



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

PART 3

OFFENCES RELATING TO STIRRING UP HATRED

Offences of stirring up hatred

4 Offences of stirring up hatred

- (1) A person commits an offence if—
- (a) the person—
 - (i) behaves in a manner that a reasonable person would consider to be threatening, abusive or insulting, or
 - (ii) communicates to another person material that a reasonable person would consider to be threatening, abusive or insulting, and
 - (b) either—
 - (i) in doing so, the person intends 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
 - (ii) 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.
- (2) A person commits an offence if—
- (a) the person—
 - (i) behaves in a manner that a reasonable person would consider to be threatening or abusive, or
 - (ii) communicates to another person material that a reasonable person would consider to be threatening or abusive, and
 - (b) in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3).

Status: This is the original version (as it was originally enacted).

- (3) The characteristics are—
- (a) age,
 - (b) disability,
 - (c) religion or, in the case of a social or cultural group, perceived religious affiliation,
 - (d) sexual orientation,
 - (e) transgender identity,
 - (f) variations in sex characteristics.
- (4) It is a defence for a person charged with an offence under this section to show that the behaviour or the communication of the material was, in the particular circumstances, reasonable.
- (5) 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.
- (6) For the purposes of subsection (4), it is shown that the behaviour or the communication of the material was, in the particular circumstances, reasonable if—
- (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.
- (7) For the purposes of subsections (1)(a)(i) and (2)(a)(i), a person’s behaviour—
- (a) includes behaviour of any kind and, in particular, things that the person says, or otherwise communicates, as well as things that the person does,
 - (b) may consist of—
 - (i) a single act, or
 - (ii) a course of conduct.
- (8) For the purposes of subsections (1)(a)(ii) and (2)(a)(ii), the ways in which a person may communicate material to another person are by—
- (a) displaying, publishing or distributing the material,
 - (b) giving, sending, showing or playing the material to another person,
 - (c) making the material available to another person in any other way.
- (9) 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).