

Hate Crime and Public Disorder (Scotland) Act 2021:

Racially Aggravated Harassment

Law

Section 3 - For offences committed on or after 1 April 2024 only. For offences committed before 1 April 2024 see [section 50A of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#).

Racially aggravated harassment

- (1) A person commits an offence if the person—
 - (a) pursues a racially aggravated course of conduct which amounts to harassment of another 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, another person alarm or distress.
- (2) A course of conduct or an action is racially aggravated if—
 - (a) at the time of carrying out the course of conduct or action, or immediately before or after doing so—
 - (i) the offender demonstrates malice and ill-will towards the victim, and
 - (ii) the malice and ill-will is based on the victim's membership or presumed membership of a group defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or
 - (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.
- (3) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.

(4) A course of conduct must involve conduct on at least two occasions.

(5) In this section—

"conduct" includes speech,

"harassment" of a person includes causing the person alarm or distress,

"membership", in relation to a group, includes association with members of that group,

"presumed" means presumed by the offender.

1. Section 3 provides for an offence of racially aggravated harassment. This offence replicates the effect of the offence of racially-aggravated harassment in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 ("the 1995 Act"), which is separately repealed by paragraph 2 of schedule 2.
2. The offence can be committed in two ways: firstly, by pursuing a racially aggravated course of conduct which amounts to harassment of a person (and is intended to, or occurs in circumstances where it would appear to a reasonable person that it would, amount to such harassment) (section 3(1)(a)) and; secondly, by acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress (section 3(1)(b)).
3. For the offence to be committed, the offender must either: demonstrate malice and ill-will towards the victim based on the victim's membership or presumed membership of a group of persons defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins; or be motivated by malice and ill-will towards members of such a group.
4. Subsection (3) makes clear that it is immaterial whether or not the offender's malice and ill-will is also based on any other factor. Subsection (4) provides that a course of conduct, as mentioned in section 3(1)(a), must involve conduct on at least two occasions.
5. 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 other protected characteristics such as religious affiliations or sexual orientation.
6. There is a body of case law relating to the interpretation of similar statutory provisions (including section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995) and it is considered that those cases, some of which are referred to below, may also be helpful in interpreting the provisions of this Act, although it should be borne in mind that the language of the new provisions is not identical.

7. "African" constitutes a distinct racial group, at least as far as black Africans are concerned (*R v White* [2001] CrimLR 576).
8. Under the 1995 Act, 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]).
9. In the event of it not being proved, under the 1995 Act, 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]).
10. A course of conduct must arise from two separate or distinct incidents ([McGlennan v McKinnon 1998 SLT 494](#)).

Racially-aggravated harassment: possible form of direction

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

"Charge [x] is a charge of racially aggravated harassment. It alleges a contravention of the 2021 Act.

A person commits an offence if the person:

(a) Pursues a racially aggravated course of conduct which amounts to harassment of another person and:

- It is intended to amount to harassment of the other person, or
- It 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, the other person alarm or distress.

Intention is a state of mind, to be inferred or deduced from what has been proved to have been said or done.

Racially aggravated

A course of conduct or an action is racially aggravated if:

- At the time of carrying out the course of conduct or action, or immediately before or after doing so:

- the accused demonstrates malice and ill-will towards the complainer, and
- the malice and ill-will is based on the complainer's membership, or presumed membership, of a group defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins,

or

- The course of conduct or action is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.

It does not matter whether the accused's malice or ill-will is also based (to any extent) on any other factor."

A course of conduct

[Only where a course of conduct is alleged: I mentioned that this offence relates to "a course" of conduct. A course of conduct involves conduct on at least two occasions. It is for you to decide in the particular circumstances whether the incidents amount to a racially aggravated course of conduct.]

A few matters call for comment:

"Conduct" includes speech.

"Harassment" of a person includes causing the other person alarm or distress.

"Membership" in relation to a group, includes association with members of that group.

"Presumed" means presumed by the accused.

Summary

"For the Crown to prove this charge, you must be satisfied that:

[Select either, or both, options as appropriate:]

- (1) the accused pursued a course of racially aggravated conduct; and
- (2) that conduct was intended to amount to harassment of the complainer;

or

- (3) that conduct occurred in circumstances in which it would appear to a reasonable person that it would amount to harassment of the complainer.

Or:

- (1) the accused acted in a manner that was racially aggravated; and
- (2) the accused's conduct caused, or was intended to cause the complainer alarm and distress.