

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2097](#): Repeal the Hate Crime and Public Order (Scotland) Act 2021, lodged by Giovanni di Stefano

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.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP