

Hate Crime and Public Order (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 21
Long Title

Schedules 1 and 2

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Johann Lamont

- 4 In section 1, page 1, line 22, at end insert—
<() sex,>

Section 3

Liam Kerr

- 32 In section 3, page 4, line 19, at end insert—
- <(3A) Subject to subsection (3B), a person does not commit an offence under this section if the behaviour or communication of the material—
- (a) occurs within a dwelling that is that person’s usual residence, and
 - (b) is not heard or seen outside that dwelling.
- (3B) Subsection (3A) only applies, provided that there is no more than one individual present when the behaviour or communication of material occurs who is not—
- (a) usually resident at the dwelling, or
 - (a) a member of the same family as the person engaging in the behaviour or communication.
- (3C) For the purposes of subsection (3B), persons are to be treated as being in the same family only if—
- (a) they are a couple,
 - (b) one of them is a relative of the other, or
 - (c) one of them is a relative of one member of a couple and the other is a relative of the other member of that couple.
- (3D) For the purposes of subsection (3C)—
- (a) a “couple” means two persons who—
 - (i) are married or are civil partners, or

- (ii) live together as though they were married.
- (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece,
- (c) a relationship by the half-blood is to be treated as a relationship of the whole blood,
- (d) the stepchild of a person is to be treated as that person's child, and
- (e) person brought up or treated by another person as if the person were that other person's child (including any person placed with that other person, or with that other person's family, under section 26(1)(a) of the Children (Scotland) Act 1995 is to be treated as that other person's child.>

Liam Kerr

33 In section 3, page 4, line 19, at end insert—

- <(3A) Subject to subsection (3B), a person does not commit an offence under this section if the behaviour or communication of the material—
 - (a) occurs within a dwelling that is that person’s usual residence, and
 - (b) is not heard or seen outside that dwelling.
- (3B) Subsection (3A) only applies, provided that the only people present when the behaviour or communication of material occurs—
 - (a) usually reside at that dwelling, or
 - (b) are members of the same family as the person engaging in the behaviour or communication.
- (3C) For the purposes of subsection (3B), persons are to be treated as being in the same family only if—
 - (a) they are a couple,
 - (b) one of them is a relative of the other, or
 - (c) one of them is a relative of one member of a couple and the other is a relative of the other member of that couple.
- (3D) For the purposes of subsection (3C)—
 - (a) a “couple” means two persons who—
 - (i) are married or are civil partners, or
 - (ii) live together as though they were married.
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece,
 - (c) a relationship by the half-blood is to be treated as a relationship of the whole blood,
 - (d) the stepchild of a person is to be treated as that person's child, and
 - (e) person brought up or treated by another person as if the person were that other person's child (including any person placed with that other person, or with that other person's family, under section 26(1)(a) of the Children (Scotland) Act 1995 is to be treated as that other person's child.>

Adam Tomkins

1 In section 3, page 4, line 22, at end insert—

<() 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.>

Adam Tomkins

5 In section 3, page 4, line 22, at end insert—

<(4A) It is a defence for a person charged with an offence under this section to show that the behaviour or communication of the material occurred wholly in private and that there was no public element.

(4B) For the purposes of subsection (4A), in determining whether behaviour occurred wholly in private and that there was no public element, particular regard must be had to the importance of the right to respect for private and family life by virtue of Article 8 of the European Convention on Human Rights.>

Adam Tomkins

2 In section 3, page 5, line 2, at end insert—

<() This section should be read and given effect subject to the general principle that the right to freedom of expression applies to the expression of information or ideas that offend, shock or disturb.>

Adam Tomkins

3 In section 3, page 5, line 2, at end insert—

<() For the avoidance of doubt, nothing in this section qualifies or modifies the general principle that the right to freedom of expression applies to the expression of information or ideas that offend, shock or disturb.>

Liam Kerr

6 Leave out section 3

Section 6

Liam Kerr

7 Leave out section 6

Section 7

Liam Kerr

8 Leave out section 7

Section 8

Liam Kerr

- 9 Leave out section 8

Section 9

Liam Kerr

- 10 Leave out section 9

After section 9

Humza Yousaf

- 11 After section 9, insert—

<Protection of freedom of expression

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—

- 5 (a) discussion or criticism of matters relating to—
- (i) age,
 - (ii) disability,
 - (iii) sexual orientation,
 - (iv) transgender identity,
 - 10 (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,
 - 15 (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.>

Joan McAlpine

- 11G* As an amendment to amendment 11, line 5, after <criticism> insert <, including that which may be perceived as offensive,>

Johann Lamont

11B As an amendment to amendment 11, line 10, at end insert—

<() asserting, or advancing or rejecting any proposition which follows from, the view that—

- (i) sex is a physical, binary characteristic that cannot be changed,
- (ii) that the terms “woman”, “man” and related terms refer to sex as such a characteristic,
- (iii) that a person’s sex may be relevant to that person’s experience or relevant to other persons.>

Johann Lamont

11C As an amendment to amendment 11, line 17, at end insert—

<() beliefs or practices related to age, disability, sexual orientation, transgender identity, or variations in sex characteristics.>

Johann Lamont

11D As an amendment to amendment 11, line 19, at end insert—

<() Nothing in this Act shall be taken as requiring a person to profess any belief or to use language as if they held any belief.>

Johann Lamont

11E As an amendment to amendment 11, line 19, at end insert—

<() The Scottish Ministers may by regulations specify further examples of behaviour or material which is not to be taken to be threatening or abusive.

() Regulations under this section are subject to the affirmative procedure.>

Johann Lamont

11F As an amendment to amendment 11, line 19, at end insert—

<() For the purposes of this section, “discussion or criticism” includes the expression of opinions which have the capacity to offend, provoke, discomfort, shock or disturb, including those expressed as antipathy, dislike, ridicule or insult, and includes the rejection of any belief.>

Section 11

Humza Yousaf

13 Leave out section 11

Section 12

Humza Yousaf

- 14 Leave out section 12

Section 13

Adam Tomkins

- 34 In section 13, page 7, line 25, at end insert—
<() “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.>

Liam Kerr

- 15 Leave out section 13

Section 14

Humza Yousaf

- 16 In section 14, page 8, line 5, leave out <and 3> and insert <, 3 and (*Protection of freedom of expression*)>

Johann Lamont

- 17 In section 14, page 8, line 15, 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

- 35 In section 14, page 8, line 18, leave out <a different> and insert <the other>

Johann Lamont

- 36 In section 14, page 8, line 19, leave out <a different> and insert <the other>

Johann Lamont

- 37 In section 14, page 8, leave out line 25

Humza Yousaf

- 18 In section 14, page 8, line 25, at end insert—
<and references to transgender identity are to be construed accordingly.>

Humza Yousaf

- 19 In section 14, page 8, line 30, at end insert—
<and references to variations in sex characteristics are to be construed accordingly.>

Section 15

Humza Yousaf

- 20 In section 15, page 8, line 33, leave out <either or both> and insert <one or more>

Johann Lamont

- 21 In section 15, page 8, leave out line 34

Humza Yousaf

- 22 In section 15, page 8, line 35, at end insert—
<() section (*Protection of freedom of expression*)(a).>

Humza Yousaf

- 23 In section 15, page 9, line 1, leave out second <section> and insert <sections (*Publication of reports on hate crime convictions*)(3) and>

Humza Yousaf

- 24 In section 15, page 9, line 2, leave out <is> and insert <may require>

Humza Yousaf

- 25 In section 15, page 9, line 3, leave out <that section> and insert <those sections>

Johann Lamont

- 26 In section 15, page 9, line 4, leave out subsection (2)

After section 15

Margaret Mitchell

- 38 After section 15, insert—
<*Offences under the Act in relation to the characteristic of age*

Offences under the Act in relation to the characteristic of age

- (1) This section applies for the purpose of sections 1 and 3.
- (2) When considering whether an offence has been committed in relation to the characteristic of age, regard must be had to the vulnerability of the victim, including whether the victim is—
 - (a) a child under the age of 16, or

- (b) an older person.>

After section 10

Humza Yousaf

12 After section 10, insert—

<Reports relating to hate crime

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 2A or 3(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 3(2), information about the characteristic to which the offence relates (by reference to one or more of the characteristics mentioned in section 3(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.>

Section 15A

Humza Yousaf

- 27 In section 15A, page 9, line 25, at end insert—
- <(A1) 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.>

Humza Yousaf

- 28 In section 15A, page 9, line 26, leave out from <chief> to <year> in line 27 and insert <Scottish Ministers must, as soon as reasonably practicable after receipt of information under subsection (A1)>

Johann Lamont

- 39 In section 15A, page 10, line 22, leave out <a different> and insert <the other>

Johann Lamont

- 40 In section 15A, page 10, line 23, leave out <a different> and insert <the other>

Johann Lamont

- 41* In section 15A, page 10, line 27, leave out <, or as a person who cross-dresses>

Humza Yousaf

- 29 In section 15A, page 10, line 30, at end insert—
- <() The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.>

After section 15A

Margaret Mitchell

42 After section 15A, insert—

<Raising awareness about offences under the Act in relation to the characteristic of age

Duty on the Scottish Ministers to raise awareness about offences under the Act in relation to the characteristic of age

The Scottish Ministers must take such steps as they consider appropriate to promote public awareness and understanding about offences under the Act in relation to the characteristic of age.>

Schedule 1

Humza Yousaf

30 In schedule 1, page 13, line 5, leave out paragraph 1

Schedule 2

Liam Kerr

31 In schedule 2, page 15, line 27, leave out paragraph 1

© 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
