

This document relates to the Hate Crime and Public Order (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 23 April 2020

# Hate Crime and Public Order (Scotland) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Hate Crime and Public Order (Scotland) Bill, introduced in the Scottish Parliament on 23 April 2020.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (67–FM);
  - a Policy Memorandum (67–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (67–LC).
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. 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.

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## The Bill

5. The Bill is divided into five main 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 evinces 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 2 creates offences of stirring up hatred against a group of persons based on the group being defined by reference to a listed characteristic. It also creates offences of possessing inflammatory material with a view to communicating the material in circumstances where there is an intention to stir up hatred or it is likely that hatred would be stirred up. The listed characteristics are the same as those in Part 1.

8. Part 3 sets out further provision to assist with the interpretation of the characteristics that are listed sections 1(2), 3(3) and 5(3). It also provides a power for the Scottish Ministers to make regulations adding the characteristic of sex to any of these lists of characteristics.

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

10. 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**

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

12. 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.

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13. Section 1(1)(a) provides that an offence is so aggravated where the offender has evinced 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).

14. 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.

15. 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.

16. An offence can be aggravated by prejudice under section 1(1)(a) if the offender evinces 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 evinces 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.

17. Section 1(1)(a) also provides that the evincing 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 evinces malice and ill-will (by, for example, shouting religious slurs towards the officer) then this can result in the offence of assault being

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aggravated by religious prejudice even though the evincing of malice and ill-will took place prior to the offence (assault) being committed.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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24. 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 evinces 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**

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

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

27. 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 14 above). These requirements also exist in respect of the recording of the conviction in official records.

28. 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.

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

30. 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

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the reasons why this is the case in light of the offence having been aggravated by prejudice.

## **Part 2 – Offences relating to stirring up hatred**

### **Offences of stirring up hatred**

#### **Section 3 – Offence of stirring up hatred**

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

32. 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 threatening, abusive or insulting manner, or communicate threatening, abusive or insulting material to another person, with either 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 where it is a likely consequence that hatred will be stirred up against such a group.

33. 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 threatening or abusive manner, or communicate threatening or abusive material to another person, with either 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, or where it is a likely consequence that hatred will be stirred up against such a group.

34. 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.

35. 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

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someone else for the purpose of alerting a journalist or a journalist reporting a threat of serious violence made by another person.

36. 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.

37. 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.

38. 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.

39. 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.

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

#### **Section 4 – Culpability where offence committed during public performance of play**

41. Section 4 makes provision for certain persons associated with the public performance of a play to be held criminally liable for committing an offence of stirring up hatred.

42. Section 4(1) and (2) provides that the director or presenter of a play, in addition to the performer, will commit an offence under section 3(1) or (2) where they have consented to, or connived in, the performer's commission of the offence, or have been guilty of neglect resulting in the performer committing the offence.

43. Section 4(3) provides a person is to be taken to have directed a performance of a play given under the person's direction even if the person was not present during the performance.

44. Section 4(4) provides that 'play' and 'public performance' have the same meanings as in the Theatres Act 1968 ("the 1968 Act").

45. In this regard, section 18(1) the 1968 Act provides that:

- "play" means (a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and (b) any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition; and
- "public performance" includes any performance in a public place within the meaning of the Public Order Act 1936 and any performance which the public or any section thereof are permitted to attend, whether on payment or otherwise.



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## **Offences of possessing inflammatory material**

### **Section 5 – Offences of possessing inflammatory material**

46. Section 5 creates two offences of possession of inflammatory material.

47. Section 5(1) creates an offence of possession of racially inflammatory material. It provides that it is an offence for a person to have in their possession threatening, abusive or insulting material with a view to communicating the material to another person, with either 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 where it is likely that, if the material were communicated, hatred will be stirred up against such a group.

48. Section 5(2) creates an offence of possession of inflammatory material in respect of a group of persons defined by reference to certain characteristics. The characteristics to which this offence applies are contained in section 5(3) (discussed below). It provides that it is an offence for a person to have in their possession threatening or abusive material with a view to communicating the material to another person, with either 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, or where it is a likely that, if the material were communicated, hatred will be stirred up against such a group.

49. Section 5(3) provides a list of characteristics by which a group may be defined, in respect of which it is an offence to possess inflammatory material under section 5(2). 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.

50. Section 5(4) provides that it is a defence to an offence under section 5(1) or (2) for the accused to show that the possession of the material was, in the particular circumstances, reasonable. This may apply where, for example, a person is in possession of inflammatory material made by someone else for the purpose of alerting a journalist or where a person does not know and could not reasonably have known that they were in possession of inflammatory material likely to stir up hatred, for example, postal distributors or couriers who handle sealed envelopes containing

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inflammatory material, who had no reason to suspect the content of the material inside.

51. Section 5(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.

52. Section 5(6) defines the different ways in which a person may communicate material to another person for the purposes of an offence under section 5(1) or (2). The different ways in which a person may communicate material to another person include 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 other 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.

53. Section 5(7) provides for the available maximum penalties for an offence under section 5(1) and (2).

## **Further provisions relating to the offences**

### **Section 6 – Powers of entry etc. with warrant**

54. 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 or 5 has been, or is being, committed at the premises or there is evidence at the premises of the commission of an offence under section 3 or 5.

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55. 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 or a member of the police staff to enter the premises in question.

56. Section 6(2) sets out what a constable or member of police staff 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 or member of police staff has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 3 or section 5. This includes any material in the possession of a person on those premises.

57. Section 6(3) provides that the power of a constable or member of police staff 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.

## **Section 7 – Recording conviction for an offence under section 3 or 5**

58. Section 7 makes provision about the recording of a conviction for offences under sections 3 and 5 (relating to stirring up hatred).

59. Where a person is convicted of an offence under section 3 or 5, 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**

60. 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 or 5 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).

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## **Section 9 – Individual culpability where organisation commits offence**

61. 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 or 5, in addition to the organisation.

62. 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, or have been guilty of neglect resulting in the organisation’s committing 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 or 5 committed by an organisation.

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

63. Section 10 introduces schedule 1, which makes further provision about offences under sections 3 and 5 in relation to providers of information society services. The provisions in schedule 1 accord with Articles 3(2) and (4) and 12 to 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, often referred to as the E-Commerce Directive (“the Directive”).

64. Paragraph 1 of schedule 1 provides that proceedings for an offence under section 3 or 5 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.

65. 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.

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66. Paragraph 2 of schedule 1 sets out the conditions under which service providers may be exempted from liability under the offences at section 3 and 5 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 stirring up hatred or possession of inflammatory material while making use of the internet. This accords with Article 12 of the Directive.

67. 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 intended or likely to stir up hatred in terms of sections 3 and 5, providing the conditions in paragraph 3 are met. This accords with Article 13 of the Directive.

68. 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. This accords with Article 14 of the Directive.

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

## **Section 11 – Protection of freedom of expression: religion**

70. 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 sections 3 and 5 solely because it involves or includes the discussion or criticisms of religion or religious beliefs or practices, proselytising, or urging of persons to cease practising their religions.

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71. 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 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**

72. 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 sections 3 and 5 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.

73. 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 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**

74. Section 13 provides the meaning for various terms used in Part 2.

## **Part 3 – Further provision relating to the characteristics**

### **Section 14 – Meaning of the characteristics**

75. Section 14 sets out further provision to assist with the interpretation of the characteristics listed in sections 1(2), 3(3) and 5(3).

76. Section 14(2) provides that a reference to “age” includes a reference to an age falling within a range of ages. 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.

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77. Section 14(3) and (4) provides that “disability” means a physical or mental impairment of any kind, and includes a medical condition which has (or may have) a substantial or long-term effect, or is of a progressive nature. The meaning is the same as the definition of “disability” in section 1 Offences (Aggravation by Prejudice) (Scotland) Act 2009 (which is repealed as a consequence of this legislation, see section 18 and paragraph 4 of schedule 2).

78. 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).

79. 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.

80. 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.

81. 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.

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## **Section 15 – Power to add the characteristic of sex**

82. Section 15 provides for a power to make regulations adding the characteristic of sex to any of the lists of characteristics set out in sections 1(2), 3(3) and 5(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 sections 3 and 5 in respect of that characteristic.

83. 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.

84. 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.

## **Part 4 – Abolition of the offence of blasphemy**

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

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

## **Part 5 – General provisions**

### **Section 17 – Ancillary provision**

86. 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**

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

88. 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.

89. Paragraph 1 repeals and amends certain provisions of the Public Order Act 1986. Paragraph 2 provides that the existing statutory



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aggravation in respect of race provided for in section 96 of the Crime and Disorder Act 1998 is repealed. Paragraph 3 provides that the existing 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 existing 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**

90. 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 20 – Commencement**

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

### **Section 21 – Short title**

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

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# Hate Crime and Public Order (Scotland) Bill

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