

**THE OFFICE OF THE FIRST MINISTER
AND DEPUTY FIRST MINISTER**

EQUALITY UNIT

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FROM: J A CANAVAN
TO: PS/FIRST MINISTER
PS/DEPUTY FIRST MINISTER
DATE: 4 JANUARY 2001

COR/831/2000 - BELFAST CITY COUNCIL RESOLUTION ON HATE CRIME

Summary: Issue - Belfast City Council letter of 5 December conveyed a resolution deploring racism and calling on the First Minister to introduce legislation prohibiting "hate crimes".

Time Scale: Reply now due.

Recommendation: That FM and DFM reply deploring racism, pointing to the relevant actions in the Programme for Government, but clarifying that the criminal law is a matter for the Secretary of State.

Background:

1. Belfast City Council agreed a resolution on 4 December deploring racism, referring to the increase in racist attacks in the city and calling on the First Minister "to initiate without further delay the necessary arrangements to ensure that the appropriate legislative mechanisms in respect of the prohibition of Hate Crimes are introduced".

2. The latter proposal is similar to recent Assembly Questions tabled by Alliance Party Members. Current correspondence from the Secretary of State is also relevant. The Alliance Party seeks to replicate in Northern Ireland provisions of the Crime and Disorder Act 1998, which introduced significant increases in the minimum sentences for racially motivated offences of violence, but extending the same principle to violence directed at people because of their religion, gender, disability or sexual orientation. This is clearly in the reserved field and the Secretary of State, who has also been lobbied by the Alliance Party, has suggested a meeting between Adam Ingram MP and the FM and DFM (my advice of 11 December and 28 December refers).
3. The attached draft reply to the City Council takes a similar line to the recent Assembly Oral Answer. It makes clear that the criminal law is a reserved responsibility, but indicates the commitment of the Executive Committee to promoting a climate of tolerance and equality, in which racial prejudice is unacceptable. The draft reply does not refer to the Secretary of State's proposal for a meeting with Mr Ingram, nor suggest that FM and DFM would request Direct Rule Ministers to strengthen the criminal law along the lines of the Alliance proposals.

(Sgd) *J A Canavan*

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Mr Pringle
Mrs Cosgrove
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Ms Smith
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DRAFT

Mr Liam Steele
Head of Committee and Members' Services
Chief Executive's Department
Belfast City Council
City Hall
BELFAST BT1 5GS

You wrote on 5 December 2000 to the Private Secretary to the First Minister, conveying the text of the Council's resolution on hate crime legislation.

The First Minister and the Deputy First Minister appreciate the Council's interest in this important issue, particularly given the recent incidents of violent racism referred to in the resolution. They believe that the devolved administration, as well as local government, have an important role to play in creating a climate of tolerance and opposition to all forms of prejudice. Northern Ireland Departments and all District Councils are now subject to the new statutory obligations on promoting equality of opportunity and good relations between, inter alia, people of different racial groups.

In its Draft Programme for Government, the Executive Committee has committed itself to a range of actions which will tackle the underlying causes of racism and sectarianism, including a strategic policy framework on racial equality, a Single Equality Bill and the creation of a Social Inclusion/Community Regeneration Fund, which will support initiatives on community relations and cultural diversity.

However, it should be pointed out that the criminal law remains within the reserved field. Therefore, policy responsibility for developing further legislation on hate crime, such as the provisions of the Crime and Disorder Act 1998 which apply in Great Britain, falls to the Secretary of State for Northern Ireland. It would be for the Westminster Parliament, rather than the Northern Ireland Assembly, to enact such legislation.

The First Minister and Deputy First Minister hope that this clarifies the position regarding criminal legislation in this field. They re-emphasise, however, their commitment to taking action, within their devolved responsibilities, to improve race relations and promote racial equality.

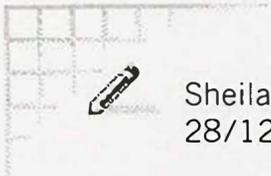
Private Secretary
to the First Minister

Private Secretary
to the Deputy First Minister

File: Hate crimes

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Sheila Bradfield
28/12/2000 13:27

To: Ps Ministers/OFMDFM/DFP@DFP
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Subject: COR 796/00 - RESONSE TO SECRETARY OF STATE ON HATE CRIME LEGISLATION

Please see attached paper from Tony Canavan.



Sheila 22.12 - HATE CRIME LEGISLATION.doc

**THE OFFICE OF THE FIRST MINISTER
AND DEPUTY FIRST MINISTER**

FROM: J A CANAVAN

TO: PS/FIRST MINISTER

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DATE: 28 DECEMBER 2000

COR 796/00 - RESPONSE TO SECRETARY OF STATE ON HATE CRIME LEGISLATION

1. William Redpath's note of 15 December conveyed the First Minister's request for information additional to my submission of 11 December. The First Minister requested further advice on existing Northern Ireland legislation on incitement.
2. There are two Northern Ireland Orders in Council which have some relevance to racial harassment and intimidation (other, obviously, than the normal criminal law).

Public Order (NI) Order 1987

3. Part III of this Order deals with incitement to hatred and arousing fear. "Fear" and "hatred" relate to groups defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origin. Essentially this means that the legislation covers both sectarian and racist incitement. The Order created offences of using threatening abusive or insulting words or behaviour, or disseminating, through various media, threatening abusive or insulting material, or possessing such material.
4. However, an offence is only committed if a person has the **intention** of stirring up hatred or arousing fear. This legislation has existed, in various forms, for 30 years and has been rarely used, despite the widespread sectarianism of recent decades. It was closely modelled on GB legislation on incitement to racial hatred, which has been criticised for its limited scope. The Macpherson Report recommended that it be extended to cover incitement which occurred within a private dwelling. There is also similar Irish legislation which covers race, religion, nationality and sexual orientation.

Protection from Harassment (NI) Order 1997

5. This Order is not restricted to harassment motivated by any particular type of prejudice. The chief mischief which it was intended to address was "stalking" but it could also be applied in other circumstances, eg, persistent harassment or intimidation of an individual or family for racist or sectarian reasons. It does, however, require that a "course of

conduct" be demonstrated. The conduct (which may include speech) has to occur on at least two occasions. This considerably restricts the application of the Order.

6. It applies to two levels of offence. The less serious of these is harassment (up to six months' imprisonment on summary conviction and/or a fine up to level 5). There is also a civil remedy against harassment, including an injunction to restrain the harasser.
7. The more serious offence is that of putting people in fear of violence (on conviction on indictment, up to five years' imprisonment and/or an unspecified fine). A court may also impose restraining orders against the defendant guilty of either the harassment or intimidation offences, and it is a criminal offence to break the restraining order.

Discussion

8. There are obvious shortcomings in using either the 1987 or the 1997 Orders to combat racist and sectarian attacks. The 1987 Order addresses only incitement, rather than actual violence. Its use has been very limited (it is not clear if anyone has ever been convicted under it).
9. The 1997 Order is severely limited by the need to demonstrate a pattern of behaviour on the part of the defendant. Again, it is not intended to deal with actual violence. For that, the normal criminal law must be used.
10. Both Orders therefore fall short of the relevant provisions of the Crime and Disorder Act. These provisions are based on the premise that racist motivation aggravates an act of violence and justifies a heavier sentence than the norm.

(Sgd) *J A CANAVAN*

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