POLICY NOTE

THE HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021 (COMMENCEMENT AND TRANSITIONAL PROVISION) REGULATIONS 2024

SSI 2024/82 (C. 8)

The above instrument was made in exercise of the powers conferred by section 21 (2) of the Hate Crime and Public Order (Scotland) Act 2021 ("2021 Act")[1]. The instrument is not subject to any Parliamentary procedure.

Summary Box

This instrument provides for commencement of all remaining provisions not yet commenced in the 2021 Act. The provisions being commenced include the aggravation of offences by prejudice with reference to certain characteristics, a modernised racially aggravated harassment offence, stirring up hatred offences with reference to certain characteristics, further provision in relation to hate crime including publication of reports and abolition of the offence of blasphemy. As the 2021 Act includes some new criminal law as well as re-stating and modernising existing criminal law, the approach taken has been to provide transitional provision where needed to ensure clarity about what criminal law will apply in relation to conduct arising on or around the date of commencement.

Policy Objectives

This instrument is the Hate Crime and Public Order (Scotland) Act 2021 (Commencement and Transitional Provision) Regulations 2024 ("the Commencement Regulations"). The Commencement Regulations bring into force on 1 April 2024 sections 1 to 16, 18 to 20 and schedules 1 and 2 of the Hate Crime and Public Order (Scotland) Act 2021[2] ("the 2021 Act").

Sections 1 and 2 of the 2021 Act provide for aggravation of offences by prejudice. Section 3 provides for racially aggravated harassment. Sections 4 to 10 provide for offences relating to stirring up hatred. Sections 11 to 15 make further provision relating to hate crime. Section 16 abolishes the offence of blasphemy. Section 18 provides for modification of the enactments listed in schedule 2 which relate to existing offences. Sections 19 and 20 provides for Crown application. Schedule 1 makes further provision about offences under sections 3 and 4 for information society services and schedule 2 provides for the modification of enactments.

The Bill for the 2021 Act received Royal Assent on 23 April 2021 and sections 17, 21 and 22 of the 2021 Act came into force the following day.

[1] https://www.legislation.gov.uk/asp/2021/14/contents/enacted
[2] https://www.legislation.gov.uk/asp/2021/14/schedule/2

Detail

Regulation 2 of the Commencement Regulations sets out that 1 April 2024 is the day appointed for the coming into force of all of the 2021 Act so far as not already in force. Sections 17, 21 and 22 of the 2021 Act came into force on 24 April 2021.

The 2021 Act contains provision that re-states, with some modernisation, existing criminal law and creates new criminal law. As such, it is necessary to ensure clarity within the Commencement Regulations over how the criminal law is to operate for conduct amounting to an offence on or around the commencement date.

Regulation 3 of the Commencement Regulations makes transitional provision where there is a failure to establish that the time of the commission of the offence was before 1 April 2024. This is when the new offence provisions under the 2021 Act come into force and the old offence provisions under the existing law are modified by schedule 2 of the 2021 Act including the introduction of new aggravation provisions.

Regulation 3(1) to (3) provide for the situation where an accused is charged, in respect of the same conduct, both with an offence under the provisions in the 2021 Act and also with an offence under a provision of the existing law in force before 1 April 2024. Regulation 3(2) provides for the maximum penalty where the court or jury are satisfied, on every respect other than whether the offence took place before 1 April 2024, that the accused committed an offence charged. The accused may be found guilty under the existing law if the maximum penalty under the existing law is less than the maximum under the 2021 Act. Otherwise the accused may be found guilty of an offence under the 2021 Act. Regulation 3(3) provides that the reference to the maximum penalty is the maximum by way of imprisonment or other detention on conviction.

Regulation 3(4) and (5) provide for the situation where there is a failure to establish that the time of commission of an offence was before 1 April 2024, and where the accused is charged with an aggravation by prejudice under both the existing law and the 2021 Act. Where the court or jury is satisfied in every other respect that the offence has taken place, and the court is satisfied that the offence was aggravated by prejudice, regulation 3(5) provides that the aggravation provisions under the 2021 Act will apply.

Regulation 3(6) makes further provision for offences relating to attempts, incitement, counselling, procuring and being involved art and part.

Inclusion of the transitional provisions in regulation 3 will help ensure an effective transition from the existing law to the new law, minimising the risk of error and confusion.

EU Alignment Consideration

The Instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

There has been no formal consultation on these Commencement Regulations, although the Crown Office and Procurator Fiscal Service have been engaged with given their prosecutorial interests.

Impact Assessments

As these regulations for commencement only bring into force provisions of the 2021 Act, no impact assessments have been carried out in relation to this instrument. This is due to a full suite of Impact Assessments being prepared and published ahead of the Bill which led to the 2021 Act. Additional Impact Assessments were not deemed as necessary at this time for the Commencement and Transitional Regulations as nothing has fundamentally changed since the passing of the Act.

Impact Assessments completed for the Bill leading to the 2021 Act include;
Business and Regulatory Impact Assessment
Child Rights and Regulatory Impact Assessment
Equalities Impact Assessment
Data Protection Impact Assessment
Fairer Scotland Duty Impact Assessment
Strategic Environment Impact Assessment

Financial Effects

No BRIA is necessary as this instrument only brings into force the provisions of the 2021 Act and in itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Mainstreaming and Inclusion Division
Hate Crime Policy Team

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