

39 Religiously aggravated offences

(1) Part 2 of the Crime and Disorder Act 1998 (c. 37) is amended as set out in subsections (2) to (6).

(2) In the cross-heading preceding section 28 for "Racially-aggravated" substitute "Racially or religiously aggravated".

(3) In section 28 (meaning of racially aggravated)-

(a) in the sidenote and subsection (1) for "racially aggravated" substitute "racially or religiously aggravated";

(b) in subsections (1) and (2) for "racial group" substitute "racial or religious group";

(c) in subsection (3) for the words from "on" to the end of the subsection substitute "on any other factor not mentioned in that paragraph."

(4) In section 28 after subsection (4) insert-

"(5) In this section "religious group" means a group of persons defined by reference to religious belief or lack of religious belief."

(5) In each of the provisions listed in subsection (6)-

(a) in the sidenote for "Racially-aggravated" substitute "Racially or religiously aggravated";

(b) in subsection (1) for "racially aggravated" substitute "racially or religiously aggravated".

(6) The provisions are-

(a) section 29 (assaults);

(b) section 30 (criminal damage);

(c) section 31 (public order offences);

(d) section 32 (harassment etc.).

(7) In section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (increase in sentences for racial aggravation)-

(a) in the sidenote for "racial aggravation" substitute "racial or religious aggravation";

(b) in subsection (1) for the words from "racially-aggravated assaults" to the end of the subsection substitute "racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc.";

(c) in subsections (2) and (3) for "racially aggravated" substitute "racially or religiously aggravated".

(8) In section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (arrestable offences) in paragraph (p) (offences falling within section 32(1)(a) of the Crime and Disorder Act 1998) for "racially-aggravated" substitute "racially or religiously aggravated".

Racially-aggravated offences: England and Wales

Meaning of "racially aggravated".

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

(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.

(2) In subsection (1)(a) above-

"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender.

(3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on-

(a) the fact or presumption that any person or group of persons belongs to any religious group; or

(b) any other factor not mentioned in that paragraph.

(4) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

Racially-aggravated assaults.

29. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm);

(b) an offence under section 47 of that Act (actual bodily harm); or

(c) common assault,

which is racially aggravated for the purposes of this section.

(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two

years or to a fine, or to both.

Racially-
aggravated
criminal damage.

30. - (1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the Criminal Damage Act 1971 (destroying or damaging property belonging to another) which is racially aggravated for the purposes of this section.

(2) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.

(3) For the purposes of this section, section 28(1)(a) above shall have effect as if the person to whom the property belongs or is treated as belonging for the purposes of that Act were the victim of the offence.

Racially-
aggravated public
order offences.

31. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 4 of the Public Order Act 1986 (fear or provocation of violence);

(b) an offence under section 4A of that Act (intentional harassment, alarm or distress); or

(c) an offence under section 5 of that Act (harassment, alarm or distress),

which is racially aggravated for the purposes of this section.

(2) A constable may arrest without warrant anyone whom he reasonably suspects to be committing an offence falling within subsection (1)(a) or (b) above.

(3) A constable may arrest a person without warrant if-

(a) he engages in conduct which a constable reasonably suspects to constitute an offence falling within subsection (1)(c) above;

(b) he is warned by that constable to stop; and

(c) he engages in further such conduct immediately or shortly after the warning.

The conduct mentioned in paragraph (a) above and the further conduct need not be of the same nature.

(4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) or (b) above, the jury find him not guilty of the offence charged, they

may find him guilty of the basic offence mentioned in that provision.

(7) For the purposes of subsection (1)(c) above, section 28(1)(a) above shall have effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

Racially-
aggravated
harassment etc.

32. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 2 of the Protection from Harassment Act 1997 (offence of harassment); or

(b) an offence under section 4 of that Act (putting people in fear of violence),

which is racially aggravated for the purposes of this section.

(2) In section 24(2) of the 1984 Act (arrestable offences), after paragraph (o) there shall be inserted-

"(p) an offence falling within section 32(1)(a) of the Crime and Disorder Act 1998 (racially-aggravated harassment);".

(3) A person guilty of an offence falling within subsection (1)(a) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) A person guilty of an offence falling within subsection (1)(b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.

(7) Section 5 of the Protection from Harassment Act 1997 (restraining orders) shall have effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 2 or 4 included a reference to an offence under this section.

Racially-aggravated offences: Scotland

Racially-
aggravated
offences.

33. After section 50 of the Criminal Law (Consolidation) (Scotland) Act 1995 there shall be inserted the following section-

Racially-aggravated harassment.

"Racially-aggravated harassment

50A. - (1) A person is guilty of an offence under this section if he-

(a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and-

(i) is intended to amount to harassment of that person; or

(ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or

(b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

(2) For the purposes of this section a course of conduct or an action is racially aggravated if-

(a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group; or

(b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.

(3) In subsection (2)(a) above-

"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender's malice and ill-will is also based, to any extent, on-

(a) the fact or presumption that any person or group of persons belongs to any religious group; or

(b) any other factor not mentioned in that paragraph.

(5) A person who is guilty of an offence under this section shall-

(a) on summary conviction, be liable to a fine not exceeding the statutory maximum, or imprisonment for a period not exceeding six months, or both such fine and such imprisonment; and

(b) on conviction on indictment, be liable to a fine or to imprisonment for a period not exceeding seven years, or both such fine and such imprisonment.

(6) In this section-

"conduct" includes speech;

{d3} "harassment" of a person includes causing the person alarm or distress;

"racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, and a course of conduct must involve conduct on at least two occasions."

NB NOT FROM PARLIAMENTARY SITE AS NOT IN OFFICIAL ELECTRONIC ARCHIVE:

[http://www.webtribe.net/~shg/Public%20Order%20Act%201986%20\(1986%20c%2064\)%20Sect%204A,%205,%206.htm](http://www.webtribe.net/~shg/Public%20Order%20Act%201986%20(1986%20c%2064)%20Sect%204A,%205,%206.htm)

Public Order Act 1986

1986 CHAPTER 64

An Act to abolish the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; to create new offences relating to public order; to control public processions and assemblies; to control the stirring up of racial hatred; to provide for the exclusion of certain offenders from sporting events; to create a new offence relating to the contamination of or interference with goods; to confer power to direct certain trespassers to leave land; to amend section 7 of the Conspiracy and Protection of Property Act 1875, section 1 of the Prevention of Crime Act 1953, Part V of the Criminal Justice (Scotland) Act 1980 and the Sporting Events (Control of Alcohol etc) Act 1985; to repeal certain obsolete or unnecessary enactments; and for connected purposes

[7th November 1986

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BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[4A Intentional harassment, alarm or distress]

[(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

thereby causing that or another person harassment, alarm or distress.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that

or another dwelling.

(3) It is a defence for the accused to prove—

(a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(b) that his conduct was reasonable.

(4) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.]

NOTES

Amendment

Inserted by the Criminal Justice and Public Order Act 1994, s 154.

5 Harassment, alarm or distress

(1) A person is guilty of an offence if he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or

(b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(c) that his conduct was reasonable.

(4) A constable may arrest a person without warrant if—

- (a) he engages in offensive conduct which [a] constable warns him to stop, and
- (b) he engages in further offensive conduct immediately or shortly after the warning.

(5) In subsection (4) “offensive conduct” means conduct the constable reasonably suspects to constitute an offence under this section, and the conduct mentioned in paragraph (a) and the further conduct need not be of the same nature.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 41(1).

Appointment

Appointment: 1 April 1987: see SI 1987/198, art 2, Schedule.

Amendment

Sub-s (4): word in square brackets in para (a) substituted by the Public Order (Amendment) Act 1996, s 1.