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**POLICE
SCOTLAND**

POILEAS ALBA

Guidance for Election Candidates in Scotland

Scottish Parliament Election 2021

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Guidance for Elections Candidates in Scotland

Police Scotland, the Electoral Commission, and the Electoral Management Board and have jointly developed this guidance about behaviour which candidates in elections may experience during a campaign. Some of this behaviour may be considered criminal conduct.

There is no requirement or expectation for a person reporting an allegation of crime to have knowledge of criminal law. This guidance is intended simply to assist candidates to recognise conduct which may or may not be considered criminal, in order to inform and assist them in any contact they have with the police and potentially the wider criminal justice system. In any circumstance where a candidate in an election believes that a criminal offence has been committed, they are encouraged to report it to the police.

As with all election related criminality, Police Scotland is responsible for investigating an allegation that a criminal offence has been committed. Following an investigation, and where a crime has been identified, a crime report will be created. Where an investigation provides the identification of potential suspect/suspects, and sufficiency of evidence exists, a report of the circumstances will be submitted to the Crown Office and Procurator Fiscal Service (COPFS) for their consideration of action.

This guidance cannot cover every eventuality but intends to address in outline some of the possible criminal offences a candidate in an election may encounter. This guidance should not be treated as legal advice nor is it meant to be an exhaustive account of these areas of law.

Candidates should however be reassured that the number of crimes/offences reported by other candidates as victims is low.

Threatening or Abusive Behaviour

Some threatening or abusive behaviour can constitute an offence under the Criminal Justice and Licensing (Scotland) Act 2010.

A person commits an offence if—

- (a) A behaves in a threatening or abusive manner,
- (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

For more information on this legislation, please click [here](#).

Vandalism

Any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism.

For further information on this legislation, please click [here](#).

Assaults

Every attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted. There must be criminal intent: an accidental injury, even although caused by a mischievous act, does not amount to assault.

Harassment and Stalking Offences

Stalking is defined as 'two or more behaviours towards a victim which cause, are intended to cause, or where the perpetrators behaviour is reckless as to whether it causes, the victim to suffer fear and alarm'.

'Fear and alarm' covers physical or psychological harm, or apprehension or fear for the safety of the perceived victim or any other person.

The specific legislation for Stalking is section 39 of the Criminal Justice and Licensing (Scotland) Act 2010.

For more information on this legislation, please click [here](#).

Crimes and Incidents Motivated by Hate

A hate incident is any incident which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice and ill-will towards a social group but which does not constitute a criminal offence.

A hate crime is any crime which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice or ill-will towards a social group.

There are currently 5 social groups protected under hate crime legislation:

- Disability or presumed disability
- Race or presumed race
- Religion or presumed religion
- Sexual orientation or presumed sexual orientation
- Transgender identity or presumed gender identity

Where a crime takes place and is assessed as a hate crime, an aggravation of the crime will be backed up by specific legislation.

Further information on offences aggravated by prejudice can be found by clicking [here](#).

Communications Offences

Communications which are deemed as grossly offensive, indecent, obscene or menacing and are sent by an electronic communications network, such as a telephone system, a mobile telephone network, online via social media, or any other electronic communications system are an offence under S127 Communications Act 2003.

(1) A person is guilty of an offence if they-

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) causes any such message or matter to be so sent.

(2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, they-

- (a) sends by means of a public electronic communications network, a message that he knows to be false,
- (b) causes such a message to be sent; or
- (c) persistently makes use of a public electronic communications network.

For further information on this legislation, see click [here](#).

Election Offences

There are multiple offences which relate to elections, covered by various pieces of legislation.

- **Bribery** - A person is guilty of bribery if they directly or indirectly, by themselves or by someone on their behalf, give any money or procure any office to or for any voter, or on behalf of any voter, in order to induce any voter to vote or not to vote for a particular candidate or referendum answer; or to vote or refrain from voting.
- **Treating** - A person is guilty of treating if either before, during or after an election or referendum they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.
- **Undue influence** - A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This can include threats of harm of a spiritual nature. A person may also be guilty of undue influence if they impede or prevent, or act with the intention of impeding or preventing, the voter from freely exercising their right to vote.
- **Personation** - It is an offence for any individual to vote as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed as a person guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force. It is an offence to commit, aid, abet, counsel or procure the offence of personation.
- **False application to vote by post or by proxy** - It is an offence to falsely apply to vote by post or proxy with the intention of depriving another person of a vote or gaining a vote or money or property to which a person is not entitled. Specifically, it is an offence to:
 - apply for a postal or proxy vote as some other person (whether living, dead or fictitious)
 - otherwise make a false statement in connection with an application for a postal or proxy vote
 - induce an Electoral Registration Officer or Returning Officer or Counting Officer to send a communication relating to a postal or proxy vote to an address that has not been agreed by the voter
 - cause such a communication not to be delivered to the intended recipient.

It is also an offence to aid, abet, counsel or procure the commission of the above offences.

Conclusion

The application of the law is in each case fact- and context- sensitive which must be borne in mind when applying general guidance to real life situations. Most of the words which constitute the key elements of these offences (e.g. threatening; hostility; intention; course of conduct; grossly offensive) are not terms of art and have no specific legal meaning. Their ordinary, everyday meaning applies which may assist consideration of whether an offence has been committed or not.

If a candidate in an election believes that a criminal offence has been committed, they are encouraged to report it to the police. This guidance may assist when a candidate has contact with the police or the wider criminal justice system.

Although specifically relating to legislation which covers England and Wales, the [“When it goes too far”](#) will provide further supportive guidance to election candidates.