

Elected Member Briefing: Hate Crime and Public Order Act (Scotland)

Introduction

The [Hate Crime and Public Order \(Scotland\) Act](#) was passed by the Scottish Parliament on 11 March 2021 and came into force on the 1 April 2024.

The 2021 Act maintains the existing legislative protections from crimes aggravated by prejudice towards race, religion, disability, transgender identity and sexual orientation, while introducing new protections against offences aggravated by prejudice towards a person's age.

The legislation maintains the existing stirring up of racial hatred offence, with some minor modifications, but also introduces new stirring up of hatred offences for each of the following characteristics:

- Disability
- Religion
- Sexual orientation
- Transgender identity
- Age
- Variations in sex characteristics¹

For each of these characteristics, an offence is committed when a person behaves in a manner that:

- a reasonable person would consider to be threatening or abusive, or communicates to another person material that a reasonable person would consider to be threatening or abusive, and
- 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 as listed.

There is a defence to all offences of stirring up hatred where a person can show the behaviour or communication of material was, in the particular circumstances, reasonable.

¹ Variations in sex characteristics relate to diverse physical and biological characteristics of the body, whereas transgender identity relates to a person's gender identity.

The Hate Crime and Public Order (Scotland) Act does not address prejudice towards women (misogyny) as this will be dealt with [via another piece of legislation](#), due to be tabled before the end of the current parliamentary session in 2026.

To support implementation of the 2021 Act, the Scottish Government published a new [Hate Crime Strategy](#) in March 2023.

How does this impact on elected members conduct?

Elected members have to obey the new laws in the same way as any members of the public, whether that is in their dealings with constituents and community groups or when posting or sharing content via their own social media channels.

As you are already subject to the [Councillors' Code of Conduct](#), which contains a paragraph relating to discrimination, the Hate Crime legislation does not in reality impose any new restrictions on your conduct.

The [Code](#) plays a vital role in setting out, openly and clearly, the standards elected members must apply when undertaking their Council duties. Paragraph 3.2 of the Code states:

I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/ maternity; I will advance equality of opportunity and seek to foster good relations between different people.

While the Hate Crime and Public Order (Scotland) Act strengthens the law in these areas, elected members are already required to behave in a way that shows respect to the groups identified under the new legislation. Any elected member who appears to be demonstrating prejudice against one of these groups can already be reported to the [Ethical Standards Commissioner](#) who will investigate and take action as required. Elected members who adhere to the Code of Conduct are unlikely to fall foul of the new Hate Crime legislation.

Of course, you may wish to make yourself aware of [the powers contained within the new law](#) and keep them in mind especially when dealing with individuals and groups covered by the legislation, or when posting and particularly sharing content on social media.

Social media

Social media can be a divisive place and it is important to bear in mind both the Code of Conduct and the new stirring up hatred offences within the Hate Crime legislation when posting and sharing content online. Be careful what you share and always check that the information contained within links and articles you have shared does not fall foul of the rules, not just the content within the post itself.

There are some top tips on how to behave online in our [#FollowMe social media guide](#) for elected members which will help you to stay on the right side of the Code of Conduct and the new Hate Crime legislation.

Additional information

- [Hate Crime and Public Order \(Scotland\) Act factsheet](#)
- [Standards Commission for Scotland webinar: Following the ethical standards of public life when engaging with the public](#)
- [Standards Commission for Scotland webinar: Following the ethical standards of public life when using social media](#)