Draft Regulations laid before the Scottish Parliament under section 12(4)(c) of the Hate Crime and Public Order (Scotland) Act 2021, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2026 No.

CRIMINAL LAW

The Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026

Made - - - -	*2026*
Coming into force - -	*5th April 2027*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 12(1), (2) and (3) of the Hate Crime and Public Order (Scotland) Act 2021(**a**) and all other powers enabling them to do so.

In accordance with section 12(5) of that Act, a proposed draft of this instrument has been laid before the Scottish Parliament and regard has been had to representations about the proposed draft that were made to the Scottish Ministers within the period of 40 days beginning with the day on which the proposed draft was laid.

In accordance with section 12(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026 and come into force on 5 April 2027.

(2) In these Regulations "the Act" means the Hate Crime and Public Order (Scotland) Act 2021.

Amendment of the Hate Crime and Public Order (Scotland) Act 2021

2.—(1) The Hate Crime and Public Order (Scotland) Act 2021 is amended as follows.

(2) In section 1(2) (aggravation of offences by prejudice), after paragraph (g) insert—

"(h) sex.".

(3) In section 4(3) (offences of stirring up hatred), after paragraph (f) insert—

"(g) sex.".

(**a**) 2021 asp 14.

(4) In section 9(a) (protection of freedom of expression), after sub-paragraph (v) insert—

"(vi) sex.".

(5) In section 11 (meaning of the characteristics), after subsection (8) insert—

"(9) A group defined by reference to sex is a group of persons defined by reference to—

(a) their biological sex being female, or

(b) their biological sex being male,

and references to sex are to be construed accordingly.

(10) In this section, "biological sex" means sex at birth.".

(6) In section 14(3)(a) (publication of reports on hate crime convictions), after sub-paragraph (vi) (and before the "and" immediately following it) insert—

"(vii) sex, whether the offence relates to the female sex or the male sex,".

(7) In section 15(4)(b) (publication of reports on hate crime recorded by police), after sub-paragraph (vii) insert—

"(viii) where the characteristic is sex, whether the sex that is recorded as being targeted is the female sex or the male sex.".

Transitional provision: aggravation of offences by prejudice

3. Section 1 of the Act applies in respect of offences committed by acts done or omissions made on or after 5 April 2027.

Transitional provision: offence of stirring up hatred

4. Section 4 of the Act applies in respect of acts done or omissions made on or after 5 April 2027.

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hate Crime and Public Order (Scotland) Act 2021 ("the Act"). They add provisions relative to the characteristic of "sex", and make further provision as to the publication of information relating to that characteristic.

Section 1 of the Act makes provision in relation to the aggravation of offences by prejudice defined by reference to one or more characteristics listed in section 1(2). Regulation 2(2) adds the characteristic of "sex" to that list of characteristics.

Section 4(2) of the Act sets out an offence of stirring up hatred against a group of persons defined by reference to a characteristic listed in section 4(3). Regulation 2(3) adds the characteristic of "sex" to that list of characteristics.

Section 9 of the Act makes provision relative to the stirring up offence under section 4(2), to the effect that behaviour or material is not to be taken to be threatening or abusive in terms of that offence solely on the basis that it involves or includes discussion or criticism of a characteristic listed in section 9(a). Regulation 2(4) adds the characteristic of "sex" to that list of characteristics.

Section 11 of the Act makes provision relative to the interpretation of the characteristics listed in sections 1, 4, and 9. Regulation 2(5) adds provision relative to the definition of the characteristic of "sex", as referred to in those sections. This Regulation provides that a group defined by reference to sex is a group of persons defined by reference to their biological sex being female or their biological sex being male. "Biological sex" is thereafter defined as meaning sex at birth. This aligns with the interpretation given to "sex" in the context of the Equality Act 2010 by the Supreme Court in *For Women Scotland v Scottish Ministers* [2025] UKSC 16 and mirrors the approach, set out in paragraph 7 of that Judgment, of using biological sex as a label carrying the meaning of sex of a person at birth. The groups that are protected by the characteristic of sex under the 2021 Act, as now inserted by these Regulations, are the group of people who were, at birth, assigned female and the group of people who were, at birth, assigned male. Defining the characteristic of sex by reference to biological sex (sex at birth) ensures that there is no overlap between the scope of the characteristic of "sex" and the characteristic of "transgender identity" in the 2021 Act.

Section 14 of the Act places a duty on the Scottish Ministers to publish reports on convictions for offences under the Act, and for offences aggravated by prejudice in terms of section 1 of the Act. Subsection (3) requires that Scottish Ministers establish whether supplementary information can be provided about any subgroups to which the offences relate, as set out in paragraph (a). Each of sub-paragraphs (i) to (vi) sets out the information at issue in respect of each characteristic. Regulation 2(6) adds an entry to the end of the list, to the effect that, in respect of the characteristic of sex, the relevant information is whether the offence relates to the female sex or the male sex.

Section 15 of the Act places a duty on the Scottish Ministers to publish reports on cases categorized by the Police as offences under the Act, and as offences aggravated by prejudice in terms of section 1 of the Act. Subsection (4) provides that the report must include (to the extent that these details have been recorded) the particular characteristic and such other information depending on the particular characteristic. Regulation 2(7) adds an entry regarding information where the particular characteristic is "sex", providing that the information required is whether the sex that is recorded as being targeted is the female sex or the male sex.

These Regulations are made under section 12 of the Act. Section 12 only permits the addition of the protected characteristic of "sex" and related matters to the Act. It does not permit the modification of the offences to which the characteristic may apply in terms of aggravation, nor does it permit the modification of the definition of any of the other protected characteristics.

Regulations 3 and 4 make transitional provision. Regulation 3 provides that section 1 (aggravation of offences by prejudice) of the Act will apply to offences committed on or after the coming into force date. Where the offence is committed by a course of conduct, all the conduct must have

occurred on or after that date. Regulation 4 provides that section 4 (offence of stirring up hatred) of the Act will apply to acts done or omissions made on or after the coming into force date. Where the offence is committed by a course of conduct, all the conduct must have occurred on or after that date.

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