



Hate Crime and Public Order (Scotland) Act 2021 – Operational Workshop

****Welcome, please wait – today’s
presentation will start shortly!****

S38(1)(b)

Policing Together

Service Delivery Unit - Legislation and Compliance

Aim

The aim of this workshop is to provide a more detailed overview of the changes in Hate Crime legislation brought on by the new Hate Crime and Public Order (Scotland) Act 2021

Workshop - Overview

1. What is HCPO(S)A and what does it do?
2. Why is how we deal with hate crime so important?
3. What are the areas for today's discussion:
 1. Age
 2. Variations in sex characteristics
 3. Stirring up hatred
 4. Section 15 requirements

What is HCPO(S)A and what does it do?

The **Hate Crime and Public Order (Scotland) Act 2021** is a “consolidating Act” that brings together relevant hate crime laws into one place as well as updating and extending some of these laws. The key changes are:

- Consolidation of existing legislation into a single Act which will make identifying appropriate legislation simpler when dealing with hate crimes.
- Addition of two new characteristics which are protected under hate crime legislation: Age and Variations in Sex Characteristics.
- Creation of a new crime of “stirring up hatred” against a group of persons, defined by reference to age, disability, religion, sexual orientation, transgender identity and/or variations in sex characteristics.
- Abolition of the crime of Blasphemy.
- Requirement for the Scottish Government to publish hate crime information. The Chief Constable must provide the government with information on hate crimes recorded by the police to be published annually.

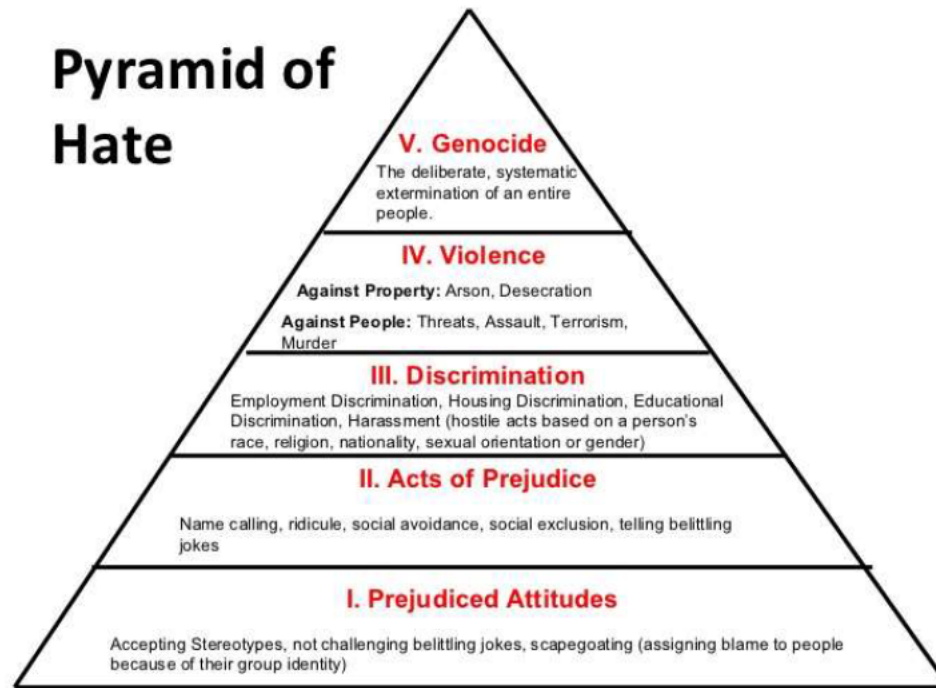
Old legislation	New legislation
Aggravators: <ul style="list-style-type: none"> Section 96 Crime and Disorder Act 1998: racial aggravation Section 74 Criminal Justice Scotland Act: religious prejudice Section 1 and 2, Offences (Aggravation by Prejudice) (Scotland) Act 2009: disability and sexual orientation or transgender identity prejudice 	Section 1 Hate Crime and Public Order (Scotland) Act 2021 covers all aggravations and hate-motivated offences based on the HCPO(S)A characteristics, including the two newly defined ones.
Section 50A(1)(a) Criminal Law (Consolidation) (Scotland) Act 1995	Section 3(1)(a) Hate Crime and Public Order (Scotland) Act 2021
Section 50A(1)(b) Criminal Law (Consolidation) (Scotland) Act 1995	Section 3(1)(b) Hate Crime and Public Order (Scotland) Act 2021
Sections 18-21 Public Order Act 1986 (stirring up racial hatred)	Section 4(1) Hate Crime and Public Order (Scotland) Act 2021
Crime of blasphemy	Abolished
Creation of new offence	New legislation
Stirring up hatred towards age, disability, religious belief, sexual orientation, transgender identity and variations sex characteristics (not previously legislated for.)	Section 4(2) Hate Crime and Public Order (Scotland) Act 2021
Additional characteristics	Characteristics covered by new legislation
Age and variations in sex characteristics.	Age, disability, race, religious belief, sexual orientation, transgender identity and variations sex characteristics

Why is how we deal with hate crime so important?

In Lord Bracadale's independent review of hate crime legislation in Scotland he identified three clear reasons to justify having hate crime legislation:

- The harm which hate crime causes
- The symbolic function which legislation fulfils
- The practical benefits from having a clear set of rules and procedures within the criminal justice system to deal with hate crime.

Drip Drip Drip.....Escalation



HCPO(S)A added characteristics

New characteristics covered by the Act:

- Age
- Variations in sex characteristics

Age

The legislation provides that a reference to “age” includes a reference to a category of ages. This means that, for example, an offence might be aggravated by prejudice based on malice and ill-will towards “older people” or “adolescents” rather than the victim’s specific age.

Although there might only be a relatively small proportion of crimes relating to prejudice towards a person because of their age, the Act ensures that these crimes are treated in the same way as other hate crimes.

Example 1

Reporter (approx. 70 year old) states that when he was in his garden his neighbour (Paul approx. 35 years old) subjects him to derogatory remarks based on his older age and regularly intimidates him. The neighbour yelled at him today “We should have let COVID-19 run its course and wipe you old bastards out” and “I’m going to get you moved to a nursing home where you’ll be abused”. Reporter then contacts police.

Discuss.

Example 2

Mary Smith (approx. 80 years old) is leaving her local shop when a teenager (approx. 15 years old) walks past her carrying a skateboard under his arm. Mary hits him with an umbrella and shouts at the teenager that he should respect his elders and take his skateboard to the park where he belongs.

Discuss

Age

Things to consider?

- Bogus callers / fraud against the elderly
- Paedophilia
- Human trafficking/modern slavery

Variations in Sex Characteristics (VSC) - What does this mean?

People with VSC don't fit within what we normally ascribe to typical male and female body types, obvious examples might be:

- Males with enlarged breast tissue
- Females with enhanced facial hair
- Ambiguous genitalia

Caster Semenya



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Example

Reporter is an VSC female living in student accommodation with 6 others, after a night out they all returned home and played strip poker, the caller striped off exposing her genital differences. Since then she has been facing harassment and verbal abuse from one of her male flatmates (Lewis Anderson). He uses derogatory language, frequently referring to her as a “freak and a hermaphrodite”. He asks inappropriate questions in front of others to embarrass her and this morning he threatened her against using the shared bathroom or he’ll expose her to all university classmates. Caller feels intimidated and scared of what his future actions might be.

Discuss.

Stirring up hatred - overview

Extends the current “stirring up racial hatred” to the other characteristics covered by the legislation.

Biggest change in legislation offered by the HCPO(S)A and one of the areas that equalities groups are most concerned about. There are a number of articles regarding concerns around the erosion of freedom of speech/expression.

Offences of stirring up hatred - Section 4 Hate Crime and Public Order (Scotland) Act 2021

Section 4 of the Act creates two offences of stirring up hatred:

- The offence of stirring up **racial** hatred (**Sections 4(1)**) and
- The offence of stirring up hatred against a group of persons defined by reference to age; disability; religion or, in the case of a social or cultural group, perceived religious affiliation; sexual orientation; transgender identity; and or variations in sex characteristics. (**Sections 4(2)**)

The standalone offences of Sections 18-21 Public Order Act 1986 that relate to stirring up of racial hatred have been repealed and replaced and or amended by the **Section 4 Hate Crime and Public Order (Scotland) Act 2021**.

Offences of stirring up racial hatred

Section 4(1) Hate Crime and Public Order (Scotland) Act 2021

(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.

Stirring up hatred of other groups

Section 4(2) Hate Crime and Public Order (Scotland) Act 2021

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).

As a reminder the characteristics mentioned in Subsection 3 are: Age, Disability, Religion, Sexual orientation, Transgender identity and Variations in sex characteristics.

What is the difference between Sections 4(1) and 4(2)?

Section 4(1) Hate Crime and Public Order (Scotland) Act 2021	Section 4(2) Hate Crime and Public Order (Scotland) Act 2021
<p>This specifically covers: Race, Nationality (including citizenship), ethnicity, national origins, colour.</p>	<p>This specifically covers the remaining Characteristics: Age, Disability, Religion, Sexual orientation, Transgender identity, Variations in sex characteristics.</p>
<p>includes the terms ‘threatening, abusive or insulting’</p>	<p>Only includes the words ‘threatening and abusive’</p>
<p>Section 4(1) includes ‘... a person intends to stir up hatred’ and also covers behaviour which is likely to stir up hatred’.</p>	<p>Section 4(2) only covers behaviour that is intended to stir up hatred. It does not cover behaviour which is ‘likely’ to stir up hatred.</p>

So how does that work in practice? – two part test – part 1

Both offences require that the behaviour is such which a reasonable person would consider threatening or abusive, with the stirring up racial hatred offence containing additional provision to capture behaviour which a reasonable person would consider insulting.

~ Lord Advocates Guidelines 2024

So how does that work in practice? – two part test – part 2

Once part 1 is satisfied that the behaviour is threatening or abusive or threatening, abusive or insulting then we need to look at the intent for the crime to be complete.

Second part is intention. There needs to be intention to stir-up hatred.

Section 9 Hate Crime and Public Order (Scotland) Act 2021

- What is freedom of Speech/Expression?
- How does it relate to Section 9?
- Why is section 9 there?

Section 9 Hate Crime and Public Order (Scotland) Act 2021 – Protection of Freedom of Expression

- For the purposes of Section 4 (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.

Example 1



James Allchurch – Radio Aryan

Example 2



The Rabat Principles

This test considers the following factors:

- **Context:** The social and political context in which the speech was made and disseminated. The risk of harm might be increased in tense social or political environments.
- **Speaker:** The position or status of the speaker in society and the extent to which the speaker is capable of influencing others. A person with a high profile or authority may cause more harm than others.
- **Intent:** Whether there was an intention to incite discrimination, hostility, or violence, as opposed to merely distributing information or participating in a debate.
- **Content and Form:** The content of the speech and the form it takes. This includes an examination of whether the speech was provocative and direct, had a malicious intent, and used inflammatory language.
- **Extent of the Speech:** The extent or reach of the speech, including the size of its audience and the mode of dissemination. Speech that is broadcast to a wide audience has a potential for greater harm.
- **Likelihood, including imminence:** The likelihood of the speech inciting actual action against the target group, considering the context and all other relevant factors.

Hate Crime Data Capture December 2023

Hate Crime (Question to be asked at crime level)

Does any person perceive this to be a Hate Crime? Person(s) perceiving as hate crime

Multi-select

Demographic Information (Captured for all victims, suspects and accused when crime is a hate crime)

Date of Birth **Age / Estimated Age** (if DOB not known) From To
Sex

Nationality

Ethnic Appearance

Self-Defined Ethnicity

Prejudice Information (Captured for all victims when crime is a hate crime - civilian victim or police victim)

Race

Perceived Colour of Person's Skin

Single-select

Age

Perceived Reason for Targeting

Single-select

Sexual Orientation

Perceived Reason for Targeting

Single-select

Disability

Perceived Reason for Targeting

Multi-select

Religion

Perceived Reason for Targeting

Single-select

Variations in Sex Characteristics

Perceived Reason for Targeting

Single-select

Transgender Identity

Perceived Reason for Targeting

Single-select

General Prejudice to Race

Single-select

This information is only captured once for each victim on a crime.

Questions?

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Hate Crime and Public Order (Scotland) Act 2021 – HCA Workshop

S38(1)(b) / S38(1)(b)

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Service Delivery Unit - Legislation and Compliance

Housekeeping

- Accessibility
- Respect
- Confidentiality
- Offensive language
- Breaks

Aim

The aim of this workshop is to provide a more detailed overview of the Hate Crime and Public Order (Scotland) Act 2021.

Workshop - Overview

1. What is Hate Crime Public Order (Scotland) Act 2021?
2. What has changed?
 - New characteristics of Age & Variations in sex characteristics
 - Stirring up hatred
 - Section 15 requirements
3. Case Studies

What is HCPO(S)A and what does it do?

The **Hate Crime and Public Order (Scotland) Act 2021** is a “consolidating Act” that brings together relevant hate crime laws into one place as well as updating and extending some of these laws. The key changes are:

- Consolidation of existing legislation into a single Act which will make identifying appropriate legislation simpler when dealing with hate crimes.
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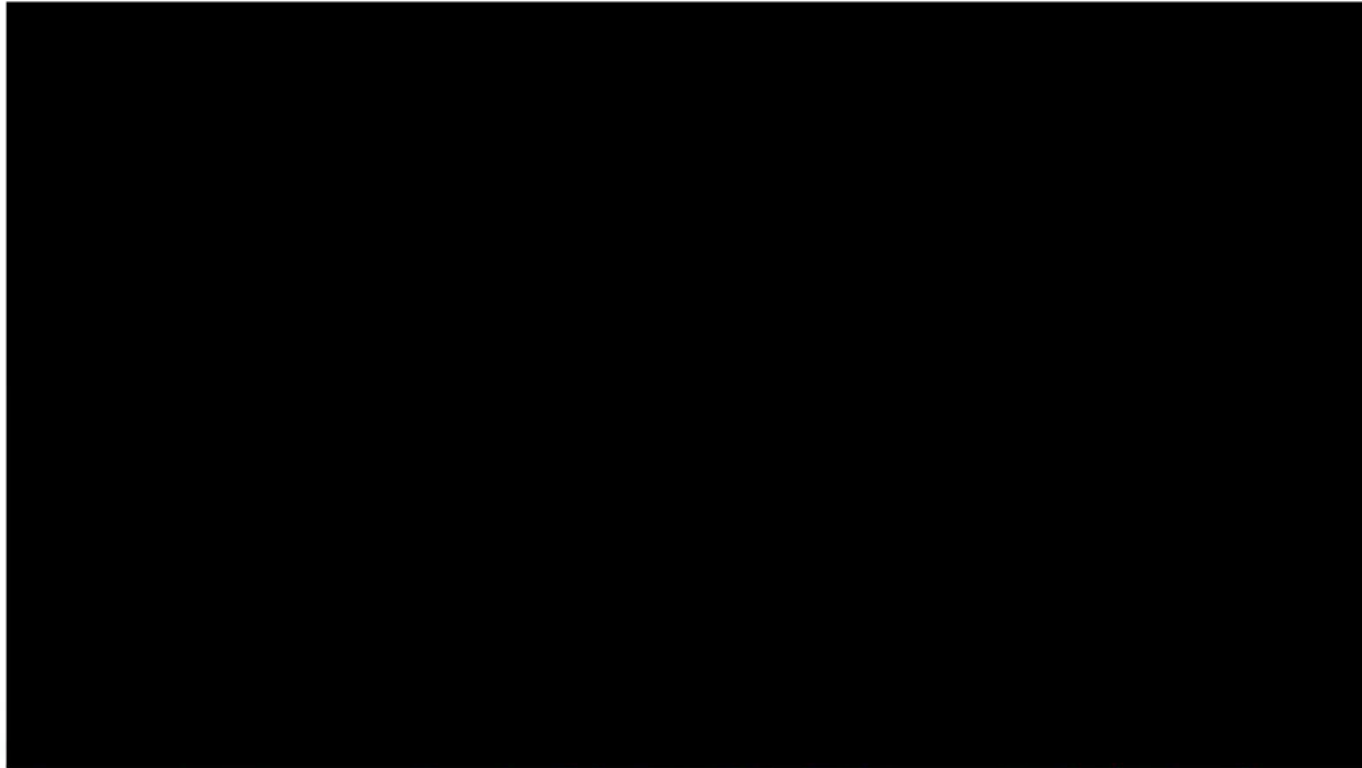
Old v New

Old legislation	New legislation
Aggravators: <ul style="list-style-type: none"> Section 96 Crime and Disorder Act 1998: racial aggravation Section 74 Criminal Justice Scotland Act: religious prejudice Section 1 and 2, Offences (Aggravation by Prejudice) (Scotland) Act 2009: disability and sexual orientation or transgender identity prejudice 	Section 1 Hate Crime and Public Order (Scotland) Act 2021 covers all aggravations and hate-motivated offences based on the HCPO(S)A characteristics, including the two newly defined ones.
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Sections 18-21 Public Order Act 1986 (stirring up racial hatred)	Section 4(1) Hate Crime and Public Order (Scotland) Act 2021
Crime of blasphemy	Abolished
Creation of new offence	New legislation
Stirring up hatred towards age, disability, religious belief, sexual orientation, transgender identity and variations sex characteristics (not previously legislated for.)	Section 4(2) Hate Crime and Public Order (Scotland) Act 2021
Additional characteristics	Characteristics covered by new legislation
Age and variations in sex characteristics.	Age, disability, race, religious belief, sexual orientation, transgender identity and variations sex characteristics

QUESTIONS

- What section of the new Act covers the legislation previously known as section 50A(1)(a)?
 - Section 3(1)(a) – course conduct
- What about 50A(1)(b)?
 - Section 3(1)(b)
- What essential elements do we still require?
 - Must have a direct victim
 - Victim must be person perceiving to be racist
 - Corroboration (it is a standalone crime not an aggravation)

Case Study 1



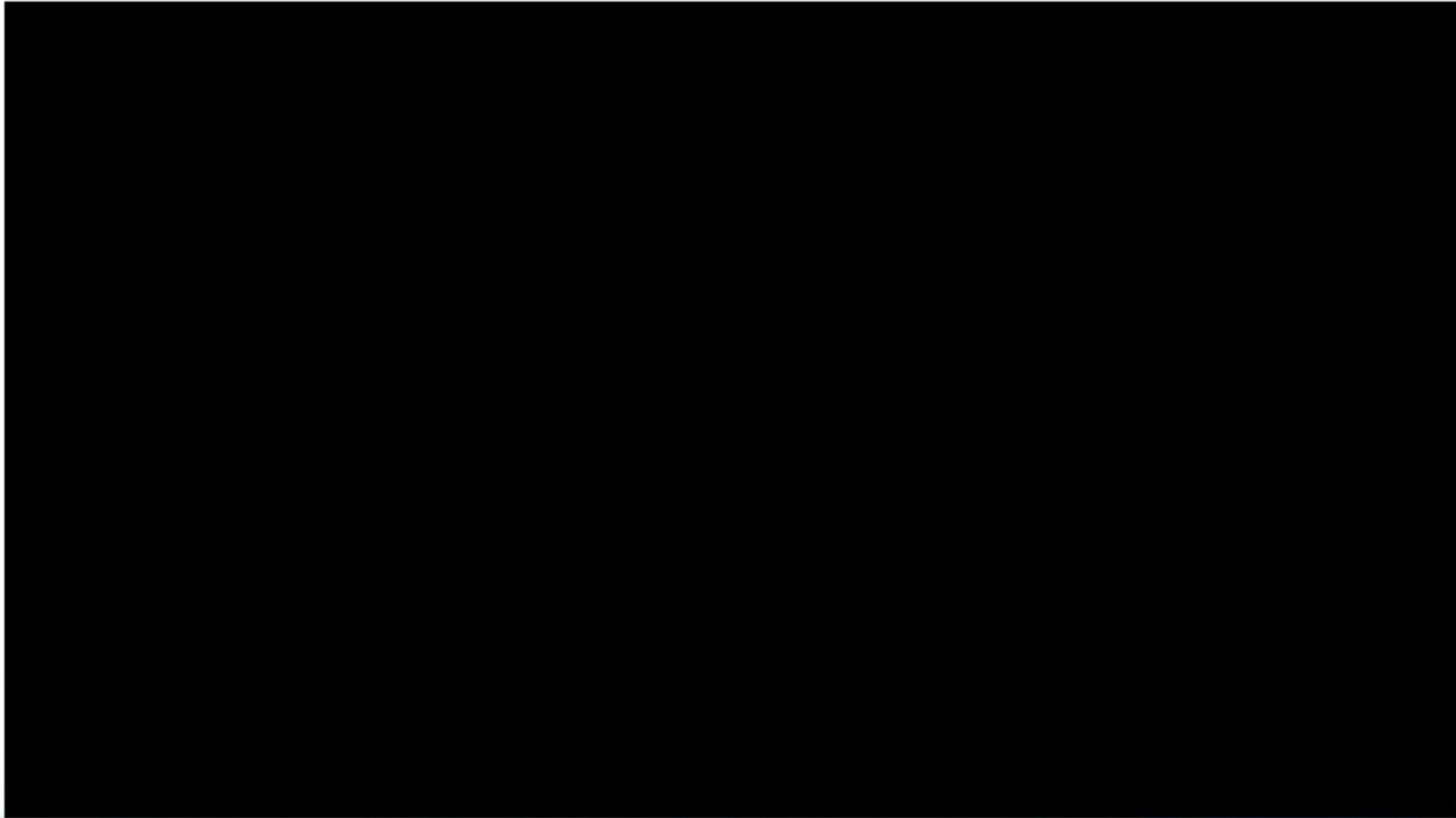
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Case study 1



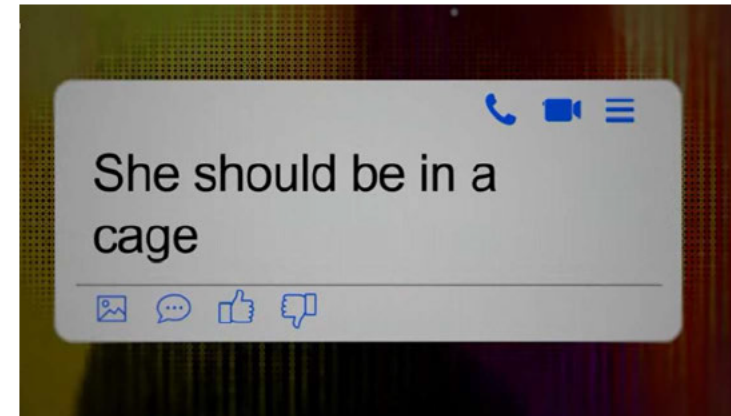
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Case Study 1



HCPO(S) Act 2021 - New Characteristics

New characteristics covered by the Act:

- Age
- Variations in sex characteristics

Age

The legislation provides that a reference to “age” includes a reference to a category of ages.

e.g. malice and ill-will towards “older people” or “adolescents” rather than the victim’s specific age.

Case Study 2

Reporter resides in sheltered housing complex for elderly.
Garden of complex has been vandalised and the following words
sprayed on wall

“Shame COVID didn’t wipe you old bastards out”

And

“waste of our money put them all down”

Age - Things to consider?

- Bogus callers / fraud against the elderly
- Paedophilia
- Human trafficking/modern slavery

Variations in Sex Characteristics (VSC)

People born with physical and biological sex characteristics which taken as a whole are neither:

- Those typically associated with males nor
- Those typically associated with females

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Case Study 3

Reporter is an VSC female living in student accommodation with 6 others. Some of the other residents become aware that she has VSC . She has been facing harassment and verbal abuse from one of her flatmates.

They use derogatory language, frequently referring to her as a “freak and a hermaphrodite”. They ask inappropriate questions in front of others to embarrass her and threatened her that they will expose her to all university classmates.

Caller feels intimidated and scared of what future actions might be.

Stirring up hatred - overview

Extends the current “stirring up racial hatred” to the other characteristics covered by the legislation.

Biggest change in legislation offered by the HCPO(S)A and one of the areas that equalities groups are most concerned about. There are a number of articles regarding concerns around the erosion of freedom of speech/expression.

Questions

1. What are the main points of the stirring up offences?
2. What are the 2 differences between section 4(1) and 4(2)?

Offences of stirring up hatred - Section 4 HCPO(S) Act 2021

SECTION 4(1) –

The offence of stirring up racial hatred

The standalone offences of Sections 18-21 Public Order Act 1986 that relate to stirring up of racial hatred have been repealed and replaced and or amended by the **Section 4 Hate Crime and Public Order (Scotland) Act 2021**.

SECTION 4(2) –

The offence of stirring up hatred against a group of persons defined by reference to age; disability; religion or, in the case of a social or cultural group, perceived religious affiliation; sexual orientation; transgender identity; and or variations in sex characteristics.

Stirring up racial hatred

Section 4(1) HCPO(S) Act 2021

(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.

Stirring up hatred of other groups

Section 4(2) HCPO(S) Act 2021

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).

As a reminder the characteristics mentioned in Subsection 3 are: Age, Disability, Religion, Sexual orientation, Transgender identity and Variations in sex characteristics.

Difference Sections 4(1) and 4(2)?

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Case Study 4



- Podcast titled “Radio Aryan”
- Negative stereotypes of Black and Asian people
- Non white people responsible for all violence / sexual violence in UK
- Segregate people by ethnicity
- “protect white people” “fight the invasion”
- Create safe spaces for indigenous Britons
- Denied gas chambers were used by Nazis (Holocaust denial)
- Talked about hanging Black and Jewish people

Section 9 HCPOA 2021

- Freedom of Expression
- How does it relate to Section 9?
- Why is section 9 there?

Section 9 Hate Crime and Public Order (Scotland) Act 2021 – Protection of Freedom of Expression

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 - (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.

The Rabat Principles

This test considers the following factors:

- **Context:** The social and political context in which the speech was made and disseminated. The risk of harm might be increased in tense social or political environments.
- **Speaker:** The position or status of the speaker in society and the extent to which the speaker is capable of influencing others. A person with a high profile or authority may cause more harm than others.
- **Intent:** Whether there was an intention to incite discrimination, hostility, or violence, as opposed to merely distributing information or participating in a debate.
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- **Extent of the Speech:** The extent or reach of the speech, including the size of its audience and the mode of dissemination. Speech that is broadcast to a wide audience has a potential for greater harm.
- **Likelihood, including imminence:** The likelihood of the speech inciting actual action against the target group, considering the context and all other relevant factors.

Case Study 5



Case Study 6



Hate Crime Data Capture December 2023

Hate Crime (Question to be asked at crime level)

Does any person perceive this to be a Hate Crime? Yes No

Person(s) perceiving as hate crime

- Victim
- Witness
- Other
- Police

Multi-select

Demographic Information (Captured for all victims, suspects and accused when crime is a hate crime)

Date of Birth:

Age / Estimated Age (if DOB not known): From To

Sex: (Male, Female, Other)

Nationality: (Values from crime, Not known)

Ethnic Appearance: (Values from crime, Not known)

Self-Defined Ethnicity: (Values from crime, Not known)

Prejudice Information (Captured for all victims when crime is a hate crime - civilian victim or police victim)

Race

Perceived Colour of Person's Skin

- Not Applicable
- Black
- Brown
- Mixed Race
- White
- None of the above

Single-select

Perceived Nationality Being Targeted

- All values from nationality list
- Not applicable
- Scottish
- English
- Northern Irish
- Welsh

Single-select

General Prejudice to Race

- Not Applicable
- Asylum seeker / Refugee
- Gypsy / Traveller / Roma
- African
- Asian
- Jewish
- Middle Eastern
- Sikh
- General xenophobia
- None of the above

Single-select

Age

Perceived Reason for Targeting

- Not applicable
- Targeted due to age

Single-select

Religion

Perceived Reason for Targeting

- Not Applicable
- Buddhism
- Christianity - Catholicism
- Christianity - Protestantism
- Christianity - Other
- Hinduism
- Islam
- Judaism
- Sikhism
- Lack of religion
- None of the above

Single-select

Sexual Orientation

Perceived Reason for Targeting

- Not Applicable
- General
- Gay Man
- Lesbian
- Bisexual
- Heterosexual / Straight
- None of the above

Single-select

Variations in Sex Characteristics

Perceived Reason for Targeting

- Not applicable
- Variation in characteristics

Single-select

Disability

Perceived Reason for Targeting

- Not Applicable
- Cognitive Impairment
- Hearing Impairment
- Physical Disability
- Visual Impairment
- None of the above

Multi-select

Transgender Identity

Perceived Reason for Targeting

- Not Applicable
- Transgender (General)
- Transgender (Female to male)
- Transgender (Male to female)
- Non Binary
- Person who cross dresses
- None of the above

Single-select

This information is only captured once for each victim on a crime.

Q&A

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