



## **The Racial and Religious Hatred Act 2006**

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The *Racial and Religious Hatred Bill 2005-06* was introduced into the House of Commons in June 2005. The Bill represented the Government's third attempt to outlaw incitement to religious hatred. Provisions had been included in both the *Anti-Terrorism Crime and Security Bill 2001-2002* and the *Serious Organised Crime and Police Bill 2004-05* but the relevant clauses fell as a result of Parliamentary opposition, particularly in the House of Lords.

The Act received Royal Assent on 16 February 2006. However, the legislation was not brought into force until 1 October 2007. A Parliamentary Question answered in October 2009 stated that to date there had been one prosecution brought but not yet concluded for the offence.

This Note sets out the passage of the Bill, the content of the Act as passed, and other related provisions.

The Library Research Paper 05/48 [The Racial and Religious Hatred Bill \[Bill 11 of 2005-06\]](#) provides full details of the content of the Bill as introduced and the issues which arose from it.

Another Standard Note, SN/PCC/3189, [Religious Hatred: Attempts to legislate 1997-2005](#) sets out previous legislation which had been intended to outlaw religious hatred since 1997

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# 1 The Racial and Religious Hatred Act 2006

## 1.1 The Act

The long title of the *Racial and Religious Hatred Act* states that its purpose is, “to make provision about offences involving stirring up hatred against persons on racial or religious grounds”. The Schedule to the Act amends to the *Public Order Act 1986* by creating new offences in England and Wales of stirring up hatred against persons on religious grounds. It also amends section 24A of the *Police and Criminal Evidence Act 1984* so that the powers of citizen’s arrest do not apply to the offences of stirring up religious and racial hatred.

The Schedule defines “religious hatred” as “hatred against a group of persons defined by reference to religious belief or lack of religious belief”.<sup>1</sup> The Explanatory Notes to the Act explain that:

The new offences apply to the use of words or behaviour or display of written material (new section 29B), publishing or distributing written material (new section 29C), the public performance of a play (new section 29D), distributing, showing or playing a recording (new section 29E), broadcasting or including a programme in a programme service (new section 29F) and the possession of written materials or recordings with a view to display, publication, distribution or inclusion in a programme service (new section 29G) . For each offence the words, behaviour, written material, recordings or programmes must be threatening and intended to stir up religious hatred. Religious Hatred is defined as hatred against a group of persons defined by reference to religious belief or lack of religious belief.<sup>2</sup>

The Explanatory Notes further explain that:

... The definition is designed to cover hatred against a group of persons defined by their religious belief or lack of religious belief but does not seek to define what amounts to a religion or religious belief. It will be for the courts to determine whether any particular belief is a religious belief for these purposes.

The reference to “religious belief or lack of religious belief” is a broad one, and is line with the freedom of religion guaranteed by Article 9 of the ECHR. It includes, although this list is not definitive, those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha’ism, Zoroastrianism, and Jainism. Equally, branches or sects within a religion can be considered as religions or religious beliefs in their own right. The offences also cover hatred directed against a group of persons defined by reference to lack of religious belief, such as Atheists and Humanists. The offences are designed to include hatred against a group where the hatred is not based on the religious beliefs of the group or even on a lack of any religious belief, but based on the fact that the group do not share the particular religious beliefs of the perpetrator.<sup>3</sup>

## 1.2 Commencement

The Bill received its Royal Assent on 16 February 2006. A commencement order, which brought almost all the provisions of the Act into force from 1 October 2007, was made on 24 August 2007.<sup>4</sup>

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<sup>1</sup> *Racial and Religious Hatred Act 2006*, Schedule

<sup>2</sup> *Racial and Religious Hatred Act 2006*, Explanatory Notes, para 4

<sup>3</sup> *Racial and Religious Hatred Act 2006*, Explanatory Notes, para 11-12

<sup>4</sup> The *Racial and Religious Hatred Act 2006 (Commencement No 1) Order 2007*, SI 2007/2490, <http://www.opsi.gov.uk/si/si2007/20072490.htm> (last viewed 9 June 2008)

## 2 Review of the Act

On 10 November 2006, Nick Griffin, the leader of the British National Party (BNP) and Mark Collett, the party's head of publicity, were acquitted of inciting racial hatred.<sup>5</sup> The case was heard nine months after the jury in a previous hearing failed to reach a verdict on the same charges.<sup>6</sup> They were charged after an undercover BBC documentary showed speeches they made at party meetings.<sup>7</sup>

At the end of the retrial, it was reported that a number of Cabinet ministers were considering the need to amend either the racial hatred or the religious hatred laws:

Indicating the possible change in the race laws, Lord Falconer said last night: "I think we should look at them in the light of what's happened here, because what is being said to young Muslim people in this country is that we as a country are anti-Islam, and we have got to demonstrate without compromising freedom that we are not."

The Home Office said John Reid, the Home Secretary, would "think carefully" and consult other ministers about the need for changes to existing laws.

Gordon Brown, the Chancellor, said mainstream opinion in this country would be "offended" by some of the statements that had been made during the course of the week-long trial. "Of course, the courts make their judgments on these things," he told BBC News 24. "But if there is something that needs to be done to look at the law then I think we will have to do that. Any preaching of religious or racial hatred will offend ... and I think we have got to do whatever we can to root it out, from whatever quarter it comes. If that means that we have to look at the laws again, I think we will have to do so."<sup>8</sup>

The following day, it was reported that there were disagreements in the Cabinet about the need for changes to the law. The Chancellor was reported as being prepared to change the law, whilst the Home Secretary wanted to see how the new legislation in the *Racial and Religious Hatred Act 2006* worked:

But Home Office sources said Reid was taking a more cautious line, ruling out new legislation until well into next year. They said he wanted to see how a new race and religious hatred law - watered down by amendments in the House of Lords - 'bedded in' when it came into force in February.<sup>9</sup>

On 15 November 2006, the *Times* reported that:

The Attorney-General is to examine the "race hate" laws after the acquittal of Nick Griffin, the British National Party leader, who condemned Islam as a "wicked, vicious faith" (Frances Gibb writes). But Lord Goldsmith, QC, said that while he favoured a re-examination of the laws, ministers were not challenging the verdict or seeking to ensure that Mr Griffin did not get cleared again.<sup>10</sup>

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<sup>5</sup> Ian Herbert and Nigel Morris, "Tougher race laws likely after BNP pair cleared", *Independent*, 11 November 2006

<sup>6</sup> Andrew Norfolk, "BNP man vilifies Islam at race hate retrial", *Times*, 2 November 2006

<sup>7</sup> BBC News, *The Secret Agent*, July 2004, <http://news.bbc.co.uk/1/hi/programmes/newsnight/3896921.stm> (last viewed 9 June 2008)

<sup>8</sup> Ian Herbert and Nigel Morris, "Tougher race laws likely after BNP pair cleared", *Independent*, 11 November 2006

<sup>9</sup> Ned Temko and Jamie Doward, "Race hate laws split the cabinet: Brown and Reid clash over whether to toughen legislation following BNP leader's acquittal", *Observer*, 12 November 2006

<sup>10</sup> Francis Gibbs, "Race hate laws to be reviewed", *Times*, 15 November 2006

Further details of the Attorney-General's review and view of the existing law, including the *Racial and Religious Hatred Act*, were published on 26 November 2006:

A bitter Cabinet row over the new religious hatred laws has been laid bare in private correspondence between the Attorney General, Lord Goldsmith, and the Home Secretary, John Reid, passed to The Independent on Sunday.

The acquittal of Nick Griffin, the BNP leader who called Islam "a wicked, vicious faith", exposed a loophole in British race hate laws earlier this month.

But the Cabinet is divided over whether, with the 2006 Racial and Religious Hatred Act, the Government has done enough to close the gap.

Now a letter from Lord Goldsmith makes clear that the Attorney General agrees with senior ministers such as Gordon Brown who want the Government to admit that the new Act is practically useless.

The Attorney General's letter – dated 15 November – informs Mr Reid that the Crown Prosecution Service believes Mr Griffin would have walked free, even he had been if prosecuted under the new Act. "Our judgment is that the new religious hatred law would not have assisted the prosecution here. This is because the law was so diluted in its passage through Parliament."

He points out that Mr Griffin had not used "threatening" words, as required by the 2006 Act, which insists on "proof of intent to stir up religious hatred" and includes wide "freedom of expression" provisions.

Lord Goldsmith tells Mr Reid bluntly that "the 2006 Act will have a very limited impact on this when it comes into force".<sup>11</sup>

Mike O'Brien, the Solicitor General, was asked about the acquittal of Nick Griffin during Questions on 23 November 2006. He told the House that the Law Officers had discussed the case with the Crown Prosecution Service and were "considering with colleagues whether the case has any wider implications".<sup>12</sup>

Later he commented on the case and whether Nick Griffin and Mark Collett would have been found guilty under the provisions of the *Racial and Religious Hatred Act 2006*:

Griffin and Collett made their statements in early 2004. They were prosecuted for making racist statements, and they were acquitted by a jury. Griffin claimed in his defence that he was not attacking Asians, as had been alleged, but was attacking Muslims, and that was not against the law at the time. Parliament has passed new laws on incitement of religious hatred. Those laws were watered down by the Opposition during their passage through Parliament. It is difficult to know whether a jury might have convicted under the new law. It would have been better if the Government's stronger Bill had been passed. Even if they were acquitted, the statements by Griffin and Collett, and their politics of stirring up hatred, remain despicable.<sup>13</sup>

He confirmed that when it comes into force, the provisions of the *Racial and Religious Hatred Act 2006* would be kept under review:

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<sup>11</sup> Francis Elliott, "Lord Goldsmith backs Brown in feud with Reid", *Independent on Sunday*, 26 November 2006

<sup>12</sup> HC Deb 23 November 2006 c682

<sup>13</sup> HC Deb 23 November 2006 c682

We will give very careful consideration to the legislation and to whether further legislation is needed. ... That will soon change. If the new watered-down legislation is not strong enough, we may need to plug the gap, but we will see how it works.<sup>14</sup>

A Parliamentary Answer given on 13 May 2008 confirmed that up to that date, there had been no prosecutions under the legislation.<sup>15</sup> A further Parliamentary Question answered on 26 October 2009 indicated that, to date one prosecution under Part 3A of the *Public Order Act 1986* as amended by the *Racial and Religious Hatred Act 2006* has been brought but had not concluded: a person has been charged and a trial date has yet to be fixed.<sup>16</sup>

### **3 Progress of the Racial and Religious Hatred Bill 2005-06**

#### **3.1 In brief**

The *Racial and Religious Hatred Bill* (Bill 11 of 2005-06) was introduced into the House of Commons on 9 June 2005.<sup>17</sup>

It received its second reading on 21 June 2005. A reasoned amendment, in the names of the leaders of the Conservative and Liberal Democrat parties,<sup>18</sup> was tabled, that:

.. this House declines to give a Second Reading to the Racial and Religious Hatred Bill because, while the Bill recognises the problems caused by extremists seeking to stir up hatred against others on the grounds of their ethnic identity, by creating a new offence of inciting religious hatred, it will disproportionately curtail freedom of expression, worsen community relations as different religious and belief groups call for the prosecution of their opponents, create uncertainty as to what words or behaviour are lawful and lead to the selective application of the law in a manner likely to bring it into disrepute.<sup>19</sup>

The reasoned amendment was rejected by 246 votes to 303. The House then agreed the second reading by 303 votes to 247.<sup>20</sup>

Standing Committee E considered the Bill. It met on four occasions but did not amend the Bill.

The remaining stages of the Bill were taken on 11 July 2005. During the report stage one new clause was added to the Bill. The Bill received its third reading on the same day.<sup>21</sup>

The Bill (HL Bill 15) was introduced into the House of Lords on 12 July 2005. It received its second reading on 11 October 2005. It was amended in committee on 25 October 2005, and the Bill was reprinted (HL Bill 31). The Bill was not amended on report in the House of Lords on 8 November 2005. The House of Lords passed the Bill on 24 January 2006.

The House of Commons agreed to the Lords amendments on 31 January 2006.

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<sup>14</sup> HC Deb 23 November 2006 c684

<sup>15</sup> HC Deb 13 May 2008 c1429W

<sup>16</sup> HC Deb 26 October 2009 c16W

<sup>17</sup> HC Deb 9 June 2005 c1402

<sup>18</sup> HC Deb 21 June 2005 c668

<sup>19</sup> *Ibid*, June c684

<sup>20</sup> *Ibid*, c759; c763

<sup>21</sup> *Ibid*, cc656-671

### 3.2 Summary of changes to the Bill

The Bill that left the Commons amended the provisions of the *Public Order Act 1986* on racial hatred to include religious hatred, and extended the existing provisions so that as well as intending to incite hatred an offence would have been committed if threatening, insulting or abusive behaviour “was likely to” stir up either racial or religious hatred.

In the House of Lords the Bill was amended in the following ways:

- the racial and religious hatred provisions were separated;
- racial hatred provisions in the *Public Order Act 1986* were left unchanged;
- religious hatred provisions only applied to threatening behaviour (i.e. insulting or abusive behaviour was deleted) – they were contained in a new Schedule which would insert a new Part into the *Public Order Act 1986*;
- a provision protecting freedom of speech was inserted.

The House of Commons considered four Lords amendments on 31 January. The Government tabled motions to accept the Lords amendments that separated the provisions on religious hatred from those on racial hatred.

It disagreed with the Lords amendments that left the provisions on inciting racial hatred in the *Public Order Act 1986* unchanged (Amendment 2) and to insert a new Schedule (Amendment 4). The Government tabled a single amendment in lieu of Amendments 2 and 4 that would have restored the “likely limb” to the racial hatred provisions; altered the new Schedule to create offences if “acts were done with intention or recklessness as to stirring up religious hatred”; and changed the provisions on freedom of speech.

When the Bill returned to the House of Commons, the Government suffered two defeats, on motions that the House disagreed with the Lords in their amendments 2 and 4. As a result the Bill as amended by the House of Lords was presented for Royal Assent.

### 3.3 Changes to the Bill during its initial passage through the House of Commons

One change was made to the Bill in the Commons: during its report stage on 11 July 2005, the Home Office Minister, Paul Goggins, moved a new clause, which would mean that it would not be possible to make a citizen’s arrest in connection with offences relating to incitement to racial or religious hatred. The new clause said:

New Clause 3

#### *Consequential Amendment: Powers of Arrest*

'In section 24A of the Police and Criminal Evidence Act 1984 (c.60) (arrest without warrant by persons other than constables) after subsection (4) add—

"(5) This section does not apply in relation to an offence under Part 3 of the Public Order Act 1986.".<sup>22</sup>

During the course of the debate, Paul Goggins explained why the new clause had been proposed:

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<sup>22</sup> HC Deb 11 July 2005 c597

New clause 3 addresses concerns expressed in Committee, not least by the hon. Member for Beaconsfield (Mr. Grieve), and elsewhere that individuals could try to use the power of citizen's arrest inappropriately and perhaps maliciously in relation to the new offence. The hon. Gentleman spoke eloquently about the fact that the police would be highly unlikely to charge into the middle of a meeting or a speech during which someone was taking action that could be deemed to be inciting hatred on the ground of religious belief. He suggested that if the police might be cautious, we should also be cautious about the powers that we might give ordinary citizens.

The powers to effect a citizen's arrest are set out in the Serious Organised Crime and Police Act 2005, which passed through the House earlier this year before the general election. I have no doubt that the necessary safeguards included in the Act will work well. I draw three safeguards to hon. Members' attention. First, the power of citizen's arrest covers only indictable offences. Secondly, an individual must have reasonable grounds to believe that it is necessary to make an arrest. Thirdly, it should be clear to a person making such an arrest that it is not practical for a constable to make the arrest.<sup>23</sup>

The new clause was agreed to without a division.<sup>24</sup>

### **3.4 Progress in the House of Lords**

#### ***Second reading***

On 11 October 2005, the day of the second reading debate in the House of Lords, a number of groups staged protests outside the Houses of Parliament.<sup>25</sup> The BBC reported that both the African and Caribbean Evangelical Alliance and the National Secular Society took part in the protest:

Opponents say it will damage freedom of speech and worsen community relations.

But Home Secretary Charles Clarke says it will only affect "extreme behaviour" and not prevent poking fun at religion.<sup>26</sup>

During the course of the debate, Lord Falconer, who introduced the Bill, described it as "an important but controversial bill" and identified the gap in the law that the Bill sought to close:

**[Lord Falconer:]** ... The gap in the criminal law that it seeks to address allows people to stir up hatred against others on the grounds of religious belief or lack of religious belief.

**Lord Waddington:** My Lords, strictly speaking, that is quite untrue, is it not, because the Public Order Act prevents the sort of behaviour to which the noble and learned Lord has just referred?

**Lord Falconer of Thoroton:** No, my Lords, it is not. The problem with the Public Order Act is where you are addressing people other than the people whom you are insulting or abusing with a view to stirring up hatred among them against a particular religious group. That is not currently covered by the criminal law, and that is why there is a gap that needs to be covered. Let us be clear, it is a small gap in the criminal law capturing, as I just said in answer to the question of the noble Lord, Lord Waddington, behaviour

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<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*, c601

<sup>25</sup> For example: "Religion: lawyers protest against religious hatred bill", *Guardian*, 11 October 2005

<sup>26</sup> BBC News, *Protest over religious hate Bill*, 11 October 2005, [http://news.bbc.co.uk/1/hi/uk\\_politics/4329716.stm](http://news.bbc.co.uk/1/hi/uk_politics/4329716.stm) (last viewed 9 June 2008)

that is not already covered by the existing common law offences of incitement or by offences in the Public Order Act.<sup>27</sup>

He acknowledged that the Bill would impact on freedom of speech:

The Bill will impact on freedom of speech just as the incitement to racial hatred offence does. That, we believe, is right because there are words and actions that should have no place in civilised society. But, of course, what we must guard against is going too far, and this will be—I am sure—the central focus of the debate this afternoon. We believe that the Bill will not have an undue effect on freedom of speech. In particular it will not stop the telling of jokes about religion or the ridiculing of faith. It will not close down debate about religious beliefs or stop artists from dealing with religious subjects.<sup>28</sup>

A large number of peers outlined their opposition to the Bill, although it did receive some support. Lord Lester indicated that amendments would be tabled:

... if the Bill is given a Second Reading we will move an amendment to cover Muslims, Jews and Sikhs equally. We will also seek to place a strong protective fence around free speech. Words, behaviour, and so on abusive or insulting to a religious belief should not be treated as giving rise to an offence unless they are intended or likely to incite violence against individuals who hold that belief. That will ensure that the stirring up of hatred against religious groups such as Jews or Muslims will be unlawful but that the stirring up of hatred against Islam or Judaism or any other religion would be unlawful only if it were likely to stir up violence.<sup>29</sup>

These amendments were tabled with considerable publicity on 20 October 2005.<sup>30</sup>

During the second reading debate, Lord Bassam confirmed that the Government had produced a Keeling Schedule (a schedule that sets out how the amended law would appear if the Bill were passed).<sup>31</sup>

### **Committee stage**

The House of Lords considered the *Racial and Religious Hatred Bill* in Committee on 25 October 2005.

In the original Bill, the Government had proposed to amend Part 3 of the *Public Order Act 1986* to include provisions on inciting religious hatred, as well as making some changes to the existing provisions on inciting racial hatred. The effect of amendments tabled by Lord Lester of Herne Hill, Lord Hunt of Wirral, Lord Carey of Clifton (formerly the Archbishop of Canterbury) and Lord Plant of Highfield was to leave the provisions on inciting racial hatred unchanged and to add a new part to the *Public Order Act* to address religious hatred (the Schedule – HL Bill 31 of 2005-06). The new Schedule limited the extent of the offence of inciting religious hatred (it refers to “threatening words or behaviour”) compared to the existing offence of inciting racial hatred (it referred to “threatening, abusive or insulting words or behaviour”). The new Schedule also included a specific provision to protect the freedom of speech. Lord Hunt described the changes in the following way:

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<sup>27</sup> HL Deb 11 October 2005 c162

<sup>28</sup> HL Deb 11 October 2005 c163

<sup>29</sup> *Ibid*, c175

<sup>30</sup> Dominic Kennedy, “Hatred Bill panders to minorities for votes, says comic”, *Times*, 21 October 2005; Tania Branigan, “Ex-archbishop backs axing of ‘redundant’ blasphemy laws”, *Guardian*, 21 October 2005

<sup>31</sup> HL Deb 11 October 2005 c280; the Keeling Schedule was deposited in the Libraries of both Houses – *Racial and Religious Hatred Bill 2005: Consolidated versions of Acts amended by the Bill*, Dep 05/1215

We have come to the conclusion that rather than amending Part III of the Public Order Act 1986, which relates to racial hatred, it would be far more sensible to leave it untouched. Instead, we are now seeking to add an entirely new schedule to that Act to deal with religious hatred. That vastly improves the Bill before us in two important ways.

At a stroke, it makes the Bill far more comprehensible and readily understood for the expert and the lay person alike. It also delivers a clear Bill dealing specifically with religious hatred and not interspersed with racial hatred, just as the Labour Party promised in its manifesto earlier this year. So we enable the Government to fulfil that commitment and, indeed, to do so in much more specific terms than originally set out in the Bill. In other words, we believe that we have created a far better opportunity to do what Ministers say that they want to do; protecting the person and not the belief.

We have therefore tabled amendments that would maintain the criminal offence of threatening, but would remove the words "abusive" and "insulting" from the proposed offence and move them into the proposed freedom of expression defence. Let me explain why. Ministers say that they wish to defend people as opposed to their beliefs. Is it possible, however, to defend them from hatred as people while also preserving the right of others to criticise their beliefs? In other words, is it possible to draw a distinction between a group of people who share a religion or an ideology and the natural desire to protect them from hatred and on the other hand the religion or ideology itself? If someone insults my beliefs, I can perfectly well argue that they insult me too. They/we can amount to the same thing, especially in religious matters.

Similarly, if someone is abusive about my beliefs, once again I should be free to argue that they are abusing me too. Therefore, if we wish to apply criminal sanctions to protect people from feeling insulted or abused when someone criticises or attacks their beliefs, it is obvious that the beliefs themselves as well as the individual who feels insulted or abused are being protected. In both cases it can be impossible to separate the person from the belief.<sup>32</sup>

Baroness Scotland of Asthal, the Home Office Minister, began her response to the debate on the amendments by saying: "I do not stand before the Committee saying that there is no possibility of change whatever".<sup>33</sup> She reiterated this offer later in her speech but she did express some concerns about the amendment:

... we were listening while the Bill made its way through the Commons and we continue to listen now, both at Second Reading and here in Committee. There are issues which we find difficult. The first and by no means the least is that of truncating the offence to restrict it simply to "threatening". The reason is that a number of substantive offences can be satisfied already with the mere use of threat. We believe that the words "insulting and abusive" add particular importance to this offence. That is because a person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of the offence if he intends thereby—this is an important qualification—to stir up racial or religious hatred. However, I appreciate that of course it is the religious hatred point on which we rightly concentrate.

I turn now to the issue also rightly highlighted by the noble Lord, Lord Avebury, raised by Section 18(5) of the Public Order Act 1986, which refers to a person who is not shown to have intended to stir up racial or religious hatred. He would not be guilty of an

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<sup>32</sup> HL Deb 25 October 2005 cc1071-1072

<sup>33</sup> HL Deb 25 October 2005 c1097

offence under the section if he did not intend his words, behaviour or written material to be so, or was not aware that it might be threatening, abusive or insulting.

I understand the concern expressed by many noble Lords about the need to show intention. I understand also that the reason noble Lords say that is because they do not want a flippant and inconsequential aside to be used in a pernicious and destructive way to bring about a criminal conviction. That point has been made very clearly. But we have to approach this matter with a degree of calm.<sup>34</sup>

Baroness Scotland commented on other concerns raised about the Bill. On self-censorship she pointed out that similar provisions applied in relation to racial hatred. She said that she understood “people’s concern of ‘likely to’” – provisions in the Government’s Bill created an offence if behaviour was “likely to stir up racial or religious hatred”. She also said that the Government was considering whether it would be possible to have something on the face of the Bill to give voice to the fact that the Human rights Act provision on freedom of speech “actually bites”.<sup>35</sup>

She concluded her speech by indicating that the Government was not implacably opposed to the Bill being amended:

So that is where we are now. I do not say that the Government will not think again, but I say clearly that I do not have amendments or suggestions this afternoon that I can put before your Lordships that you can consider. I may be in a better position to do so by Report.<sup>36</sup>

Before he pressed the amendment, Lord Hunt commented that “The conclusion of the debate is that we disagree about the means but we agree the ends, so we are as one in the intent”.<sup>37</sup> However, he did press the amendment and the Lords agreed amend the Bill by 260 to 111.<sup>38</sup>

The House of Lords did not debate amendments that would have abolished the common law offence of blasphemy and other religious offences.<sup>39</sup>

On 21 October 2005, before the House of Lords committee stage took place, the Home Office provided a memorandum to Parliament on the Bill. The Government had indicated it would produce guidance about the content and purpose of the Bill. The Government considered that this would be best done when “the text of the Bill has been settled”. However, the memorandum provided an “annotated outline of the ground which it envisages covering in the guidance”.<sup>40</sup>

### **Report stage**

Following the committee stage, there were various press reports that indicated that the Government was likely to make compromises on the Bill, to secure its progress.<sup>41</sup>

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<sup>34</sup> *Ibid*, cc1097-1098

<sup>35</sup> *Ibid*, cc 1098-1100

<sup>36</sup> *Ibid*, c1100

<sup>37</sup> *Ibid*, c1100

<sup>38</sup> *Ibid*, c1101

<sup>39</sup> *Ibid*, c1139

<sup>40</sup> Home Office, *Racial and Religious Hatred Bill*, MGP 05/2209

<sup>41</sup> see for example: Andrew Sparrow, “Hint of compromise as peers throw out religious hatred Bill”, *Daily Telegraph*, 26 October 2005

At report stage, on 8 November 2005, Lord Foulkes, speaking about the new schedule that had been inserted in Committee and, particularly, its provisions on free speech, noted that Baroness Scotland had indicated that “she would consider the issue further” and tabled probing amendments in order to “find out the current status of the Government’s consideration of the Bill”.<sup>42</sup> In response, Baroness Scotland told the House of Lords:

In Committee strong concern was expressed about freedom of expression. ... As I indicated then, I wanted to take stock of our position and look for ways in which that deep concern could be addressed without substantially undermining the Government’s stated policy aim of legislating to outlaw incitement to religious hatred, which I continue to believe is fundamentally correct.

We have considered the issues further, and I have had a number of discussions both with those who support the Government’s intentions in this area and those who have deep reservations about how the legislation might operate in practice. Those discussions have been ongoing on all sides of the House. I am sure that noble Lords will appreciate that squaring this particular circle is in no way easy. If it were, I am sure that others far wiser than I would have done it a long time ago.

The time between Committee and today has not been sufficient for the Government to come to a definite resolution of the matters in dispute. There are further discussions to be had, both with the Opposition and with noble Lords on these Benches. Therefore we are unfortunately not in a position to table government amendments for the House to consider on Report. I am, however, continuing to look at how we might make headway and perhaps achieve a level of consensus. I can give your Lordships a personal assurance that we will do all we can to achieve such a consensus, as I am sure your Lordships would wish.<sup>43</sup>

Baroness Scotland outlined the four main areas of the Bill that had changed as a result of the amendments agreed to during the committee stage and re-stated her desire for a negotiated agreement that would allow the Government to table amendments on third reading:

The amendment that was made in Committee restructured the Bill so that the religious offence is entirely separate from the racial offence. There are difficulties with providing consistency between that and the existing racial offence, since it suggests—more than we accept—that religion and race are completely separate issues. I accept, however, that the House has clearly signalled its preference for the new framework. We are prepared to consider whether the new structure should remain.

The amendment also removed the words “abusive” and “insulting” from the offence, leaving only “threatening words or behaviour” capable of prosecution. As I indicated in Committee, we have real difficulties with that change. If we confine the offence relating to religion to cases in which threatening language has been used, we would limit it to a very narrow range of behaviour. In the sort of cases that have been dealt with under the racial offence, it is clear that campaigns used to stir up hatred use a range of words, some of which may be threatening but are not necessarily so. Abusive and insulting words can also be used, and they can have just as devastating an effect on the communities concerned. Therefore, limiting the offence only to threatening words and behaviour would make it far too difficult to get to the sort of material that is used to incite hatred and would severely curtail the ability of the Crown Prosecution Service to bring to justice those responsible. We have to bear in mind that those who seek to take advantage of the provisions will want to craft what they say very keenly to avoid being subject to any restraint provided by us through the law.

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<sup>42</sup> HL Deb 8 November 2005 c510

<sup>43</sup> HL Deb 8 November 2005 cc510-511

The most important amendment to the Bill is, I respectfully suggest, to the freedom of expression protection included at paragraph 29J to the schedule. My noble friend's amendment would remove that provision and replace it with something far more tightly drawn. That issue is at the heart of concerns raised by most of those who spoke in Committee. The wording currently contained in the Bill would cause us 8 Nov 2005: Column 512 some difficulties in terms of providing a workable offence for prosecutors. However, I believe that it should be possible to include something that goes some way towards that type of wording, which would be sufficiently sound and robust in defending the freedom of speech concerns raised both inside and outside Parliament. That is something that we shall continue to consider and discuss with noble Lords, with a view to coming up with a form of words that I hope will be acceptable to all.

Lastly, there is the issue of whether intent should be the only threshold for bringing forward prosecution of these offences. Your Lordships will know that that is something that is also being looked at in the context of the Terrorism Bill currently being considered in the other place. While the wording that was used in what is known as the "likely limb" is obviously considered to be too loose by a number of noble Lords in respect of the Bill's offence, we shall want to see whether there is a form of words that will enable prosecutions to be brought without having the unintended consequences feared by many. We understand that that is a difficult road to walk, but we intend to see how best it can be done. If we are successful in doing that, we would hope to be in a position to table amendments at Third Reading, subject to the House's agreement.<sup>44</sup>

Baroness Scotland received broad support for her plans to consult before the third reading of the Bill took place from, among others, the Conservative and Liberal Democrat front benches, and from the Bishop of Oxford.<sup>45</sup>

Amendments to abolish the offences of blasphemy and blasphemous libel and other religious offences were debated on report stage. One vote took place, on an amendment that would have added a clause abolishing blasphemy and blasphemous libel; any distinct offence of disturbing a religious service or religious devotions; and any religious offence of striking a person in a church or churchyard. The amendment was rejected by 153 votes to 113, and an amendment to repeal the *Ecclesiastical Courts Jurisdiction Act 1860* was withdrawn.<sup>46</sup> A further amendment to change the meaning of religious hatred to include references to the desecration of religious objects was also withdrawn.<sup>47</sup>

### **Third reading**

The Bill's third reading, in the House of Lords, was expected on 19 December 2005. However, on 14 December 2005, the Notices and Orders of the Day of the House of Lords listed the bill as "waiting for third reading". Before the Christmas Recess the third reading debate was rescheduled and it took place on 24 January 2006.

Before the third reading took place in the House of Lords, there were attempts to reach a compromise between the Government and supporters of the amendment. On third reading, Baroness Scotland indicated that a compromise had almost been reached but further amendments would be required. These would be tabled in the House of Commons when it considered Lords amendments.

Baroness Scotland of Asthal reported that the outcome of her consultations with the authors of the amendments, which were passed in the Committee stage, was that the Bill would

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<sup>44</sup> HL Deb 8 November 2005 cc511-512

<sup>45</sup> *Ibid*, c513; c516; c514

<sup>46</sup> *Ibid*, cc520-547

<sup>47</sup> *Ibid*, cc547-557

require further amendment but, for procedural reasons, Government amendments to the Bill had not been tabled.<sup>48</sup> The amendments needed to implement the compromise would be tabled by Home Secretary when the Commons considered the Lords amendments.<sup>49</sup>

Baroness Scotland summarised the Government's position during and the conclusions of the discussions:

At Report stage, on 8 November, I said that we would continue to try to build a consensus on the Bill that balanced the concerns which many noble Lords had clearly expressed about the freedom of expression with a need to produce a viable and effective offence of incitement to religious hatred. It seemed to me then, as I said earlier, and it seems to me now that, in this House, such a consensus does exist: first, that we need to protect people, as I have just indicated; but, secondly, that we also need to protect our freedom of expression and freedom of speech. I believe that there is still a possibility that that consensus will be arrived at. However, it has not been possible to bring forward agreed amendments to this House. I confess that that is a source of great regret and acute disappointment to me.

[...]

We are prepared to accept that the incitement to religious hatred offence should be separate from the existing racial offence, and that it should form a new schedule to the Public Order Act 1986. That is, we accept, the new architecture. We propose to insert a subjective recklessness test into the offence, clarifying the intent provisions. We will put forward a revised version of the freedom of expression wording for the sake of complete clarity on this issue. It will specifically state that proselytising, discussion, debate and criticism—including the use of abusive and insulting language and ridicule—of religion and religious practices will not be caught by the offence unless a person also intends to stir up hatred against a group of people, or is reckless as to whether it would thereby be stirred up. We have always contended that that is the Government's intention. Finally, we will be seeking to restore "abusive and insulting" to the words and behaviour that make out the offence. I hope that, given the full package of measures that we are proposing, this will not be something that will cause noble Lords to disagree.<sup>50</sup>

Lord Hunt of Wirral, the Conservative spokesman, also paid tribute to those who had been involved in the negotiations. He then provided a review of the negotiations:

... Just as Ministers conceded ground and accepted both our amended structure and substantive aspects of the revised Bill, so we on these Benches have moved too. We did so at the outset, by conceding the principle that any such Bill should be passed at all. Although we on these Benches certainly agree that there should be no right to stir up hatred of people, on the whole we continue to believe that the existing law covers this perfectly adequately. [...]

Throughout there was a lot of good will on all sides. Shortly before Christmas, it seemed that that good will might manifest itself in a more concrete form in the shape of an agreement on the Bill. Alas that did not prove possible. The concessions offered by Ministers were by no means perfect, but they were a major improvement on the original Bill.<sup>51</sup>

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<sup>48</sup> HL Deb 24 January 2006 c1077, although one amendment, tabled by Lord Hylton, was briefly discussed before being withdrawn

<sup>49</sup> HL Deb 24 January 2006 c1075

<sup>50</sup> HL Deb 24 January 2006 cc1071-1072

<sup>51</sup> *Ibid*, c1073

He then outlined why he could not accept, in its entirety, the compromise offered:

In order to allow ideas and free debate to flourish, it is essential that we should retain our right to criticise—even as hateful—beliefs and practices of every kind, be they secular or religious. That means retaining the right to cause a sense of insult, and also to say things that might seem abusive. I am afraid that that is why those two words, "abusive" and, especially, "insulting", even when clearly confined to the offence of stirring up hatred against people, continue to cause these Benches such difficulties. They involve the creation of a new criminal offence that could result in people being imprisoned through causing insult alone in this controversial area of religion and politics. That is the rock on which agreement foundered.<sup>52</sup>

Lord Lester of Herne Hill, for the Liberal Democrats, welcomed "the fair compromise reached with the Home Secretary on further amendments to the Bill", but regretted that amendments could not be made in the House of Lords. He concluded his remarks with this hope that the blasphemy laws would soon be abolished.<sup>53</sup>

The Bishop of Manchester welcomed the Government's decision to create a separate part of the *Public Order Act 1986* covering religious hatred; appreciated the general thrust of the provision on freedom of; and welcomed the removal of the "likely limb of the offence" (that is, the someone has to be intent on stirring up religious hatred rather than either intending or behaving in a way that was likely to stir up religious hatred).<sup>54</sup>

The amended Bill received its third reading in the House of Lords on 24 January 2006.

### ***Commons consideration of Lords amendments***

Paul Goggins, in introducing the Government's position on the Lords amendments, provided the following summary of the changes that the Lords had made:

The Lords amendments make four significant alterations. They separate the religious hatred offences from the racial hatred offences. They remove what was known as the "likely limb", so that only intentional behaviour will be caught. They insert a wide-ranging freedom of expression provision and remove the words "abusive and insulting" from the offence, so that only threatening speech and behaviour will be caught. Those changes considerably reduce the scope of the Bill, to the extent that, in our view, it would be virtually impossible to bring a successful prosecution.<sup>55</sup>

He outlined the Government's response to those amendments:

- "First, I make it clear to the House that we now accept that the religious hatred offences should be separate from the existing racial offences in line with the framework agreed in the other place".<sup>56</sup>
- "The second effect of the amendments agreed by their Lordships is the removal of what was known as the "likely limb", leaving only intent as the threshold for prosecutions under the offence. It remains our clear view that intent by itself is not enough, but rather than seeking to reinstate the likely limb, we have decided to introduce an additional test of subjective recklessness, so for a prosecution to succeed, it would be necessary to prove either that someone intended to stir up hatred, or that they were aware that their actions

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<sup>52</sup> *Ibid*, c1074

<sup>53</sup> *Ibid*, cc1074-75

<sup>54</sup> *Ibid*, c1076

<sup>55</sup> HC Deb 31 January 2006 cc189-190

<sup>56</sup> *Ibid* c192

or words would stir up religious hatred, yet they continued. No one could be caught out inadvertently, as some have feared".<sup>57</sup>

- "I shall turn to the issue of "threatening, abusive and insulting". The Government have made it clear throughout that to have only "threatening" as the threshold for the offence would not capture the type of behaviour that we are seeking to outlaw. We have of course taken a serious look at our position on this issue, particularly in the light of the deep concerns expressed in the other place. However, our clear conclusion is that nothing less than the reinstatement of "abusive and insulting" will make the offence viable".<sup>58</sup>
- "We are also seeking to amend the likely limb of the racial hatred offence along the lines originally proposed in the Bill".<sup>59</sup>

Lords Amendments 1 and 3 provided for the religious hatred offences to be separated from the racial hatred offences and the Government asked the House of Commons to agree with these amendments. It asked the House to disagree with Lords Amendment 2 which would have left the provisions on racial hatred in the *Public Order Act 1986* unchanged. It also wanted the House to disagree with Lords Amendment 4, which deleted the Schedule (that amended the racial hatred provisions) and inserted a new Schedule (that contained provisions on religious hatred only). The Government proposed an amendment in lieu of Lords Amendments 2 and 4 that would have fulfilled the objectives spelt out by Paul Goggins and described above.

During the course of the debate, Dominic Grieve, the Shadow Attorney General, acknowledged that the Government had made efforts to reach a compromise but that it had not been possible. He argued that the House should allow the Bill to pass but in the way that the Lords had amended it:

It is for the House to send out a simple message. The Government can have their legislation. They can put it on the statute book in the form that the Lords have wisely altered and it can then go forward, but we should get away from the dead end on which we shall embark if we are not careful.<sup>60</sup>

In the event, the question that the House disagree with Lords Amendment 2 was negatived by 288 to 278 votes, and the question that House disagree with the Lords Amendment was negatived by 283 to 282 votes.<sup>61</sup>

A separate Standard Note, SN/SG/3904, [Commons Divisions on the Racial and Religious Hatred Bill](#) contains information about Members' voting records on these divisions.

Charles Clarke, the then Home Secretary, made the following comments after the two Government defeats:

On a point of order, Mr. Deputy Speaker. In the light of the House's decisions this evening, I think it appropriate to inform the House—if that is acceptable to you—of how we see the position at the moment. *[Interruption.]* The Bill will now proceed to Royal Assent as it stands. That means that the debate between the House of Commons and the House of Lords will be about threatening behaviour, but will not include insulting

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<sup>57</sup> *Ibid*, c195

<sup>58</sup> *Ibid*, c201

<sup>59</sup> *Ibid*, c205

<sup>60</sup> HC Deb 31 January 2006 cc215-216

<sup>61</sup> *Ibid*, cc235-244

and abusive behaviour; it will concern intent only, not recklessness; and it will deal with a wide-ranging freedom of expression clause.

Despite this evening's defeat for the Government, I am delighted that we are introducing legislation to deal with the issues that we must address. There have been substantial arguments in both the House of Commons and the other place—*[Interruption.]*

[...]

**Mr. Clarke:** Is it in order, Mr. Deputy Speaker, to say clearly that the Government accept the House's decision this evening, that we are delighted that the Bill is proceeding to its Royal Assent, and that we are delighted to have a Bill that deals with incitement to religious hatred? We regret that the agreements and discussions in the other place did not happen, but I hope, Mr. Deputy Speaker, that you will accept our determination to carry the Bill through.<sup>62</sup>

## 4 Related provisions

### 4.1 Racial discrimination – defining racial groups

The *Race Relations Act 1976* makes it unlawful to discriminate directly or indirectly on racial grounds in employment, housing, education, the provision of goods and services etc. Section 3 defines “racial grounds” as “colour, race, nationality or ethnic or national origins”. The Act does not make discrimination on religious grounds unlawful. However, case law has determined that the Act protects Sikhs and Jews, because they belong to groups defined by ethnic origin as well as a common religion.

Thus, in the case of *Mandla v Dowell Lee* in 1983<sup>63</sup> (the ‘Sikh turban case’) it was held that the term “ethnic” is to be construed widely in a broad cultural and historic sense and hence that Sikhs belong to a group defined by ethnic origins as well as a common religion. Lord Fraser defined certain essential characteristics that determine whether a group is *ethnic*:

The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which keeps it alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are ... relevant: (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people ... and their conquerors might both be ethnic groups.<sup>64</sup>

Jews also meet these criteria.<sup>65</sup> It has been held too that gypsies<sup>66</sup> constitute a racial group because the word *ethnic*, as Lord Fraser had determined, is not to be construed in a strictly biological or racial sense. However, it has been ruled that it was not appropriate to grant

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<sup>62</sup> HC Deb 31 January 2006 c244

<sup>63</sup> *Mandla v Dowell Lee* [1983] 2 AC 548

<sup>64</sup> [1983] 1 All ER at 1066

<sup>65</sup> Richard Jones and Welhengama Gnanapala, *Ethnic minorities in English Law*, 2000, pp42-43 cited the following cases: *Mandla v Dowell Lee* [1982] 3 All ER 1108, CA; *Re Samuel, Jacobs, Ramsden* [1941] 3 All ER 196; *Morgan v British Civil Service Commission and British Library* (Case No. 19177/98, EOR Discrimination Case Law Digest, No 6, Winter 1990, p3)

<sup>66</sup> *Commission for Racial Equality v Dutton* [1989] 1 All ER 306, [1989] 2 WLR 17, CA

leave to apply for judicial review and apply for a declaration that Muslims were a group covered by sections 17 and 19 of the *Public Order Act 1986*: such a declaration would not be binding on the Criminal Court.<sup>67</sup>

#### **4.2 Incitement to racial hatred**

Section 17 of the *Public Order Act 1986* defines *racial hatred* as

hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origin.

The definition would include those groups which are defined by their ethnic origins as well as their religious beliefs, such as Sikhs and Jews.

Part III of the 1986 Act goes on to set out a series of offences of racial hatred, which are committed if the behaviour was intended to or likely to stir up racial hatred:

- to use threatening, abusive or insulting words or behaviour or display threatening, abusive or insulting material (section 18)
- to publish or distribute threatening, abusive or insulting written material (section 19)
- to present or direct a play in public which involves the use of threatening, abusive or insulting words or behaviour (section 20)
- to distribute, show or play a recording of images or sounds which are threatening, abusive or insulting (section 21)
- to produce, direct or broadcast a programme involving threatening, abusive or insulting images or sounds, or to use the offending words or behaviour in a programme (section 22)
- to possess threatening, abusive or insulting written material, or a recording of images or sounds which are threatening, abusive or insulting, with a view to displaying, publishing, distributing, showing, playing or broadcasting it (section 23),

#### **4.3 Religious discrimination**

Measures to prohibit religious discrimination operate on an international and a domestic level. Article 14 of the *European Convention on Human Rights* forbids discrimination on any ground – including religion – which prevents the enjoyment of those rights and freedoms set out in the Convention. Rights protected include the freedom of expression, freedom of thought, conscience and religion, freedom of assembly and association. Article 9 of the Convention specifically defines the right of everyone to “manifest his religion or belief, in worship, teaching, practice and observance”. There has, therefore, been some protection within United Kingdom domestic law against discrimination on religious grounds since the *Human Rights Act 1998* came into force on 2 October 2000.

#### **4.4 Racially and religiously aggravated offences**

The *Crime and Disorder Act 1998* defined racially aggravated offences in the following way:

- (1) An offence is racially aggravated for the purposes of sections 29 to 32 below if-

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<sup>67</sup> *R v director of Public Prosecutions, ex parte London Borough Council of Merton* [1999] No CO/3019/98

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.<sup>68</sup>

The Act provides for persons guilty of racially aggravated offences to be subject to more severe penalties than those convicted of corresponding offences that were not racially-aggravated. Sections 29-32 detail the penalties for racially-aggravated assaults, criminal damage, public order offences and harassment etc.<sup>69</sup>

Section 39 of the *Anti-Terrorism, Crime and Security Act 2001* amended the *Crime and Disorder Act 1998* to replace “racially-aggravated” with “racially or religiously aggravated”, and made consequent amendments.

#### 4.5 Religious discrimination in employment

Prior to the *Employment Equality (Religion or Belief) Regulations 2003*,<sup>70</sup> which came into force on 2 December 2003, there was no law against religious discrimination in employment in Great Britain, although the race discrimination legislation had been used to protect certain religious groups that also constitute a distinct ethnic group. The 2003 regulations implemented aspects of the EC Equal Treatment Framework Directive 2000/78/EC (also known as the Employment Directive) which outlaw discrimination on grounds of religion or belief.<sup>71</sup>

Previous attempts to introduce such measures include:

- the *Religious Discrimination Bill 1997-98*, which was introduced by John Austin, and would have made religious discrimination in employment unlawful. It would also have outlawed other forms of religious discrimination and created a new offence relating to incitement to religious hatred;<sup>72</sup> and
- the *Race Relations (Religious Discrimination) Bill [HL] 1999-2000*, which was presented by Lord Ahmed on 21 March 2000. It would have extended the protection of the *Race Relations Act 1976* to religion. The Bill was given a second reading in the House of Lords on 7 June 2000.<sup>73</sup>

#### 4.6 Incitement

The common law offence of incitement is described in textbooks on criminal law, for example:

The common law offence of incitement (or solicitation) is committed when one person “counsels, procures or commands” another to commit a crime, whether as perpetrator or as accessory, and whether or not the person incited does what he is urged to do. (If

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<sup>68</sup> *Crime and Disorder Act 1998* c37, s28(1)

<sup>69</sup> Some background to these provisions is given in House of Commons Library Research Paper RP98/44, *The Crime and Disorder Bill [HL], Bill 167 of 1997-98: Anti-social neighbours, sex offenders, racially motivated offences and sentencing drug-dependent offenders*, Section IV, <http://hcl1.hclibrary.parliament.uk/rp98/rp98-044.pdf>

<sup>70</sup> SI 2003/1660

<sup>71</sup> House of Commons Library Standard Note SN/BT/456, *Religion and Discrimination in Employment*, provides fuller details

<sup>72</sup> HC Deb 3 Mar 1998 cc859-861

<sup>73</sup> HL Deb 7 June 2000 cc1189-1208

he does it, the inciter will of course be an accomplice and will normally be charged as such; but on a charge of incitement it is no defence to show that the crime was actually committed.) Any persuasion or encouragement (including a threat) is sufficient.<sup>74</sup>

If someone is being incited to do something for which there is no criminal offence, there can be no common law offence of incitement. However, as with the proposed law on stirring up religious hatred it would be possible to legislate against the specific form of incitement without making what the person incited does an offence.

#### 4.7 Blasphemy

Blasphemy was a common law offence which was abolished in the *Criminal Justice and Immigration Act 2008*. Blasphemy was defined by Halsbury's Laws Direct in the following terms:

Blasphemy is an indictable offence at common law consisting in a publication of contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ, the Bible or the formularies of the Church of England. The publisher must intend to publish, but he need not intend that the words amount to blasphemy. It is immaterial whether the words are spoken or written; but, if written, they constitute blasphemous libel. The offence is punishable by fine and imprisonment at the discretion of the court.<sup>75</sup>

Lord Avebury's *Religious Offences Bill 2001-2002* had included provision to abolish the blasphemy offences. A Select Committee on Religious Offences was established in the House of Lords to consider his proposals. The Church of England's submission to the Select Committee they stated that if a new offence of incitement to religious hatred was introduced they would support the repeal of the Blasphemy offences:

The Church of England favours the introduction of a new offence of Incitement to Religious Hatred. If such an offence were enacted and proved effective, that would provide the context in which the current offence of blasphemy could be repealed.<sup>76</sup>

During the Report stage of the *Criminal Justice and Immigration Bill 2007-08* the Liberal Democrat Dr Evan Harris tabled an amendment to abolish the offences of blasphemy and blasphemous libel.<sup>77</sup> The Government indicated that they would consult the Church of England, and subject to the outcome of that consultation, produce their own amendment to the Bill during its passage through the Lords.<sup>78</sup> Dr Harris therefore did not press his amendment to division.<sup>79</sup>

When the Archbishop's responded to the Government's consultation they stated that:

...the eventual introduction of the offence of incitement to religious hatred in 2006 proved extremely contentious. It is still too early to be sure how the new law will operate in practice and we shall all be helped to clarify our minds as what the courts will do in this regard.<sup>80</sup>

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<sup>74</sup> Glanville Williams, *Textbook of Criminal Law*, second edition, 1983, p439

<sup>75</sup> Halsbury's Laws Direct, para 826

<sup>76</sup> Select Committee on Religious Offences, *Religious Offences in England and Wales*, HL 96-II 2002-03, 10 June 2003, Memorandum from the Archbishops' Council of the Church of England, para 1

<sup>77</sup> HC Deb 9 January 2008 c437

<sup>78</sup> Ibid cc453-454

<sup>79</sup> Ibid

<sup>80</sup> Letter sent by the Archbishops to the Right Honourable Hazel Blears MP, Secretary of State for Communities and Local Government, <http://www.cofe.anglican.org/news/pr2008.html>

Despite this, and several other “serious reservations” about legislating at this time, the Church stated that:

Nevertheless, having signalled for more than 20 years that the blasphemy laws could, in the right context, be abolished, the Church is not going to oppose abolition now, provided we can be assured that provisions are in place to afford the necessary protection to individuals and to society.<sup>81</sup>

The Government introduced an amendment to abolish the offences of blasphemy and blasphemous libel during the Committee stage in the House of Lords on 5 March 2008. This was passed by 148 to 87. The House of Commons considered the Lords amendment on 6 May 2008 and agreed to it on a division by 378 votes to 57. The Bill received Royal Assent on 8 May 2008.

For more information about the abolition of the blasphemy offences see the Library Standard Note, SN/PC/ 4596, [The Abolition of the Blasphemy Offences](#).

## 5 Scotland and Northern Ireland

The *Racial and Religious Hatred Act 2006* extends only to England and Wales.

### 5.1 Scotland

The Scottish Parliament convened a cross-party working group on religious hatred in response to concerns about sectarianism in Scotland and also in response to the Home Secretary’s plans to include provisions to outlaw incitement to religious hatred in the *Anti-Terrorism, Crime and Security Bill 2001-02*. The working group was given the remit to:

Consider the need for legislation to combat religious hatred (in particular the creation of a new category of statutory aggravations and the creation of a new offence of incitement to religious hatred) and if appropriate develop effective and workable proposals for legislation to increase the protection to religious groups in Scotland.

Consider whether non-legislative action could be taken as an alternative.<sup>82</sup>

In its conclusions, the Working Group reviewed the arguments in favour of further legislation in Scotland, and although it fought shy of recommending new legislation it made the following concluding comment:

Common law in Scotland already covers assaults and abusive, insulting or threatening behaviour. It also allows for religious hatred as an aggravating factor to such offences when considering sentence. Where cases are prosecuted on indictment, the maximum penalty for common law offences is life imprisonment. On the face of it, the existence of these provisions would seem to argue against the need for new legislation provided they are used regularly. There is, however, inadequate evidence to enable us to make a judgement as to whether the common law is effective and some of the Group were strongly in favour of new legislation. On balance, with some members reserving their position, it was agreed that the current legal framework needs adjustment in order to ensure that any element of religious or sectarian hatred in any particular crime is always recorded, so that offences are prosecuted in a consistent manner. The Group were unanimously agreed that whilst there is anecdotal evidence about the use of the existing law it is essential that detailed statistics of cases involving religious or

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<sup>81</sup> Ibid

<sup>82</sup> Scottish Parliament Cross-Party Working Group on Religious Hatred, Tackling Religious Hatred, undated, para 1.14, <http://www.scotland.gov.uk/library5/society/trhr.pdf>

sectarian hatred are properly kept and made available. We do not think that legislation can be effective without the cultural and attitude change that is required to eradicate religious hatred and prejudice from our society but we can see strong arguments in favour of legislation when a suitable opportunity becomes available, as part of a package of other measures.<sup>83</sup>

The *Criminal Justice (Scotland) Act 2003* includes a section entitled 'Offences aggravated by religious prejudice'. The section contains specific statutory provision for an offence to be aggravated by reason of religious prejudice.<sup>84</sup>

## 5.2 Northern Ireland

The *Public Order (Northern Ireland) Order 1987* allowed the changes made in public order legislation in Great Britain, as a result of the *Public Order Act 1986*, to be implemented in Northern Ireland. In introducing the debate on the Order, the then Secretary of State for Northern Ireland, Tom King, argued that:

The Government believe it right that the principles underlying public order legislation should be uniform throughout the United Kingdom, although local circumstances in Northern Ireland may require detailed provisions that are different. The draft order is designed to reflect this balance...<sup>85</sup>

The Secretary of State commented specifically on two such differences – that of fear and religious belief:

The order encompasses an additional element about fear and religious belief, both of which reflect the unfortunate circumstances of Northern Ireland. Some hon. Members may think this is a radical departure but those things have been in Northern Ireland legislation since 1970.<sup>86</sup>

The Northern Ireland legislation was able to extend the provisions of the *Public Order Act 1986* to include incitement to religious hatred by using the terms "fear" and "hatred", rather than "racial hatred", and then by providing the following definition:

### **STIRRING UP HATRED OR AROUSING FEAR** **Acts intended or likely to stir up hatred or arouse fear**

#### **Meaning of "fear" and "hatred"**

8. In this Part—

"fear" means fear of a group of persons [. . .] defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins;

"hatred" means hatred against a group of persons [. . .] defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins.<sup>87</sup>

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<sup>83</sup> *Ibid* para 5.04

<sup>84</sup> See Scottish Parliament Information Centre, Justice Issues – Subject Profile, SPICe Briefing 03/46, pp25-27, <http://www.scottish.parliament.uk/business/research/briefings-03/sb03-46.pdf>

<sup>85</sup> HC Deb 10 March 1987 Vol 112 c219

<sup>86</sup> *Ibid* c220

<sup>87</sup> The *Public Order (Northern Ireland) Order 1987*, SI 1987/463 (NI 7), as amended

Between 1993 and 2003, there were no prosecutions for incitement to religious hatred in Northern Ireland. There was one prosecution and subsequent conviction for distributing written material that would incite religious hatred.<sup>88</sup>

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<sup>88</sup> HL Deb 3 March 2005 c34WA