

Citizen Participation and Public Petitions Committee
Wednesday 25 September 2024
14th Meeting, 2024 (Session 6)

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

Introduction

Petitioner Giovanni di Stefano

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to immediately repeal the Hate Crime and Public Order (Scotland) Act 2021.

Webpage <https://petitions.parliament.scot/petitions/PE2097>

1. This is a new petition that was lodged on 14 May 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 51 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received a submission from the Scottish Government which is set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take on this petition.

Clerks to the Committee
September 2024

Annexe A: Summary of petition

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

Petitioner

Giovanni di Stefano

Date Lodged

14 May 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to immediately repeal the Hate Crime and Public Order (Scotland) Act 2021.

Background information

It is my view that the legislation is in violation of the European Convention of Human Rights and Universal Declaration of Human Rights 1948, fails the compatibility criteria with the said legislation, and is not fit for purpose.

This legislation will never face scrutiny by the courts and requires immediate repeal for the good of Scotland. Its intentions may have been good but the law the Scottish Government created is foul and frankly impossible for the police to enforce.

The UK Government repealed S.225 of the Criminal Justice Act 2003 exhibiting maturity and common sense when legislation is errant. The Scottish Government should do the same.

Annexe B: SPICe briefing on petition PE2097



Introduction

The petition seeks the repeal of the [Hate Crime and Public Order \(Scotland\) Act 2021](#) (the 2021 Act), arguing that it is:

- in violation of both the [European Convention on Human Rights](#) and the [Universal Declaration of Human Rights](#)
- not fit for purpose
- impossible for the police to enforce.

The 2021 Act both consolidates existing statutory provisions and extends hate crime law. Changes made by the 2021 Act include:

- alterations to hate crime characteristics (e.g. amending the definition of transgender identity and adding age)
- replacing the previously existing statutory hate crime aggravations with ones covering the amended/expanded list of hate crime characteristics
- setting out new offences relating to stirring up hatred that apply to all the hate crime characteristics (previous offences in this area applied to race only).

In November 2023, the Scottish Government published a [short overview of the background to, and provisions of, the 2021 Act](#).

The main provisions of the 2021 Act were brought into force on 1 April 2024.

On 17 April 2024, the Scottish Parliament [debated a Conservative motion on repealing the 2021 Act](#).

Freedom of expression and parliamentary scrutiny of the Bill

Article 10 of the [European Convention on Human Rights](#) (ECHR) seeks to protect freedom of expression. It is specifically referred to in section 4(5) of the 2021 Act:

“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”.

Much of the debate during parliamentary scrutiny of the [Hate Crime and Public Order \(Scotland\) Bill](#) (the Bill) focused on how the proposed offences relating to stirring up hatred might impact on freedom of expression. For example, in its [Stage 1 report](#), the Justice Committee noted that:

“Central to the Committee’s scrutiny of this Bill is the need to balance the rights of individuals to be protected from being subjected to threatening or abusive behaviour and the rights of individuals, the press and religious groups to express themselves freely, without fear of investigation or criminality.” (para 54)

Stage 2 consideration of the Bill included the agreement of amendments:

- requiring an intention to stir up hatred for the proposed offence applying to hate crime characteristics other than race
- expressly providing that an objective approach should be taken in applying the proposed stirring up offences (e.g. focusing on what a reasonable person would consider to be threatening or abusive rather than what a particular individual thought).

Further amendments agreed to at Stage 3 included ones expanding the scope of provisions seeking to protect freedom of expression – to cover more of the hate crime characteristics. However, areas of debate where significant differences of view continued included whether the Bill as amended provided sufficient protection for freedom of expression.

Following debate at Stage 3, the Bill was passed (for 82, against 32, abstentions 4).

Parliamentary debate on repeal of the 2021 Act

As already noted, [the Scottish Parliament debated a motion on repealing the 2021 Act on 17 April 2024](#) (shortly after its main provisions were brought into force). The Conservative motion stated:

“That the Parliament believes that the Hate Crime and Public Order (Scotland) Act 2021 should be repealed.”

Following debate, an amended motion which did not call for repeal was agreed (for 64, against 29, abstentions 25):

“That the Parliament believes that the Hate Crime and Public Order (Scotland) Act 2021, as supported by the majority of the Parliament, will provide greater protections for those who are targeted victims of hate crime; notes that the Act was developed following a review into hate crime by senior retired judge Lord Bracadale, who recommended specific legislation to recognise the impact and harm caused by hate crime; further notes that around a third of hate crimes in Scotland involved a victim who experienced the incident at their place of work or whilst undertaking duties as part of their occupation, most of whom were working in retail or other service industries, and that a quarter of recorded hate crimes had a police officer victim, and recognises that the impact on victims of hate crime can be traumatic and life changing.”

Issues covered in the debate included:

- the impact of the 2021 Act on freedom of expression
- non-crime hate incidents
- the impact on the police in dealing with reports of hate crime.

Concerns about the impact on the police in part reflected the large number of reports of hate crime made following the coming into force of the 2021 Act (e.g. see the BBC news report '[More than 7,000 hate crime reports in first week of new law](#)', 10 April 2024).

Following the coming into force of the 2021 Act, [Police Scotland has published some weekly hate crime statistics](#). These include figures showing a steep fall in online hate crime reports after the first week. For example, falling from 7,152 in week commencing 1 April, to 59 in week commencing 13 May (the latest figures at time of writing).

Police Scotland produced [a paper on the policing of the 2021 Act](#) for discussion at [the meeting of the Scottish Police Authority](#) on 23 May 2024 (see online recording of the meeting from 4:14 to 4:26). The paper included the following statement:

“On implementation of the Act, Police Scotland experienced a surge of reporting, the vast majority of which were reported online, anonymously and did not meet the threshold to be classified as either Hate Crimes or Non-Crime Hate Incidents. Additional staffing was put in place and the impact on frontline policing was minimal.” (para 1.6)

Frazer McCallum
Senior Researcher
04/06/2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Annexe C: Written submission

Scottish Government submission of 29 August 2024

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

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

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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