

# PE2097/A: Repeal the Hate Crime and Public Order (Scotland) Act 2021

## Scottish Government written submission, 29 August 2024

The Scottish Government unequivocally condemns any form of hatred or prejudice. Such behaviour has a hugely damaging and corrosive impact on victims, their families and communities.

[The Hate Crime and Public Order \(Scotland\) Act 2021](#) was commenced on 01 April 2024 and consolidates, modernises and extends existing hate crime legislation. It is an essential element of our wider approach to tackling the harm caused by hatred and prejudice and will provide greater protections for victims and communities.

[There was a debate in Parliament, on 17 April 2024 regarding the matter of repealing the Hate Crime Act](#), where members of the Scottish Parliament voted against the motion to repeal.

The Act introduces new offences for threatening or abusive behaviour which is intended to stir up hatred against someone who possesses, or appears to possess, characteristics including age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics. These new offences have a higher threshold for a crime to be committed than the long-standing offence of stirring up racial hatred, which has been in place since 1986.

With regards to the thresholds of the offences, it is important to note that stirring up hatred offences are not new. Offences concerned with stirring up racial hatred have been a part of our criminal law and the law of the whole of the UK for decades, and in this regard the Act simply restates existing legal thresholds. For the new stirring up hatred offences introduced by the Act, a person can only commit an offence if they behave in a threatening or abusive way or communicate threatening or abusive material and, in either case, do so with the intention of stirring up hatred. Each of those elements must be proved beyond a reasonable doubt, with corroborated evidence. These are well-established thresholds in existing Scottish criminal law for a person's conduct that the courts and practitioners are familiar with. For example, as provided for under [the statutory offence of threatening or abusive behaviour contained in section 38 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#) and the [existing racial stirring up hatred offences in the Public Order Act 1986](#).

The Act includes rigorous safeguards on free speech and is compatible with the European Convention on Human Rights, including Article 10 which protects everyone's right to freedom of expression. It does not prevent people expressing controversial, challenging or offensive views nor does it seek to stifle criticism or rigorous debate in any way.

The development of the Act was [informed by Lord Bracadale's Independent Review of Hate Crime Legislation in Scotland](#) and the [Scottish Government's subsequent engagement with stakeholders including via the One Scotland: consultation on current hate crime legislation](#). Following introduction of the Bill to Parliament, we undertook significant engagement with stakeholders to further inform its

development as it was scrutinised by MSPs. All evidence submitted to the Justice Committee and Parliamentary briefings were carefully considered.

[For more information, you can access an Information Note on the Act](#), as well as [read our factsheet, which outlines what the Act does, why it is needed and how it is being implemented](#).

**Equality, Inclusion and Human Rights Directorate**