudice.

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

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

Part 1A – Offence of racially aggravated harassment

Section 2A – racially aggravated harassment

32. Section 2A creates an offence of racially aggravated harassment. This replicates the effect of the offence of racially-aggravated harassment in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (“section 50A”), which is separately repealed by paragraph 1A of schedule 2.

33. The offence can be committed in two ways; firstly, by pursuing a racially-aggravated course of conduct which amounts to harassment of a person (and is intended to, or occurs in circumstances where it would appear to a reasonable person that it would, amount to such harassment) (section 2A(1)(a)) and, secondly, by acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress (section 2A(1)(b)). For the offence to be committed, the offender must either: demonstrate malice and ill-will towards the victim based on the victim's membership or presumed membership of a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, or be motivated by malice and ill-will towards members of such a group. Subsection (3) makes clear that it is immaterial whether or not the offender's malice and ill-will is also based on any other factor. Subsection (4) provides that a course of conduct, as mentioned in section 2A(1)(a), must involve conduct on at least two occasions.

34. Subsection (5) of section 2A defines some of the words used in the section. In particular, “membership” in relation to a group is defined to include association with members of that group.

35. Subsection (6) sets out the maximum penalties for an offence under section 2A. In addition to setting the maximum penalties for fines, it provides that the maximum term of imprisonment on summary conviction for an offence under section 2A is 12 months. This matches the equivalent maximum term of imprisonment for an offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, as modified by section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. On indictment, the maximum term of imprisonment for an offence under section 2A is seven years.

Part 2 – Offences relating to stirring up hatred

Offences of stirring up hatred

Section 3 – Offence of stirring up hatred

36. Section 3 creates two offences of stirring up hatred.

37. Section 3(1)(a) and (b) creates an offence of stirring up racial hatred. It provides that it is an offence for a person to behave in a manner that a reasonable person would consider to be threatening, abusive or insulting, or to communicate to another person material that a reasonable person would consider to be threatening, abusive or insulting, either with the intention to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, or in circumstances where a reasonable person would consider the behaviour or the communication of the material to be likely to result in hatred being stirred up against such a group.

38. The phrase ‘what a reasonable person would consider’ in section 3(1)(a)(i) and (ii) makes it clear that an objective standard is to be applied as to whether the behaviour and material referred to is threatening, abusive or insulting. Similarly, the same phrase in section 3(1)(b)(ii) makes it clear that an objective standard is to be applied as to whether the behaviour or communication of material referred to is likely to result in hatred being stirred up against a group defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.

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

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

41. Section 3(4) provides that it is a defence to an offence under section 3(1) or (2) for the accused to show that the behaviour or the communication was, in the particular circumstances, reasonable. This may apply where, for example, a person communicates a threat of serious violence made by someone else for the purpose of alerting a journalist or a journalist reporting a threat of serious violence made by another person.

42. Section 3(5) provides that, for the purposes of the defence in subsection (4), the accused is subject to an evidential burden of proof to bring forward enough evidence to raise an issue with respect to the defence; the legal burden of disproving the defence and proving that the offence has been committed remains with the prosecution.

43. Section 3(6)(a) defines a person's behaviour for the purpose of section 3(1)(a)(i) and (2)(a)(i) as including behaviour of any kind and, in particular, things said (therefore the spoken word, unrecorded speech) or otherwise communicated (e.g. displaying a poster, placard or banner; the printed media on the internet through websites, email, blogs, podcasts etc.), as well as things done by the person.

44. Section 3(6)(b) also provides that, for the purpose of that section, the person's behaviour may consist of a single act or a course of conduct.

45. Section 3(7) defines the different ways in which a person may communicate material to another person for the purposes of an offence under section 3. The different ways in which a person may communicate material to another person are by:

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

46. Section 3(8) provides for the available maximum penalties for an offence under section 3(1) and (2).

Further provisions relating to the offences

Section 6 – Powers of entry etc. with warrant

47. Section 6 provides for powers of entry etc. under warrant in circumstances where there are reasonable grounds to suspect that an offence under section 3 has been, or is being, committed at the premises or there is evidence at the premises of the commission of an offence under that section.

48. Section 6(1) provides that a sheriff or justice of the peace may, where there are such reasonable grounds, grant a warrant authorising a constable to enter the premises in question.

49. Section 6(1A) provides that such a warrant remains in force for 28 days beginning with the day on which it was granted.

50. Section 6(2) sets out what a constable may do under such a warrant – that is, enter the premises (by force if necessary), search the premises and any person found on the premises, and seize and detain any material found there. But material may only be seized and detained if the constable has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 3. This includes any material in the possession of a person on those premises.

51. Section 6(3) provides that the power of a constable to seize and detain material under this section includes the power to, among other things, require any electronic information to be produced or converted in a way that it can be removed from the premises.

52. Section 6(4) defines “constable” and “premises” for the purposes of section 6.

Section 7 – Recording conviction for an offence under section 3

53. Section 7 makes provision about the recording of a conviction for offences under section 3 (relating to stirring up hatred).

54. Where a person is convicted of an offence under section 3, section 7 requires the court to state on conviction, and to also record the conviction in a manner which shows, the particular characteristic (or characteristics) to which the offence relates.

Section 8 – Forfeiture and disposal of material to which offence relates

55. Section 8(1) provides for a court to order the forfeiture and disposal of any material relating to the commission of an offence under section 3 upon conviction. Section 8(2) provides that any order made under this section does not take effect until after any appeal is finally decided or abandoned or, if no such appeal is brought, after the expiry of the period within which an appeal against conviction or sentence may be brought. Section 8(3) defines the meaning of the bringing of an appeal for the purposes of section 8(2).

Section 9 – Individual culpability where organisation commits offence

56. Section 9 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing an offence under section 3, in addition to the organisation.

57. For that to happen, those persons (referred to in section 9 as “responsible individuals”) must have consented to, or connived in, the organisation’s commission of the offence. Section 9(4) sets out a table explaining which type of person is a “responsible individual” in relation to different types of organisation listed in the table. For example, the director or secretary of a company, and a partner in a firm, are responsible individuals, so potentially have criminal liability for offences under section 3 committed by an organisation.

Section 10 and schedule 1 – Provision in relation to providers of information society services

58. Section 10 introduces schedule 1, which makes further provision about offences under sections 2A and 3 in relation to providers of information society services.

59. Paragraph 1 of schedule 1 provides that proceedings for an offence under section 2A or 3 may not be instituted against a “non-UK service provider” (defined in sub-paragraph (3)) established in the European Economic Area, unless the derogation condition in sub-paragraph (2) is satisfied.

60. Sub-paragraph (2) sets out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted. These are satisfied where the institution of proceedings: is necessary for the purposes of the pursuit of public policy, relate to an information society service that prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy, and is proportionate to the pursuit of public policy.

61. Paragraph 2 of schedule 1 sets out the conditions under which service providers may be exempted from liability under the offences at section 2A and 3 where acting as “mere conduits” for the transmission of, or provision of access to, information. This means that, providing the

conditions in paragraph 2 are met, a business providing access to the internet (e.g. a home internet service provider) is exempted from liability if the person using their service commits an offence of racially aggravated harassment or stirring up hatred while making use of the internet.

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

63. Paragraph 4 of schedule 1 sets out the conditions under which service providers may be exempted from liability for “hosting” information, that is, storing information at the request of a recipient of the service. For example, if a person uses a social network to post racially abusive or anti-religious material, inciting hatred against a racial or religious group, then, providing the conditions in paragraph 4 are met, the social network is exempt from criminal liability.

64. Paragraph 5 of schedule 1 defines certain terms used in schedule 1.

Section 11 – Protection of freedom of expression: religion

65. Section 11 provides that behaviour or material is not to be regarded as threatening or abusive for the purposes of the offences relating to stirring up of hatred under section 3 solely because it involves or includes: discussion or criticism of, or expressions of antipathy, dislike, ridicule or insult towards, religion, religious beliefs or practices, the position of not holding religious beliefs; proselytising; or urging of persons to cease practising their religions.

66. As such, the act of, for example, writing a newspaper article or blog-post urging followers of a particular religion to cease practising their religion and convert to another religion could not be regarded, of itself, as behaviour which is threatening or abusive towards followers of that religion.

However, if, for example, the article or blog-post made abusive comments about followers of that religion, or threatened them with violence, it could still amount to behaviour that is threatening or abusive.

Section 12 – Protection of freedom of expression: sexual orientation

67. Section 12 provides that behaviour or material is not to be regarded as threatening or abusive for the purposes of the offences relating to stirring up of hatred under section 3 solely because it involves or includes discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify sexual conduct or practices.

68. As such, the act of, for example, writing a newspaper article or blog post which claimed that same-sex sexual activity was wrongful could not be regarded, of itself, as behaviour which is threatening or abusive towards people who are lesbian, gay or bisexual. However, if, for example, the article or blog-post made abusive comments about people who are lesbian, gay or bisexual, or threatened them with violence, it could still amount to behaviour that is threatening or abusive.

Section 13 – Interpretation of Part 2

69. Section 13 makes provision for the interpretation of various terms used in Part 2.

Part 3 – Further provision relating to the characteristics

Section 14 – Meaning of the characteristics

70. Section 14 sets out further provision relating to the interpretation of the characteristics listed in sections 1(2) and 3(3).

71. Section 14(2) provides that a reference to “age” includes a reference to an age range. This means that, for example, an offence might be aggravated by prejudice under section 1 based on malice and ill-will towards “older people” or “adolescents” rather than the victim’s specific age.

72. Section 14(3) and (4) provides that “disability” means a physical or mental impairment of any kind, and includes a medical condition which has,

has had, or may have a substantial or long-term effect, or is of a progressive nature.

73. Section 14(5) defines what is meant by a “group defined by reference to religion”. The meaning is the same as the definition of “religious group” in section 74 of the Criminal Justice (Scotland) Act 2003, which is repealed as a consequence of this legislation (see section 18 and paragraph 3 of schedule 2).

74. Section 14(6) provides that a reference to sexual orientation is a reference to sexual orientation towards persons of the same sex, persons of a different sex or both persons of the same sex and persons of a different sex.

75. Section 14(7) defines what is meant by “transgender identity”. This definition does not only refer to people with a Gender Recognition Certificate or who have undergone, are undergoing, (or propose to undergo) medical or surgical interventions, but includes people whose gender identities are different from their sex at birth. This includes those who identify as male, but were registered as female at birth, those who identify as female but were registered as male at birth, non-binary people and cross-dressing people.

76. Section 14(8) defines what is meant by “variations in sex characteristics”. The existing definition of “transgender identity” in section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 includes “intersexuality” (section 2 is repealed by section 18 and paragraph 4 of schedule 2). It is now recognised that intersex (or a person being born with physical or variations in sex characteristics) is separate to a person’s transgender identity. The definition of “variations in sex characteristics” includes people that are born with characteristics not typically associated with males or females. There is a variety of terminology used with reference to variations of sex characteristics and intersex status. This is because some people prefer to use the term “differences in sex development” and some prefer to simply describe their specific variation.

Section 15 – Power to add the characteristic of sex

77. Section 15 provides for a power to make regulations adding the characteristic of sex to either or both of the lists of characteristics set out in sections 1(2) and 3(3). Adding the characteristic of sex to these lists would

mean that an offence can be aggravated by prejudice under section 1 in respect of sex and/or a person's conduct may amount to an offence relating to stirring up hatred under section 3 in respect of that characteristic.

78. Section 15(1A) provides that regulations under section 15(1) may modify section 15A(3) (publication of reports on recorded hate crime) by making provision about the information relating to the characteristic of sex which is to be included in reports under that section.

79. Section 15(2) provides that regulations made under section 15(1) may modify section 14 by adding interpretative provision relating to the characteristic of sex.

80. Section 15(3) provides that the power to make regulations includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision, that different provision can be made for different purposes, and that regulations made under subsection (1) are subject to the affirmative procedure.

81. Section 15(4) provides that, before laying a draft instrument containing regulations under section 15 before the Scottish Parliament, the Scottish Ministers must lay a proposed draft of the regulations before the Parliament. The Scottish Ministers must have regard to any representations that are made to them within 40 days of laying the proposed draft, and make any changes to the draft instrument that they consider appropriate. This provides a form of what is sometimes described as a "super-affirmative" procedure because it imposes additional requirements.

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

82. Section 15A places a duty on the Police Service of Scotland to publish reports on police recorded hate crime on an annual basis. The reports must include the following information, where it has been recorded:

- data identifying, for each hate crime, the characteristic included in the Bill 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.

83. Subsection (1) places a duty on the Chief Constable of the Police Service to publish this report within 6 months after the end of each reporting year. It states that the report should be based on records made by the Police Service of all offences aggravated by prejudice and all other offences under the Bill. This ensures that the report will cover all hate crimes which are reported to and recorded by the Police Service, not only those which ultimately result in prosecution and/or conviction.

84. Subsection (2) requires that, where this detail has been recorded, the report includes the age, sex, and ethnic or national origins of both the person recorded as being the victim and the person recorded as being the perpetrator. It does not place a duty on the Police Service to collect this information, but to include this information in the report where it has been recorded.

85. Subsection (3) requires that the Police Service will include in the report (to the extent that these details have been recorded):

- the particular characteristic (from the list in section 1(2) or 3(3) of the Bill) which is recorded as being targeted;
- any particular age or age range recorded as being targeted;
- the particular type of disability recorded as being targeted, including whether it is a physical or mental impairment;
- the particular race (or related characteristic) recorded as being targeted;
- the particular religion (including lack of religious belief) or religious affiliation recorded as being targeted;
- any particular sexual orientation recorded as being targeted; and
- any particular transgender identity recorded as being targeted.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as amended at Stage 2

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

87. Subsection (5) defines “Police Service” and “reporting year” for the purposes of section 15A.

Part 4 – Abolition of the offence of blasphemy

Section 16 – Abolition of the offence of blasphemy

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

Part 5 – General provisions

Section 17 – Ancillary provision

89. Section 17 provides a power for the Scottish Ministers to make, by regulations, incidental, supplementary, consequential, transitional, transitory or saving provision relating to the Bill.

Section 18 and schedule 2 – Modifications of enactments

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

91. Paragraphs 1 to 4 of schedule 2 provides for a number of repeals and amendments consequential upon the new provision being made in the Bill.

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

Section 19 – Crown application

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

Section 19A – Crown application: powers of entry

94. Section 19A provides that the exercise of a power of entry authorised by warrant under section 6 of the Bill onto Crown land requires the consent of the “appropriate authority”.

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

96. Subsection (2) provides further interpretative provision.

97. Subsection (3) makes clear that it is for the Scottish Ministers to determine any question that arises as to who, in accordance with subsection (1), is the appropriate authority in relation to any land, and their decision is final.

Section 20 – Commencement

98. Section 20 provides that this section as well as sections 17 and 21 come into force on the day after Royal Assent. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers, and those regulations may make transitional, transitory or saving

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as amended at Stage 2

provision related to commencement. Those regulations may make different provisions for different purposes.

Section 21 – Short title

99. Section 21 provides that the short title of the Act is the Hate Crime and Public Order (Scotland) Act 2021.

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as amended at Stage 2

Hate Crime and Public Order (Scotland) Bill

[As amended at Stage 2]

Revised Explanatory Notes

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