

Hate Crime and Public Order (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 10	Schedule 1
Sections 11 to 18	Schedule 2
Sections 19 to 21	Long Title

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

Before section 1

Liam McArthur

103 Before section 1, insert—

<PART

Freedom of expression

Freedom of expression

- (1) Notwithstanding any specific provision under this Act protecting freedom of expression, nothing under this Act should prohibit discussion or criticism in relation to characteristics mentioned in section 1(2).
- (2) Nothing in this Act prejudices the freedom of expression enjoyed by virtue of Article 10 of the European Convention on Human Rights.>

Section 1

Humza Yousaf

5 In section 1, page 1, line 10, leave out <evinces> and insert <demonstrates>

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,>

Liam Kerr

104 In section 1, page 1, line 23 leave out <transgender identity> and insert <gender reassignment>

Liam Kerr

105 In section 1, page 1, leave out line 24

Liam Kerr

106 In section 1, page 1, line 24, leave out <variations in sex characteristics> and insert <differences in sex development>

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 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.>

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

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>

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

- 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

107 In section 3, page 3, line 20 leave out <transgender identity> and insert <gender reassignment>

Liam Kerr

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

Liam Kerr

108 In section 3, page 3, line 21, leave out <variations in sex characteristics> and insert <differences in sex development>

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.>

Liam Kerr

17 Leave out section 3

Section 4

Humza Yousaf

Supported by: Liam Kerr

6 Leave out section 4

Section 5

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

Margaret Mitchell

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

Liam Kerr

- 109 In section 5, page 5, line 8, leave out <transgender identity> and insert <gender reassignment>

Liam Kerr

- 110 In section 5, page 5, leave out line 9

Liam Kerr

- 111 In section 5, page 5, line 9, leave out <variations in sex characteristics> and insert <differences in sex development>

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

Supported by: Humza Yousaf

- 19 Leave out section 5

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>

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>

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

Liam Kerr

20 Leave out section 6

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 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.>

Liam Kerr

21 Leave out section 7

Section 8

Humza Yousaf

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

Liam Kerr

22 Leave out section 8

Section 9

Humza Yousaf

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

Humza Yousaf
Supported by: Liam Kerr

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

Liam Kerr

23 Leave out section 9

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>

Liam Kerr

24 Leave out section 10

Humza Yousaf

64 Move section 10 to after section 15

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>

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.>

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)>

Liam Kerr

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

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,>

Liam Kerr

26 Leave out section 11

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

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

John Finnie

Supported by: Patrick Harvie

117 In section 12, page 8, line 11, leave out from <—> to end of line 13 and insert <discussion or criticism of matters relating to sexual orientation.

(3) In this section, “sexual orientation” means sexual orientation towards—

(a) persons of the same sex,

(b) persons of a different sex,

(c) both persons of the same sex and persons of a different sex.>

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,>

Liam Kerr

28 Leave out section 12

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).

5 (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 McArthur

82A As an amendment to amendment 82, line 5, leave out <or criticism>

Liam Kerr

82B As an amendment to amendment 82, line 6, at end insert—

- <() Behaviour or material is not to be taken to be threatening or abusive or as stirring up hatred solely on the basis that it involves or includes—
- (a) discussion, criticism or rejection of any concepts or beliefs relating to transgender identity,
 - (b) questioning whether any person should undergo, or should have undergone, a process of gender reassignment,
 - (c) stating that sex is an immutable biological characteristic,
 - (d) stating that there are only two sexes,
 - (e) the use of—
 - (i) “woman” or “man” and equivalent terms,
 - (ii) third person pronouns,
 in a way other than that which a person prefers, or
 - (f) reference to any past name used by a person.>

Rhoda Grant

112* After section 12, insert—

<Freedom of expression: women’s rights

- (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 when it is for the purpose of advocating for women’s rights.>

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.>

Liam Kerr

29 Leave out section 13

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>

Liam Kerr

113 In section 14, page 9, line 6 leave out <transgender identity> and insert <gender reassignment>

Liam Kerr

114 In section 14, page 9, leave out lines 10 and 11

Liam Kerr

115 In section 14, page 9, line 12, leave out subsection (8)

Liam Kerr

- 116 In section 14, page 9, line 12, leave out <variations in sex characteristics> and insert <differences of sex development>

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, line 23, 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

- 5 (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.
- 10 (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.
- 15 (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,
 - 25 (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,
 - 30 (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,
 - 35 (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
 - 40 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.

- 45 (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,
- 50 “reporting year” means a period of one year ending on 31 March.>

Margaret Mitchell

99A As an amendment to amendment 99, leave out lines 25 and 26

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>

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	The Crown Estate Commissioners

property, rights and interests under 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.>

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;>

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