

New amendments to Bills lodged on 2 March 2021

Hate Crime and Public Order (Scotland) Bill – Stage 3

Section 1

Johann Lamont

- 4** In section 1, page 1, line 22, at end insert—
<() sex,>

Section 3

Adam Tomkins

- 5** In section 3, page 4, line 22, at end insert—
- <(4A) It is a defence for a person charged with an offence under this section to show that the behaviour or communication of the material occurred wholly in private and that there was no public element.
- (4B) For the purposes of subsection (4A), in determining whether behaviour occurred wholly in private and that there was no public element, particular regard must be had to the importance of the right to respect for private and family life by virtue of Article 8 of the European Convention on Human Rights.>

Liam Kerr

- 6** Leave out section 3

Section 6

Liam Kerr

- 7** Leave out section 6

Section 7

Liam Kerr

- 8** Leave out section 7

Section 8

Liam Kerr

- 9** Leave out section 8

Section 9

Liam Kerr

- 10** Leave out section 9

After section 9

Humza Yousaf

11 After section 9 insert—

<Protection of freedom of expression

For the purposes of section 3(2), behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or includes—

- (a) discussion or criticism of matters relating to—
 - (i) age,
 - (ii) disability,
 - (iii) sexual orientation,
 - (iv) transgender identity,
 - (v) variations in sex characteristics,
- (b) discussion or criticism relating to, or expressions of antipathy, dislike, ridicule or insult towards—
 - (i) religion, whether religions generally or a particular religion,
 - (ii) religious beliefs or practices, whether religious beliefs or practices generally or a particular religious belief or practice,
 - (iii) the position of not holding religious beliefs, whether religious beliefs generally or a particular religious belief,
- (c) proselytising, or
- (d) urging of persons to cease practising their religions.>

After section 10

Humza Yousaf

12 After section 10, insert—

<Reports relating to hate crime

Publication of reports on hate crime convictions

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting year, publish a report on convictions during that reporting year for—
 - (a) offences aggravated by prejudice within the meaning of section 1, and
 - (b) offences under this Act.
- (2) The Scottish Ministers must provide information about the groups to which the offences relate by including in the report—
 - (a) information about convictions for offences which, by virtue of being offences under section 2A or 3(1), relate to groups defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins,
 - (b) in respect of each conviction for an offence aggravated by prejudice within the meaning of section 1, information about the type of prejudice by which the offence was aggravated (by reference to one or more of the characteristics mentioned in section 1(2)), and

- (c) in respect of each conviction for an offence under section 3(2), information about the characteristic to which the offence relates (by reference to one or more of the characteristics mentioned in section 3(3)).
- (3) The Scottish Ministers must—
- (a) take reasonable steps to establish whether the information provided under subsection (2) about the groups to which the offences relate may be supplemented by information about any subgroups to which the offences relate, including (in particular) where a conviction is for an offence relating to a group defined by reference to—
 - (i) age, the particular age or age range to which the offence relates,
 - (ii) disability, the particular type of disability to which the offence relates, including whether it is a physical impairment or a mental impairment,
 - (iii) race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins to which the offence relates,
 - (iv) religion or, in the case of a social or cultural group, perceived religious affiliation, the particular religion (including lack of religious belief) or religious affiliation to which the offence relates,
 - (v) sexual orientation, whether the offence relates to sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
 - (vi) transgender identity, whether the offence relates to identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses, and
 - (b) if they establish that the information provided under subsection (2) may be so supplemented, take reasonable steps to obtain that supplementary information and include it in the report.
- (4) The report must not include information in respect of any conviction—
- (a) which identifies any individual, or
 - (b) from which the identity of any individual may be ascertained.
- (5) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (6) In this section, “reporting year” means a period of one year ending on 31 March.>

Section 11

Humza Yousaf

13 Leave out section 11

Section 12

Humza Yousaf

14 Leave out section 12

Section 13

Liam Kerr

- 15 Leave out section 13

Section 14

Humza Yousaf

- 16 In section 14, page 8, line 5, leave out <and 3> and insert <, 3 and (*Protection of freedom of expression*)>

Johann Lamont

- 17 In section 14, page 8, line 15, at end insert—
<(5A) A reference to sex is a reference to being a woman or a man
(5B) For the purposes of subsection (5A)—
(a) “woman” means a female of any age, and
(b) “man” means a male of any age.>

Humza Yousaf

- 18 In section 14, page 8, line 25, at end insert—
<and references to transgender identity are to be construed accordingly.>

Humza Yousaf

- 19 In section 14, page 8, line 30, at end insert—
<and references to variations in sex characteristics are to be construed accordingly.>

Section 15

Humza Yousaf

- 20 In section 15, page 8, line 33, leave out <either or both> and insert <one or more>

Johann Lamont

- 21 In section 15, page 8, leave out line 34

Humza Yousaf

- 22 In section 15, page 8, line 35, at end insert—
<() section (*Protection of freedom of expression*)(a).>

Humza Yousaf

- 23 In section 15, page 9, line 1, leave out second <section> and insert <sections (*Publication of reports on hate crime convictions*)(3) and>

Humza Yousaf

- 24 In section 15, page 9, line 2, leave out <is> and insert <may require>

Humza Yousaf

- 25 In section 15, page 9, line 3, leave out <that section> and insert <those sections>

Johann Lamont

- 26 In section 15, page 9, line 4, leave out subsection (2)

Section 15A

Humza Yousaf

- 27 In section 15A, page 9, line 25, at end insert—

<(A1) The chief constable of the Police Service must, as soon as reasonably practicable after the end of each reporting year, provide the information that the Scottish Ministers require in order to publish a report in accordance with this section.>

Humza Yousaf

- 28 In section 15A, page 9, line 26, leave out from <chief> to <year> in line 27 and insert <Scottish Ministers must, as soon as reasonably practicable after receipt of information under subsection (A1)>

Humza Yousaf

- 29 In section 15A, page 10, line 30, at end insert—

<() The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.>

Schedule 1

Humza Yousaf

- 30 In schedule 1, page 13, line 5, leave out paragraph 1

Schedule 2

Liam Kerr

- 31 In schedule 2, page 15, line 27, leave out paragraph 1