

Hate Crime and Public Order (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Disaggregation of data relating to hate crime

32, 59, 99

Offence of racially aggravated harassment

33, 62, 64, 66, 68, 70, 72, 74, 100, 102

Notes on amendments in this group

Amendment 64 is pre-empted by amendment 24 in group “Removal of provisions ancillary to sections 3 and 5”

Threshold for, and operation of, offences relating to stirring up of hatred

34, 34A, 35, 36, 36A, 37, 38, 39, 39A, 9, 40, 40A, 10, 1, 2, 41, 42, 17, 6, 18, 3, 4, 44, 45, 55, 8, 25, 27, 84

Notes on amendments in this group

Amendment 34 pre-empts amendment 35

Amendment 36 pre-empts amendment 37

Amendment 39 pre-empts amendment 9

Amendment 40 pre-empts amendment 10

Stirring up hatred offence: characteristics

11, 12, 13, 14, 15, 16

Offences of possessing inflammatory material

19, 47, 48, 51, 56, 57, 58, 60, 61, 63, 67, 69, 71, 73, 75, 76, 80, 85, 92, 94

Powers of entry

46, 7, 49, 50, 52, 53, 54, 101

Notes on amendments in this group

Amendment 52 pre-empts amendment 53

THIS IS NOT THE MARSHALLED LIST

Removal of provisions ancillary to sections 3 and 5

20, 21, 22, 23, 24, 26, 28, 29

Notes on amendments in this group

Amendment 24 pre-empts amendment 64 in group “Offence of racially aggravated harassment”

Characteristic of disability

88

Characteristic of sexual orientation

90, 91, 99B, 99C

Amendments already debated

Freedom of expression

With 103 – 77, 78, 79, 117, 112

Characteristic of age

With 30 – 43, 86, 87, 99A

Notes on amendments in this group

Amendment 86 pre-empts amendment 87

Characteristic of sex

With 31 – 89, 93, 96, 97, 98

THIS IS NOT THE MARSHALLED LIST

Amendments in debating order

Disaggregation of data relating to hate crime

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 by 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.>

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 by 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.>

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—

THIS IS NOT THE MARSHALLED LIST

- (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.>

Offence of racially aggravated harassment

Humza Yousaf

33 After section 2, insert—

<PART

OFFENCE OF RACIALLY AGGRAVATED HARASSMENT

Racially aggravated harassment

THIS IS NOT THE MARSHALLED LIST

- (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).>

Humza Yousaf

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

Humza Yousaf

64 Move section 10 to after section 15

Humza Yousaf

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

THIS IS NOT THE MARSHALLED LIST

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

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.>

Humza Yousaf

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

Threshold for, and operation of, offences relating to stirring up of hatred

Humza Yousaf

Supported by: Adam Tomkins

- 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

- 34A As an amendment to amendment 34, line 2, leave out <or insulting>

Dean Lockhart

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

Humza Yousaf

Supported by: Adam Tomkins

- 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

- 36A As an amendment to amendment 36, line 3, leave out <or insulting>

THIS IS NOT THE MARSHALLED LIST

Dean Lockhart

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

Humza Yousaf

Supported by: Adam Tomkins

- 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

Supported by: Adam Tomkins

- 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>

Liam Kerr

- 39A As an amendment to amendment 39, line 2, leave out <or abusive>

Liam Kerr

- 9 In section 3, page 3, line 8, leave out <or abusive>

Humza Yousaf

Supported by: Adam Tomkins

- 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

- 40A As an amendment to amendment 40, line 2, leave out <or abusive>

Liam Kerr

- 10 In section 3, page 3, line 9, leave out <or abusive>

Humza Yousaf

- 1 In section 3, page 3, line 10, leave out <either—>

Humza Yousaf

- 2 In section 3, page 3, line 13, leave out from <or> to end of line 14

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.>

THIS IS NOT THE MARSHALLED LIST

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.>

Liam Kerr

- 17 Leave out section 3

Humza Yousaf

Supported by: Liam Kerr

- 6 Leave out section 4

Liam Kerr

- 18 In section 5, page 4, line 33, leave out <or abusive>

Humza Yousaf

- 3 In section 5, page 4, line 35, leave out <either—>

Humza Yousaf

- 4 In section 5, page 4, line 38, leave out from <or> to end of line 2 on page 5

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.>

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.>

Humza Yousaf

Supported by: Liam Kerr

- 8 In section 9, page 7, leave out line 6

Liam Kerr

- 25 In section 11, page 8, line 1, leave out <or abusive>

THIS IS NOT THE MARSHALLED LIST

Liam Kerr

- 27 In section 12, page 8, line 10, leave out <or abusive>

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.>

Stirring up hatred offence: characteristics

Liam Kerr

- 11 In section 3, page 3, leave out line 16

Liam Kerr

- 12 In section 3, page 3, leave out line 17

Liam Kerr

- 13 In section 3, page 3, leave out line 18

Liam Kerr

- 14 In section 3, page 3, leave out line 19

Liam Kerr

- 15 In section 3, page 3, leave out line 20

Liam Kerr

- 16 In section 3, page 3, leave out line 21

Offences of possessing inflammatory material

Liam Kerr

Supported by: Humza Yousaf

- 19 Leave out section 5

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>

THIS IS NOT THE MARSHALLED LIST

Humza Yousaf

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

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)>

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

Humza Yousaf

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

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

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

Humza Yousaf

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

THIS IS NOT THE MARSHALLED LIST

Humza Yousaf

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

Humza Yousaf

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

Powers of entry

Liz Smith

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

Humza Yousaf

7 In section 6, page 5, line 35, at end insert—

<() A warrant granted under this section remains in force for a period of 28 days beginning with the day on which it was granted.>

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>

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

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 Crown Estate Commissioners

THIS IS NOT THE MARSHALLED LIST

the management of 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.>

Removal of provisions ancillary to sections 3 and 5

Liam Kerr

20 Leave out section 6

Liam Kerr

21 Leave out section 7

THIS IS NOT THE MARSHALLED LIST

Liam Kerr

22 Leave out section 8

Liam Kerr

23 Leave out section 9

Liam Kerr

24 Leave out section 10

Liam Kerr

26 Leave out section 11

Liam Kerr

28 Leave out section 12

Liam Kerr

29 Leave out section 13

Characteristic of disability

Dean Lockhart

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

Characteristic of sexual orientation

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>

Johann Lamont

99B As an amendment to amendment 99, line 39, leave out <a different> and insert <the opposite>

Johann Lamont

99C As an amendment to amendment 99, line 40, leave out <a different> and insert <the opposite>

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000.

Published in Scotland by the Scottish Parliamentary Corporate Body

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk
