
SCOTTISH STATUTORY INSTRUMENTS

2024 No. 82

**The Hate Crime and Public Order (Scotland) Act 2021
(Commencement and Transitional Provision) Regulations 2024**

Transitional provision where there is failure to establish that the time of commission of offence was before 1 April 2024

- 3.—(1) Paragraph (2) applies if, in any trial—
- (a) the accused is charged in respect of the same conduct both with an offence under the 2021 Act and with an offence under a provision of existing law which is listed in the schedule,
 - (b) there is a failure to establish beyond reasonable doubt that the time when the conduct took place was before 1 April 2024, and
 - (c) the court (or, in the case of a trial of an indictment, the jury) is satisfied in every other respect that the accused committed an offence charged.
- (2) Where this paragraph applies, the accused may be found guilty—
- (a) if the maximum penalty under the existing law is less than the maximum penalty for an offence under the 2021 Act, of an offence under the existing law without the modification of that law by section 18 and schedule 2 of the 2021 Act,
 - (b) in any other case, of an offence under the 2021 Act.
- (3) In paragraph (2) the reference, in relation to an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the accused on conviction of the offence in the proceedings in question.
- (4) Paragraph (5) applies if, in any trial—
- (a) the accused is charged with conduct which is an offence and is also charged with an aggravation of the offence under both the 2021 Act and a provision of existing law which is listed in the schedule,
 - (b) there is a failure to establish beyond reasonable doubt that the time when the conduct took place was before 1 April 2024,
 - (c) the court (or, in the case of a trial of an indictment, the jury) is satisfied in every other respect that the offence took place, and
 - (d) the court is satisfied that the offence was aggravated by prejudice.
- (5) Where this paragraph applies, the court must treat the aggravation as having taken place under the 2021 Act.
- (6) A reference in this regulation to an offence includes a reference to—
- (a) an attempt to commit an offence,
 - (b) incitement to commit an offence,
 - (c) counselling or procuring the commission of an offence, and
 - (d) involvement art and part in an offence.