

# Criminal Law (Consolidation) (Scotland) 1995: Racially Aggravated Harassment

## Law

### Statutory Provisions

**[Section 50A](#) - For offences committed before 1 April 2024 only. For offences committed on or after 1 April 2024 see [section 3 of the Hate Crime and Public Order \(Scotland\) Act 2021](#).**

“(1) A person is guilty of an offence under this section if he – (a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and – (i) is intended to amount to harassment of that person; or (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

(2) For the purposes of this section a course of conduct or an action is racially aggravated if –

(a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person’s membership (or presumed membership) of a racial group; or

(b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.

(3) In subsection (2)(a) above – “membership”, in relation to a racial group, includes association with members of that group; “presumed” means presumed by the offender.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender’s malice and ill-will is also based, to any extent, on–

(a) the fact or presumption that any person or group of persons belongs to any religious group; or

(b) any other factor not mentioned in that paragraph.

(6) In this section- “conduct” includes speech; “harassment” of a person includes causing the person alarm or distress; “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, and a course of conduct must involve conduct on at least two occasions.”

1. This provision is concerned with harassment towards an individual personally, or towards a group of individuals of the same racial or ethnic group, because of that person’s or that group’s racial or ethnic origins. It does not apply to harassment based on religious affiliations or sexual orientation. “African” constitutes a distinct racial group, at least as far as black Africans are concerned (*R v White* [2001] CrimLR 576).
2. The person affected by the racist remarks must be the person at whom they were targeted, not a third-party by-stander ([Martin v Bott 2005 SCCR 554](#) at para [8]).
3. In the event of it not being proved that the target heard the racist remarks, but by-standers did so, it is open to the court to convict of racially aggravated breach of the peace ([Anderson v Griffiths 2005 SCCR 41](#) at para [16], [Martin v Bott 2005 SCCR 554](#) at para [12]).
4. A course of conduct must arise from two separate or distinct incidents ([McGlennan v McKinnon 1998 SLT 494](#)).

## Possible form of direction on racially-aggravated harassment

These directions should be adapted to the circumstances of the case.

“Charge is a charge of racially aggravated harassment. It alleges a contravention of the Act mentioned there. This crime can be committed if either:

- you pursue a racially aggravated course of conduct amounting to harassment of the other person, which either
- you intend to amount to harassment of the other person, or
- appears to a reasonable person to amount to harassment of the other person.

or

- you act in a manner which is racially aggravated, and this causes, or is intended to cause, the other person alarm or distress. Intention is a state of mind, to be inferred or deduced from what’s been proved to have been said or done. The alarm or distress must be suffered by the target of your conduct. It’s not enough for a bystander, at whom your conduct wasn’t directed, to be affected.

Your course of conduct or your manner of acting is racially aggravated if either:

- Immediately before, during, or after it, you show malice and ill-will to the other person, based on his membership, actual or presumed by you, of a racial group. Membership covers association with members of the group.

or

- Your conduct is wholly or partly motivated by malice and ill-will towards members of a racial group, based on their membership of that group.

In either case, it's immaterial that your malice and ill-will is also based on the other person's membership, actual or presumed, of any religious group, or any other factor.

Some more definitions, to make things clear:

- (1) "Conduct" includes speech.
- (2) A "course of conduct" simply means conduct on at least two occasions.
- (3) "Harassment" includes causing the other person alarm or distress.
- (4) "Racial group" covers any group of persons, defined by race, colour, nationality, citizenship, or ethnic or national origins.

For the Crown to prove this charge, you would need to be satisfied that:

either (1) the accused pursued a course of racially aggravated conduct, (2) that conduct amounted to harassment of the person named in the charge, (3) it was either intentional, or, would be regarded as harassment by a reasonable person. or else (1) the accused acted in a manner that was racially aggravated. (2) that caused, or was intended to cause the person named in the charge alarm and distress."