

Hate Crime and Public Order (Scotland) Act – Stage 2

Section 1

Margaret Mitchell

- 30 In section 1, page 1, leave out line 18

Johann Lamont

- 31 In section 1, page 1, line 21, at end insert—
<() sex,>

Section 2

Dean Lockhart

- 32 In section 2, page 2, line 26, at end insert—
- <(3) For the purposes of recording a conviction under subsection (2)(b), the court must break down the characteristics into such sub-categories as must be prescribed by the Scottish Ministers in regulations.
 - (4) Regulations under subsection (3) are subject to the affirmative procedure.
 - (5) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (3) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

After section 2

Humza Yousaf

- 33 After section 2, insert—

<PART

OFFENCE OF RACIALLY AGGRAVATED HARASSMENT

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).>

Section 3

Humza Yousaf

- 34** In section 3, page 2, line 33, leave out <threatening, abusive or insulting manner> and insert <manner that a reasonable person would consider to be threatening, abusive or insulting>

Dean Lockhart

- 35** In section 3, page 2, line 33, leave out <or insulting>

Humza Yousaf

- 36** In section 3, page 2, line 34, leave out <threatening, abusive or insulting material to another person> and insert <to another person material that a reasonable person would consider to be threatening, abusive or insulting>

Dean Lockhart

- 37** In section 3, page 2, line 34, leave out <or insulting>

Humza Yousaf

38 In section 3, page 3, leave out line 5 and insert—

<() 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.>

Humza Yousaf

39 In section 3, page 3, line 8, leave out <threatening or abusive manner> and insert <manner that a reasonable person would consider to be threatening or abusive>

Humza Yousaf

40 In section 3, page 3, line 9, leave out <threatening or abusive material to another person> and insert <to another person material that a reasonable person would consider to be threatening or abusive>

Liam Kerr

41 In section 3, page 3, line 21, at end insert—

<() An offence under this section is not committed where the words or behaviour are used by a person inside a private dwelling and are not heard or seen except by other persons in that or another dwelling.>

Liam Kerr

42 In section 3, page 4, line 5, at end insert—

<() For the purposes of subsection (2)(a), “threatening or abusive” means that which a reasonable person would be likely to find threatening or abusive.>

Section 5

Margaret Mitchell

43 In section 5, page 5, leave out line 4

Liam Kerr

44 In section 5, page 5, line 9, at end insert—

<() An offence under this section is not committed where the words or behaviour are used by a person inside a private dwelling and are not heard or seen except by other persons in that or another dwelling.>

Liam Kerr

45 In section 5, page 5, line 25, at end insert—

<() For the purposes of subsection (2)(a), “threatening or abusive” means that which a reasonable person would be likely to find threatening or abusive.>

Section 6

Liz Smith

- 46 In section 6, page 5, line 29, leave out <or a member of police staff>

Humza Yousaf

- 47 In section 6, page 5, line 32, leave out <or 5>

Humza Yousaf

- 48 In section 6, page 5, line 35, leave out <or 5>

Liz Smith

- 49 In section 6, page 5, line 36, leave out <or a member of police staff>

Liz Smith

- 50 In section 6, page 6, line 2, leave out <or a member of police staff>

Humza Yousaf

- 51 In section 6, page 6, line 4, leave out <or 5>

Liz Smith

- 52 In section 6, page 6, line 5, leave out subsection (3)

Liz Smith

- 53 In section 6, page 6, line 5, leave out <or a member of police staff>

Liz Smith

- 54 In section 6, page 6, leave out lines 15 and 16

After section 6

Liam Kerr

- 55 After section 6, insert—

<Prosecution of offences under section 3 or 5

No proceedings for an offence under section 3 or 5 may be instituted except by, or with the consent of, Crown Counsel.>

Section 7

Humza Yousaf

- 56 In section 7, page 6, line 22, leave out <or 5>

Humza Yousaf

57 In section 7, page 6, line 26, leave out <or 5(1)>

Humza Yousaf

58 In section 7, page 6, line 27, leave out <or 5(3)>

Dean Lockhart

59 In section 7, page 6, line 27, at end insert—

<(2) For the purposes of recording a conviction under subsection (1), the court must break down the characteristics into such sub-categories as must be prescribed by the Scottish Ministers in regulations.

(3) Regulations under subsection (2) are subject to the affirmative procedure.

(4) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (2) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Section 8

Humza Yousaf

60 In section 8, page 6, line 29, leave out <or 5>

Section 9

Humza Yousaf

61 In section 9, page 7, line 3, leave out <or 5>

Section 10

Humza Yousaf

62 In section 10, page 7, line 27, after <sections> insert <(Racially aggravated harassment) and>

Humza Yousaf

63 In section 10, page 7, line 27, leave out <and 5>

Humza Yousaf

64 Move section 10 to after section 15

After section 10

Humza Yousaf

65 After section 10, insert—

<Protection of freedom of expression: age

- (1) This section applies for the purposes of section 3(2).
- (2) Behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes discussion or criticism of matters relating to age, whether relating to age generally or to a particular age or age range.>

Schedule 1

Humza Yousaf

66 In schedule 1, page 11, line 5, after <section> insert <(Racially aggravated harassment) or>

Humza Yousaf

67 In schedule 1, page 11, line 5, leave out <or 5>

Humza Yousaf

68 In schedule 1, page 12, line 2, after <section> insert <(Racially aggravated harassment) or>

Humza Yousaf

69 In schedule 1, page 12, line 2, leave out <or 5>

Humza Yousaf

70 In schedule 1, page 12, line 24, after <section> insert <(Racially aggravated harassment) or>

Humza Yousaf

71 In schedule 1, page 12, line 24, leave out <or 5>

Humza Yousaf

72 In schedule 1, page 13, line 4, after <section> insert <(Racially aggravated harassment) or>

Humza Yousaf

73 In schedule 1, page 13, line 4, leave out <or 5>

Humza Yousaf

74 In schedule 1, page 13, line 10, after <section> insert <(Racially aggravated harassment) or>

Humza Yousaf

75 In schedule 1, page 13, line 10, leave out <or 5>

Section 11

Humza Yousaf

- 76 In section 11, page 7, line 31, leave out <sections 3(2) and 5(2)> and insert <section 3(2)>

Humza Yousaf

- 77 In section 11, page 8, line 3, after <of> insert <, or expressions of antipathy, dislike, ridicule or insult towards>

Humza Yousaf

- 78 In section 11, page 8, line 5, at end insert <whether religious beliefs or practices generally or a particular religious belief or practice,>

Humza Yousaf

- 79 In section 11, page 8, line 5, at end insert—
 <() the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,>

Section 12

Humza Yousaf

- 80 In section 12, page 8, line 9, leave out <sections 3(2) and 5(2)> and insert <section 3(2)>

Liam Kerr

- 81 In section 12, page 8, line 12, after <practices,> insert—
 <() discussion or criticism of marriage which concerns the sex of the parties to marriage,>

After section 12

Humza Yousaf

- 82 After section 12, insert—
 <**Protection of freedom of expression: transgender identity**>
 (1) This section applies for the purposes of section 3(2).
 (2) Behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes discussion or criticism of matters relating to transgender identity.
 (3) In this section, “transgender identity” means identity as—
 (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.>

Liam Kerr

83 After section 12, insert—

<Protection of freedom of expression: transgender identity

- (1) This section applies for the purposes of sections 3(2) and 5(2).
- (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 transgender identity,
 - (b) urging of persons to modify their transgender identity,
 - (c) stating that sex is an immutable biological characteristic,
 - (d) stating that there are only two sexes, or
 - (e) refusing to use a person’s preferred name or pronoun.>

Section 13

Liam Kerr

84 In section 13, page 8, line 17, at end insert—

<() “Dwelling” means any structure, or part of a structure, occupied as a person's home or other living accommodation (whether the occupation is sole or shared with others) but does not include any part not so occupied, and for this purpose, “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure.>

Section 14

Humza Yousaf

85 In section 14, page 8, line 26, leave out <sections 1, 3 and 5> and insert <sections 1 and 3>

Margaret Mitchell

86 In section 14, page 8, leave out line 27

Humza Yousaf

87 In section 14, page 8, line 27, leave out <age falling within a range of ages> and insert <age range>

Dean Lockhart

88 In section 14, page 8, line 30, leave out <(or may have)> and insert <, has had, or may have,>

Johann Lamont

89 In section 14, page 9, line 1, at end insert—

<(5A) A reference to sex is a reference to being a woman or a man.

(5B) For the purposes of subsection (5A)—

- (a) “woman” means a female of any age, and
- (b) “man” means a male of any age.>

Johann Lamont

90 In section 14, page 9, line 4, leave out <a different> and insert <the opposite>

Johann Lamont

91 In section 14, page 9, line 5, leave out <a different> and insert <the opposite>

Section 15

Humza Yousaf

92 In section 15, page 9, line 19, leave out <any> and insert <either or both>

Johann Lamont

93 In section 15, page 9, leave out line 20

Humza Yousaf

94 In section 15, page 9, leave out line 22

Humza Yousaf

95 In section 15, page 9, line 22, at end insert—

<() Regulations under this section may modify Part 2 by making provision to the effect that, for the purposes of section 3(2), behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes particular types of conduct relating to the characteristic of sex.>

Humza Yousaf

96 In section 15, page 9, line 22, at end insert—

<() Regulations under this section may modify section (*Publication of reports by police on recorded hate crime*)(3) by making provision about the information relating to the characteristic of sex which is to be included in reports under that section.>

Johann Lamont

97 In section 15, page 9, leave out subsection (2)

Humza Yousaf

98 In section 15, page 9, line 29, at end insert—

<() 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.
- () 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.>

After section 15

Humza Yousaf

99 After section 15, insert—

<Reports on recorded hate crime

Publication of reports by police on recorded hate crime

- (1) The chief constable of the Police Service must, no later than 6 months after the end of each reporting year, 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.
- (2) 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.
- (3) 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 (*Racially aggravated harassment*) and each record of an offence under section 3(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 3(2)—
 - (i) the particular characteristic mentioned in section 1(2) or 3(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.
- (4) 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.
- (5) In this section—
- “Police Service” means the Police Service of Scotland,
- “reporting year” means a period of one year ending on 31 March.>

Schedule 2

Humza Yousaf

100 In schedule 2, page 14, line 4, at end insert—

<Criminal Law (Consolidation) (Scotland) Act 1995

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

After section 19

Humza Yousaf

101 After section 19, insert—

<Crown application: powers of entry

- (1) A warrant granted under section 6 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.>

Long Title

Humza Yousaf

- 102** In the long title, page 1, line 2, after <prejudice;> insert <to make provision about an offence of racially aggravated harassment;>