



RACE CRIME AND SECTARIAN CRIME LEGISLATION IN NORTHERN IRELAND

A Summary Paper

Northern Ireland Office

November 2002

RACE CRIME AND SECTARIAN CRIME LEGISLATION IN NORTHERN IRELAND: A CONSULTATION PAPER – SUMMARY

INTRODUCTION

1. At the Labour Party Conference in October 2001, the Secretary of State for Northern Ireland, Dr John Reid, confirmed the Government's commitment to eradicating all forms of intolerance and promised to criminalise such manifestations of hatred, whether based on racism or based on sectarianism. This consultation is designed to establish the measures that will best address this difficult and complex issue in Northern Ireland.

2. Any proposed change to the current legislation is a matter for the Northern Ireland Office, which remains responsible for the criminal law in Northern Ireland, but the Government welcomes other practical measures which the Executive had introduced in this area.

3. The Government seeks responses from the widest range of interested parties, and from all sections of the community, to the options set out in this paper. It further welcomes any other constructive ideas or proposals which are practicable and which would have support across the community.

4. Views are sought on the form legislation should take to deal with the issue of racially motivated crime and crime motivated by sectarianism. Some specific questions are listed later in this summary. Those replying should, however, feel free to comment on any aspect of the paper. The Government may be asked to publish the responses to this paper. As responses to the consultation may be published, those who wish their views to remain confidential should indicate this clearly. Further copies of this and the consultation paper may be obtained by ringing 028-90-527264.

If you would like a copy of the summary translated, or provided in any other format this can be made available by ringing 02890 527517. Translation of the full consultation document can also be arranged.

Responses to the paper, which should be received by 28 February 2003, should be addressed in writing to:

**Criminal Justice Policy Division
Northern Ireland Office
Massey House
Stoney Road
BELFAST BT4 3SX**

THE CURRENT LEGAL POSITION

5. The Public Order (Northern Ireland) Order 1987 contains provisions which make it a criminal offence to incite or arouse fear of racial and religious hatred. The 1987 Order went beyond the equivalent Great Britain legislation (the Public Order Act 1986) which did not include the concept of arousing fear and did not include hatred on religious grounds.¹ But the 1987 Order had no equivalent of that part of the Public Order Act which made it an offence to use or display signs or words likely to cause harassment, alarm or distress to a person within sight or hearing.

6. In England and Wales the Crime and Disorder Act 1998 created nine new racially motivated offences which attract significantly higher maximum penalties than their non-racially motivated equivalents:

- ◆ grievous bodily harm (malicious wounding);
- ◆ actual bodily harm;
- ◆ common assault;
- ◆ criminal damage;
- ◆ fear or provocation of violence (threatening behaviour);
- ◆ intentional harassment, alarm or distress;
- ◆ public order (disorderly behaviour);
- ◆ putting in fear of violence; and
- ◆ harassment.

¹ The Anti-Terrorism, Crime and Security Act 2001 has now amended the Public Order Act to extend the definition of hatred to include religious groupings.

And it put on a statutory basis the need for sentencers to consider evidence of racial motivation as an aggravating factor, that is to say a factor requiring a longer sentence, when deciding on the appropriate sentence for any offence other than the newly created ones.

RACIAL INCIDENTS AND PREJUDICE IN NORTHERN IRELAND

7. There is statistical evidence that racial prejudice and racially motivated crime in Northern Ireland, whilst not commonplace, has increased at a significant rate. Police statistics show that the total number of racially motivated incidents rose from 106 between 1998 and 260 in 2000/01, before dropping to 185 in 2001/02 (the most recent available figures).

8. Although the figures appear low in comparison with racial incidents reported and recorded in England and Wales, they represent a disturbing picture.

9. A research report published last year by the Northern Ireland Statistics and Research Agency, "Racial Attitudes and Prejudice in Northern Ireland" concluded that racial prejudice appears to be around twice as significant as sectarian prejudice.

CONSIDERATION OF THE CRIME AND DISORDER ACT 1998

10. While it is important that the law should protect all vulnerable groups in society, racist crime poses a particular threat to the development of a stable society and to good relations between communities. The Crime and Disorder Act 1998 was intended to send a message that racist crime would not be tolerated and that judges and magistrates would impose firmer sentences for racist offences.

11. An evaluation of the race provisions of the Crime and Disorder Act 1998 by the Institute of Criminology at Cambridge University was published in July 2002.² It found that the legislation had been successful in sending a message that racist crime would not be tolerated and had concentrated the minds of sentencers. But it also

² Copies of the report, "Racist Offences - how is the law working?" may be obtained from the Communications and Development Unit, Home Office, Room 201, 50 Queen Anne's Gate, London, SW1H 9AT.

identified some areas where the legislation may not yet be achieving what was intended:

- ◆ section 28 of the Act defines a racially aggravated offence and also distinguishes between two types of aggravation. However the definition is open to wide interpretation. It has resulted in cases being prosecuted as racially aggravated offences where the racist element, while unacceptable, is not the actual cause of the offence;
- ◆ if a racially aggravated offence is charged in the magistrate's court but the racially aggravated element is not proven, the whole case must be lost even where there is enough evidence to prove the basic offence. But if the offence is prosecuted in its basic form, any racist element cannot be used in sentencing, as no one may be sentenced for an offence which is more serious than that for which he or she has been found guilty. The legislation, therefore, has made it harder in some circumstances to obtain a conviction and a sentence to reflect the full picture of the incident. The evaluators met with a strong body of opinion that magistrates should have a similar power to that of a jury in the Crown Court which may find for an alternative charge without it being specified;
- ◆ an alternative would be to present two charges (the basic offence and the racially aggravated variant). However this has drawbacks, including weakening the case for the aggravated offence, and is seen as an invitation for the defence to press for the aggravated version to be dropped in exchange for guilty plea to the basic offence. If that happens, evidence, for example of racist language, is not admissible at sentencing;
- ◆ there are significant resource implications to the English approach. Racially aggravated offences are twice as likely as the basic offence to be committed to the Crown Court for trial and a high proportion are contested. The higher proportion of contested trials has led to racially aggravated offences having less than half the conviction rate of the basic offences.

The evaluation report recommends that:

- ◆ magistrates should be given the power to find alternative verdicts on racially aggravated offences;
- ◆ more should be done to differentiate the great range of seriousness encompassed in the concept of racial aggravation;
- ◆ more should be done through restorative methods at the lower level of racist offending;
- ◆ prosecution should remain in reserve for the most serious or recalcitrant cases.

OPTIONS FOR CHANGE IN NORTHERN IRELAND

Option one: legislate in respect of sentencing

12. Introducing in Northern Ireland provisions equivalent to those at section 82 of the Crime and Disorder Act would put on a statutory footing the need for courts to consider racial motivation as an aggravating factor when sentencing. Although sentencing guidelines in Northern Ireland already require sentencers to treat racial or sectarian motivation as an aggravating factor, putting this on a statutory footing might send a stronger message.

13. This option would not, however, address the difference in maximum sentence available in Northern Ireland and England and Wales. A further possible change, therefore, might be to amend the sentencing guidelines framework so that the maximum penalty could be exceeded by a set amount if racial or sectarian aggravation were proven.

Option Two: allowing magistrates to find alternative verdicts

14. Giving magistrates the power to find someone guilty of an alternative charge in cases of racially aggravated offences would ensure that guilty defendants were still convicted of an offence. However, it would not address the problem of ensuring that the resulting sentence fully reflected the incident.

Option Three: legislate to create racially aggravated offences only AND

Option Four: legislate to create racially aggravated and offences aggravated by sectarianism

15. It could be argued that addressing sectarian and racial offences in the same way would weaken the symbolic impact in relation to race crime which the Crime and Disorder Act sought to exert. However, excluding sectarian offences might send the message that racially motivated crime is somehow worse than crime committed for sectarian motives.

16. Legislating for crime committed for either racial or sectarian motives and attaching stiffer penalties to such crimes would provide for consistency of sentencing between Northern Ireland and England and Wales and would send a signal that there can be no legitimate differentiation between racially motivated crime and crime motivated by sectarianism.

17. The definition of a racially aggravated offence in the Crime and Disorder Act 1998 is open to wide interpretation. It covers offences where the racial element is not the cause of the offence, for example racist language used in the heat of the moment, and offences where the actual motivation is purely racial. An option would be to limit any definition of aggravation to motivation only. This would target the most objectionable form of offending. However it might underestimate the damage to individuals, families and communities of racial hostility demonstrated during the commission of offences.

SOME QUESTIONS FOR CONSIDERATION

- 1.1. *Do you consider current legislative arrangements in relation either to racial or sectarian crime to be satisfactory?*
- 1.2. *Is there sufficient reason for Great Britain legislation on racially motivated crime not to apply in exactly the same way to Northern Ireland?*
- 1.3. *Should any action taken in respect of racially aggravated crime apply equally to sectarian crime too, or should provisions be modified in some way in respect of one or other category of offence?*
- 1.4. *Should any new offences concentrate on the motivation for offending, or should they encompass behaviour/language which is related to, but not the cause of, the offence?*
- 1.5. *Is it better to proceed by introducing new categories of offence, or would it be preferable instead to look at the sentencing framework, and whether that could be modified to address the problem?*
- 1.6. *Are there other arrangements which would address effectively the issue of racially motivated or sectarian crime in Northern Ireland?*