

*Changes to legislation: There are currently no known outstanding effects for the Hate Crime and Public Order (Scotland) Act 2021. (See end of Document for details)*

## SCHEDULE 1 **S**

(introduced by section 13)

### OFFENCES UNDER SECTIONS 3 AND 4: INFORMATION SOCIETY SERVICES

#### *Exceptions for mere conduits*

- 1 (1) A service provider does not commit an offence under section 3 or 4 in respect of the information transmitted in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the transmission condition is satisfied.
- (2) The transmission condition is satisfied if the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

#### **Commencement Information**

**II** Sch. 1 para. 1 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

#### *Exception for caching*

- 2 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider does not commit an offence under section 3 or 4 in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and

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- (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

**Commencement Information**

**I2** Sch. 1 para. 2 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Exception for hosting*

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- (1) A service provider does not commit an offence under section 3 or 4 in respect of information stored in the course of providing so much of an information society service as consists of the storage of information provided by a recipient of the service, if sub-paragraph (2) or (3) is satisfied.
  - (2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided that the storage of the information by the service provider constituted an offence under section 3 or 4 (as the case may be).
  - (3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
  - (4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

**Commencement Information**

**I3** Sch. 1 para. 3 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Interpretation*

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- In this schedule—
- “information society services” has the meaning given in Article 2(a) 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 (Directive on electronic commerce),
- “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible,
- “service provider” means a person providing an information society service.

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**I4** Sch. 1 para. 4 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

**SCHEDULE 2**  
*(introduced by section 18)*

**MODIFICATIONS OF ENACTMENTS**

*Public Order Act 1986*

- 1 (1) The Public Order Act 1986 is amended in accordance with this paragraph.
- (2) Sections 18 to 21 (stirring up racial hatred) are repealed.
- (3) In section 23—
  - (a) in subsection (1)(a), the words “displayed, published, distributed, or” are repealed,
  - (b) in subsection (1)(b), the words “distributed, shown, played, or” are repealed,
  - (c) in subsection (2), the words “display, publication, distribution, showing, playing, or” are repealed.
- (4) In section 25(1), for paragraphs (a) and (b), substitute “an offence under section 23”.
- (5) In section 29—
  - (a) the definitions of “distribute”, “dwelling” and “publish” are repealed,
  - (b) for the definition of “recording” (including the interpretation of “play” and “show”, in relation to a recording), substitute—

““recording” means any record from which visual images or sounds may, by any means, be reproduced;”.

**Commencement Information**

**I5** Sch. 2 para. 1 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Criminal Law (Consolidation) (Scotland) Act 1995*

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

**Commencement Information**

**I6** Sch. 2 para. 2 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Crime and Disorder Act 1998*

- 3 Section 96 (offences racially aggravated) of the Crime and Disorder Act 1998 is repealed.

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**Commencement Information**

**17** Sch. 2 para. 3 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Criminal Justice (Scotland) Act 2003*

4 Section 74 (offences aggravated by religious prejudice) of the Criminal Justice (Scotland) Act 2003 is repealed.

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**Commencement Information**

**18** Sch. 2 para. 4 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

*Offences (Aggravation by Prejudice) (Scotland) Act 2009*

5 The Offences (Aggravation by Prejudice) (Scotland) Act 2009 is repealed.

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**19** Sch. 2 para. 5 in force at 1.4.2024 by S.S.I. 2024/82, reg. 2 (with reg. 3)

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