

**SERIOUS AND ORGANISED CRIME BILL
FINAL REGULATORY IMPACT ASSESSMENT
INCITEMENT TO RELIGIOUS HATRED**

1. Title of Proposal

New offences which will extend existing incitement to racial hatred laws to incitement against people identified by their religious beliefs or absence of religious beliefs.

2. Purpose and intended effect of measure

Under Part III of the Public Order Act 1986 it is an offence to use threatening, abusive or insulting words or behaviour with intent or likelihood to stir up racial hatred. 'Racial hatred' means hatred of anyone on the grounds of colour, race, nationality (including citizenship) or ethnic or national origins. This is the same definition as given under the Race Relations Act 1976 (i.e. the law governing racial discrimination).

Case law has determined that mono-ethnic groups such as Jews and Sikhs are classified for these purposes as racial groups, and are therefore covered by existing legislation (although the position of converts to these faiths is less certain). Multi-ethnic groups defined by religion, such as Muslims and Christians, and groups defined by their absence of religious beliefs are not covered and some are particularly concerned about their lack of protection.

The Government first proposed this measure as part of the Anti-Terrorism, Crime and Security Bill in 2001 in response to a desire to ensure adequate legal protection against attempts to stir up religious hatred which followed the acts of terrorism in the United States of 11 September that year. Due to opposition in the House of Lords, and the need to make swift progress on that Bill, that clause had to be withdrawn. The Anti-Terrorism, Crime and Security Act 2001 did however increase the maximum penalty for the offence of incitement to racial hatred from two to seven years' imprisonment.

Evidence given to the House of Lords Select Committee on Religious Offences, which reported in 2003, indicates that the proposal attracts both widespread support but also opposition based primarily on concerns about what the impact might be on freedom of speech. A joint statement issued in April 2004 by representatives of a number of UK faith communities urged the government to legislate against incitement to religious hatred as soon as possible.

3. Options

Option 1 – Do nothing

This is not an option as Government is committed to action. Doing nothing would allow the present situation by which mono-ethnic religious groups but not multi-ethnic religious groups are legally protected from incitement to hatred.

Option 2 - Non-legislative measures

Government is committed to tackling incitement to religious hatred and there are no non-legislative measures which would achieve the objectives outlined above.

Option 3 - Legislative measures

To extend existing incitement to racial hatred laws to incitement against religious groups.

4. Benefits

Prosecutions brought under the existing incitement to racial hatred legislation can be heard in either a magistrates or crown court. Every case is referred to the CPS Casework Directorate to be dealt with by a specialist prosecutor. Cases can only be prosecuted with the consent of the Attorney General. This prevents unwarranted legal action and associated costs. This will remain the position for prosecutions brought under the expanded offence.

The criminal threshold for the existing offence is set very high. When considering incitement cases for prosecution the CPS bear in mind, amongst other things, the right of everyone in this country to express views or behave in ways others might find offensive but does not threaten public order. Cases must meet a two-part test. To fall foul of this offence the offending party must not only use words or behaviour or to publish or distribute material that is threatening, abusive or insulting but must also intend or be likely to stir up hatred by doing so. It is hatred rather than just hostility that must be intended or likely to have been stirred up. Additional safeguards to freedom of speech are that a person who is not shown to have intended to stir up racial hatred is not guilty of this offence if he did not intend his words or behaviour or the written material to be, and was not aware that it might be, threatening, abusive or insulting. The offence does not apply to actions inside one's home.

This means that, historically, there have been a limited number of prosecutions under the incitement to racial hatred laws (Public Order Act 1986), on average about two a year. In the last 3 years the CPS has been asked to consider 84 cases, 4 of which have resulted in prosecutions. Of those 4 prosecuted cases, 2 resulted in convictions. Given the existing safeguards protecting free speech and the fact that Jews and Sikhs are already protected by the existing legislation, the Government would not anticipate the proposed extension to cover religious hatred resulting in a disproportionate increase in the number of cases brought. On this basis, we estimate that the CPS might consider on average an extra 30 cases per year and that they might prosecute one or two extra cases per year.

The prosecution of only a few cases does not mean the provision is ineffective. The prosecution of those cases that meet the criminal threshold is important as the offences have a disproportionate impact on the communities in which they occur. The provision also has an extremely effective deterrent effect. This is

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illustrated by the advice found on a number of websites that urge those who use them to ensure that their remarks remain within the law.

As an example, West Yorkshire Police have stated that prior to the Bradford disturbances in 2001, and also afterwards, very insidious material pertaining to religious hatred was widespread throughout the city and extremist activity had created a climate of fear common across a number of Northern towns and cities. West Yorkshire Police's view was that an offence of incitement to hatred on religious grounds, in addition to the existing offence of incitement to racial hatred, would make a significant difference in the police's ability to make a case against people promoting and disseminating this kind of religiously as well as racially based material. They also thought it would have a positive effect on relations between the police and faith communities by boosting confidence and reassurance amongst these communities that the police would be able to deal effectively with both the religiously, as well as the racially, based cases.

5. Costs

Implementation costs

Given that the law at present makes it clear that hatred must not be incited against Jews and Sikhs, there are no indications that extending this protection to other religions and beliefs will result in any significant implementation costs for the private sector. For example a small business publishing a contentious document on behalf of another individual might already consider whether or not the content incited racial hatred and is unlikely to expend more resources doing so if multi-ethnic as well as single ethnic religious groups are covered by the provisions.

There are numerous sources of reference and guidance upon the criminal law. These are regularly and routinely updated. We envisage that it will be possible to incorporate this change as part of such an update without incurring significant additional cost. For example, in 2003 the CPS produced a prosecution policy document that sets out in detail the way that it deals with cases of racist and faith-related crime, including incitement to racial hatred. The Police have similar operational documents. These documents would need revision in the light of the proposed extension to the law. The revisions required are not likely to be substantive, probably consisting of references to racial/religious hatred where the present document refers to racial hatred only.

Cost to Frontline Public Sector staff

Among the faith communities, the Jewish community, who are often the target of extremist groups, are already covered by the existing legislation. The police and CPS are often asked at present to consider whether material containing references to other religions or beliefs might constitute an offence under the existing law. The extension of the offence, and the publicity and increased confidence that this will bring, is likely to result in Police and CPS and other organisations being asked to consider more material than at present. Given the immediate publicity generated by the introduction of the new offence, any increase is likely to be most marked in the first few years. However the quality

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of the material referred to the police, CPS and other agencies at present suggests that relatively few of these cases considered comprise the necessary factors and evidence to lead to a prosecution, which will limit the impact.

Average Police costs for responding to this sort of case are £693. Based on the consideration of 30 cases a year, the cost to the Police in respect of responding to new reports could be approximately £21,000 a year. More cases may be reported in the first year when the offence is highly publicised at an estimated cost of £42,000.

Downstream Criminal Justice System Costs

The estimated cost to the Crown Prosecution Service of reviewing 30 cases and prosecuting an average of 1.3 cases each year would be £140,000 in the first year of implementation and £45,000 for each subsequent year. In the first year these costs include the costs of communication to stakeholder groups in the community, training for CPS prosecutors and the costs of case review and prosecution.

There may be a small additional cost associated with extra court cases as a result of the proposal. However, as suggested above, given the safeguards in place to protect free speech the number of cases likely to come to court under the new provision is likely to be small (with on average 1.3 prosecutions a year under the incitement to racial hatred laws) the additional cost to the courts is likely to be minimal. It is not possible to provide precise estimates for court costs because a lot will depend on the length of the trial. An average crown court trial costs £14,000 (an average of £3,700 per day). There may also be duty solicitor costs at the police station, which are £270 per suspect interviewed. There is also the cost of any administrative hearing in the magistrate's court of £110. The estimated average annual cost would be approximately £30,000.

With so few prosecutions it is also expected that the additional cost to the National Offender Management Service (NOMS) will also be minimal. There have only been 2 convictions in the last 3 years. Only one of these was a custodial sentence of 2 years, served concurrently with other custodial sentences. Based on the HMPS costs over the last three years, given the concurrent service of the one custodial sentence, if the NOMS cost is taken as that of one year rather than two, and the average cost of one place in custody is £37,000 per year, the estimated average annual NOMS of the new offence would be £13,000. However it should be noted that custodial sentences have been very rare since the introduction of the offence in 1986.

Total estimated costs are £225,000 in 2005/6 and £109,000 in subsequent years.

6. Equity and Fairness

A race equality impact assessment initial screening test has been undertaken and has also been published. As outlined above, currently only mono-ethnic religious groups, Jews and Sikhs, are legally protected from incitement to hatred. It is within the interests of equity and fairness to expand this protection

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to all religious and belief groups. Legislation protecting religious groups from incited hatred will also afford the same protection to the non-religious (such as atheists, humanists and agnostics).

7. Enforcement and Sanctions

The maximum penalty available to a magistrate's court for a summary offence of incitement to religious hatred will be 6 months imprisonment. The maximum penalty available to a crown court for the indictable version of the offence will be 7 years' imprisonment.

8. Consultation

The Government's Strength and Diversity consultation included religion as an area of debate and the Lords Select Committee mentioned above investigated this issue in detail, taking evidence from all the key stakeholders. However the Home Office has undertaken further targeted consultations on incitement, with the major religious and other belief groups, civil liberties organisation, law enforcement agencies and others.

9. Monitoring and Review

The courts and the CPS in particular will maintain records of prosecutions/convictions obtained under the new provision.

10. Summary

We recommend option 3.

The Government therefore believes it is appropriate and would in practice be effective to extend current legislation to make it a criminal offence to incite hatred against people defined by their religious belief or absence of religious belief. The Government believes that, if anything, the arguments for this extension of the law have grown stronger since 2001.

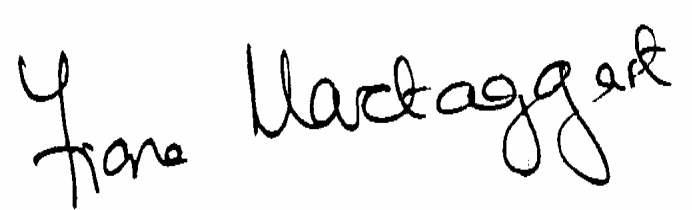
A number of faith communities, including the Muslim community, feel disadvantaged at the moment by the absence of such a provision. As members of a religious group they are not offered the same protection against incitement to hatred as exists for mono-ethnic faith groups such as Jews and Sikhs. The balance of opinion among faith leaders and representatives, as well as the police and prosecuting authorities, is in favour of the creation of this new offence.

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Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed

A handwritten signature in black ink, reading "Fiona Mactaggart". The signature is written in a cursive style with a large initial "F" and a stylized "Mactaggart".

November 2004

Fiona Mactaggart, Parliamentary Under Secretary of State, Home Office