



Incitement to religious hatred – Note by Faith Communities Unit

Following detailed consideration of the House of Lords Select Committee and in response to the joint statement signed in April 2004, the Home Secretary committed in his speech to the Institute of Public Policy Research on 7th July to introducing a new offence to protect people against extremists who stir up hatred. After a further targeted consultation, he took this forward as part of the Serious Organised Crime and Police Bill which was introduced to Parliament on 24th November.

There was significant debate on the provisions during the bill's second reading on 7 December (Tuesday), fuelled by misinformation about the intention of the provision. In response to these concerns the Home Secretary has issued a written statement to clarify the purpose and scope of these measures. That statement and material from our website are attached below.

Fiona Mactaggart has also written and spoken to many key stakeholders: clarifying the provisions as follows:

Stirring up hatred against people because of their religious beliefs or lack of them is a serious social evil. It can lead to criminal acts, abuse, discrimination and fear. We do not always have the powers we need to tackle it. Much of the harmful propaganda issued by extremist groups falls short of directly inciting people to violence or other crimes and so is not caught by the law on incitement. The kind of cases described in the Home Secretary's statement would not be covered by existing law. Nor would, for example, inflammatory statements at an extremist rally stirring up hatred against another group who are not present. Stirring up hatred in these circumstances is precisely the sort of activity we want to cover.

The new offence will:

- Ensure equality of protection allowing people of all religious faiths (and none) the freedom to practice their beliefs without fear of being the target of incited hatred, a protection that Jews and Sikhs already have.
- Meet the requests of key leaders in the major faith communities.
- Prohibit stirring up hatred against people defined by reference to their religious beliefs (not the religion itself), and not simply causing offence or hostility.

The new offence will not:

- Interfere with legitimate debate, religious activities or freedom of expression. The Jewish community are already protected by the existing offence of incitement to racial hatred even where the hatred is targeted at them because of their religion. There is no evidence that this has inhibited free speech in any way.
- Prevent the telling of religious jokes.
- Protect religions or ideologies, but will protect groups of people.
- Be misused because of the safeguards built into the provision. These include the high threshold for the offence, and the requirement that Attorney General must approve all cases for prosecution. Additionally the courts are bound by the Human Rights Act to ensure that they interpret the offence in ways that are compatible with Articles 9 and 10 of the European Convention on Human Rights, which protect freedom of speech and freedom of thought, conscience and religion.

- Lead to a large number of prosecutions. In the past 3 years only 84 cases have been referred to the CPS under the incitement to racial hatred law, of which only 4 proceeded to prosecution and resulted in only 2 prosecutions.

The Home Office has been grateful for the help and advice of many faith communities and would be pleased to discuss the issues further if anyone has further questions.

Statement on incitement to religious hatred by the Secretary of State for the Home Department (Mr. David Blunkett) on Tuesday, 7 December 2004

I am pleased to be able to give the Serious Organised Crime and Police Bill its second reading today.

Part IV of the Serious Organised Crime and Police Bill contains provisions to combat the activities of the extremists within our community who stir up hatred against groups targeted because of their religious beliefs, or lack of religious beliefs, as well as those targeted on racial grounds.

Evidence to the House of Lords Select Committee on Religious Offences in 2003 highlighted the need for such protection and we have had ample further examples of that need since. We need to combat the extremists who stir up such hatred so that people can be free to practice their religion without fear. When people hate others because of their race or religious beliefs it is often manifested; this might be in the commission of subsequent crimes motivated by hate, or in abuse, discrimination or prejudice. The reactions vary from person to person, but all hatred has a detrimental effect on both individual victims and society as a whole.

These measures build on the protection already afforded by the existing incitement to racial hatred offences by amending the offences in Part III of the Public Order Act 1986 to also protect people targeted because of their religious beliefs or lack of religious beliefs. They will make it an offence for a person to use words or behaviour or material that they know are threatening, abusive or insulting, and which are intended or likely to stir up hatred against the target of those threats, abuse or insults.

Here are two examples of situations where, taking into account all the circumstances, the prosecuting authorities would consider taking action under the new offence:

In response to an extreme racist organisation widely distributing material setting out a range of insulting and highly inflammatory reasons for hating Islam. Such reasons have included suggesting that Muslims are a threat to British people and liable to molest women and that they should be urgently driven out of Britain.

and

In response to extremists within a faith community making repeated threatening statements stirring up followers to look for ways to make trouble for unbelievers saying that God would never ever allow unbelievers to be pleased with them and created them to be enemies.

These measures will be applied with equity, protecting people of varied religious beliefs and of none. They will provide a powerful response and a strong deterrent to extreme political and racist individuals and organisations who target people because of their religious beliefs and also to religious extremists who stir up hatred of others because they do not share their religious beliefs.

The Government is committed to the preservation of the right to legitimate freedom of speech and freedom of religion. This includes the right to engage in free and vigorous debate about religion, including the right to criticise religious beliefs and practices. The Government also recognises that proselytism is an integral activity for many faith communities. Such debate, criticism and proselytism can be undertaken without using threatening, abusive or insulting behaviour that is intended or likely to stir up hatred. Expressions of antipathy or dislike of particular religions or their adherents can also be made without crossing the thresholds of the offence. This provision will not restrict but protect people's legitimate freedom to practice their religion without fear.

The provisions do not make any blanket exceptions, for example, for any activity which may be presented as a religious activity or for the recitation of any passage from sacred texts. This is because, although the vast majority of such activities would not meet any part of the thresholds for this offence, in extreme circumstances it is, for example, possible to quote or misquote passages of sacred texts out of context so that they become threatening, abusive or insulting and intended or likely to stir up hatred. Such activities would rightly be caught by the scope of the offence. Nor do the provisions define all the terms of the offence. This is deliberate and will provide the enforcement agencies with the flexibility to ensure that these offences make a full contribution in combating hate-mongering in all its various forms and contexts.

The proposals retain the high thresholds and necessary safeguards contained in the existing incitement to racial hatred provision. The primary safeguards are contained in the offence itself. It has a two-part structure which examines not only the content of the words, behaviour, written material, recordings or programmes, which must be threatening, abusive or insulting, but also examines the effect of the material which must be intended or likely to stir up racial or religious hatred.

'Religious hatred' is defined as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief'. Accordingly, the offence will only capture those activities which stir up hatred of a group of people defined by their beliefs or lack of religious beliefs. It is not a new blasphemy law and will protect people rather than ideologies.

Hatred is a strong term, relating to an extreme emotion. The offences will not criminalise material that just stirs up ridicule, prejudice, dislike, contempt or anger or which simply causes offence. A further safeguard in the legislation is that a person who does not intend to stir up hatred is not guilty of an offence if they did not know that their words, behaviour, written material, recording or programmes were threatening, abusive or insulting. Furthermore the offences do not apply to anything that takes place in one's own home. All prosecutions require the consent of the Attorney General, which will prevent the offences being misused through private prosecutions.

Of themselves, the following would not be caught by the offence:

- criticising the beliefs, teachings or practices of a religion or its followers; for example by claiming that they are false or harmful;
- proselytising one's own religion or urging followers of a different religion to cease practising theirs; for example Christians claiming that Jesus Christ is the way the truth, the life and the only way to God, Muslims exhorting people to submit to the will of Allah, or Atheists claiming that there is no God;
- telling jokes about religions;
- expressing antipathy or dislike of particular religions or their adherents.

Of themselves these activities do not meet the criteria of the offences. However if a person were to use threatening, abusive or insulting words, actions or material with the intent or likely effect that hatred would be stirred up whilst undertaking the actions listed above, then by definition, they could rightly fall into the scope of the offence.

These measures accord with, and will operate in the light of, the guarantees afforded by the European Convention on Human Rights and the Human Rights Act. Under the Human Rights Act any Court in interpreting legislation, including these offences, must do so in way in which is compatible with the rights under the European Convention. With these offences the rights in play are going to be Article 9, the right to freedom of thought, conscience and religion, and Article 10, the right to freedom of expression. In interpreting these offences the Court will have to consider both of these rights and, if necessary, balance one against the other. Article 9 states that everyone has the right to freedom of thought, conscience and religion and that this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. It also states that freedom to manifest one's religion or beliefs may be subject to limitations prescribed by law and necessary in the interests of public safety, for the protection of public order and the rights and freedoms of others.

Article 10 of the European Convention states that everyone has the right to freedom of expression and that this includes the freedom to hold opinions and to receive and impart information and ideas. Similarly it also states that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to restrictions prescribed by law that are necessary in the interests of public safety, the prevention of disorder or crime and the protection of the reputation or rights of others.

These offences are justifiable, necessary and proportionate measures for the prevention of disorder or crime and the protection of the rights of others; the need for which is reflected in these articles. Indeed because these provisions protect groups from hatred directed against them because of religious belief, they safeguard the right to freedom of thought, conscience and religion enshrined in Article 9 of the European Convention on Human Rights.

The Crown Prosecution Service will produce guidance on how these offences will be enforced but it is important that this guidance does not pre-empt the consideration of these proposals by Parliament. There will be consultation on that guidance as it is developed and it will be subject to regular review.

With the support of my colleague, the Attorney General, I make this statement as a matter of public record, which can be drawn upon in any future decisions taken by all the enforcement agencies, to clarify to all that this new measure will provide protection for those who need it without restricting legitimate freedom of speech and religion.

Incitement to religious hatred FAQs

1. What is the Government proposing?

As the Home Secretary promised in his speech to the Institute of Public Policy Research on 7 July, the Government is extending protection to prevent hatred being stirred up against people targeted because of their religious beliefs or lack of religious beliefs, as well people targeted because of their race. This is being done through the Serious and Organised Crime and Police Bill, by expanding the existing criminal offences of incitement to racial hatred contained in the Public Order Act 1986. The proposals will make it an offence to knowingly use words, behaviour or material that is threatening,

abusive or insulting with the intention or likely effect that hatred will be stirred up against a group of people targeted because of their religious beliefs or lack of religious beliefs, as well as those targeted on racial grounds.

2. Why is new legislation necessary?

The new protection is needed to combat activities of extremists who stir up hatred against people because of their religious beliefs. In evidence to the House of Lords Select Committee on Religious Offences, many organisations, including the Association of Chief Police Officers, gave examples of problems where they faced difficulties responding under existing legislation alone and where the extension of the provision on stirring up racial hatred would help them combat extremism.

These proposals will close the unacceptable loophole that exists under the current incitement to racial hatred laws, whereby mono-ethnic faith groups such as Jews or Sikhs are protected from those who stir up hatred against them, but multi-ethnic faith groups are not. Since the introduction of the incitement to racial hatred offence, some extremists have exploited this loophole, using religious terms to identify victims whom they would have previously identified using racial terms.

3. What would be caught by the new incitement offence?

Below are two examples of situations where, taking into account all the circumstances, the prosecuting authorities would consider taking action under the new offence:

- a) In response to an extreme racist organisation widely distributing material setting out a range of insulting and highly inflammatory reasons for hating Islam. Such reasons have included suggesting that Muslims are a threat to British people and liable to molest women and that they should be urgently driven out of Britain.
- b) In response to extremists within a faith community making repeated threatening statements stirring up followers to look for ways to make trouble for unbelievers saying that God would never ever allow unbelievers to be pleased with them and created them to be enemies.

The proposed offences will be applied with equity, protecting people of varied religious beliefs and of none. They will provide a powerful response and a strong deterrent to extreme political and racist individuals and organisations who target people because of their religious beliefs and also to religious extremists who stir up hatred of others because they do not share their religious beliefs.

Both of these groups of extremists are very small in number and wholly unrepresentative of the communities they claim to speak for. The vast majority of British people, including British Muslims, are peaceful and law abiding and would not advocate hatred against people of other religions or races.

4. What will the new offence not cover?

Of themselves, the following would not be caught by the offence:

- criticising the beliefs, teachings or practices of a religion or its followers; for example by claiming that they are false or harmful;
- proselytising one's own religion or urging followers of a different religion to cease practising theirs; for example Christians claiming that Jesus Christ is the way the

- truth, the life and the only way to God, Muslims exhorting people to submit to the will of Allah, or Atheists claiming that there is no God;
- telling jokes about religions;
 - expressing antipathy or dislike of particular religions or their adherents.

Of themselves these activities do not meet the criteria of the offences. However if a person were to use threatening, abusive or insulting words, actions or material with the intent or likely effect that hatred would be stirred up whilst undertaking the actions listed above, then by definition, they could rightly fall into the scope of the offence.

5. Will the new legislation only protect Muslims? What about individuals with no religious beliefs? Are they protected?

The new legislation will protect people of all religious beliefs, applying equally to incited hatred against Muslims, or Christians, or any other religious group. It will also protect people targeted because of their lack of religious beliefs or because they do not share the religious beliefs of the perpetrator.

6. Will religion be defined? Will the definition include cults?

In keeping with similar legislation, the proposals do not define the meaning of religion. "Religious hatred" is defined as "hatred against a group of people defined by their religious beliefs or lack of religious belief". Explanatory notes have been published which provide a non-exhaustive list of widely practised religions and clearly explain that the protection also covers people identified with a particular branch of a religion. They also stress that the protection of the offence covers Atheists, Humanists and Agnostics. When the circumstances are unclear, the courts will decide whether a particular group of people is protected, in the wider context of the criminal behaviour being considered. If the courts ruled that a new religious movement qualified as a religion for the purposes of the new offence, that would not prevent criticism of the practices of that movement.

7. What about protection for other at-risk groups such as those with disabilities or those who suffer because of their sexual orientation? Why isn't the incitement to racial hatred provisions being extended to protect those groups?

The extension of the incitement provisions to cover people identified by their religion as well as race, is the closing of an unacceptable loop-hole that mono-ethnic religious groups (such as Jews and Sikhs) are covered by the existing offence whereas multi-ethnic religious groups (such as Muslims and Hindus) are not. The Government keeps provisions under constant review and is open to considering whether further extensions are needed.

8. What measures have been put in place to ensure that provisions for freedom of speech and/or freedom of religion will not be abused?

The Government is determined to protect both the rights of free speech, which have been long respected in this country, and the right to lead a life in which one can peacefully practise one's own religion without fear. The new legislation will provide protection from the activities of extremists who stir up hatred against people because of their religious beliefs or lack of religious beliefs, whilst also safeguarding the right to engage in free and vigorous debate about religion, including the right to criticise religious beliefs and practices.

The proposed and existing offences both carry a high threshold in order to protect freedom of speech. Words, behaviour or material used must be threatening, abusive or insulting and must either be intended to or likely to stir up hatred. The hatred must be aimed at people who are members of that group, not ideologies. Hatred is a strong term; which goes beyond ridicule, prejudice, dislike, contempt, anger or offence. A further safeguard in the legislation is that a person who does not intend to stir up hatred is not guilty of an offence if they did not know that their words, behaviour, written material, recording or programmes were threatening, abusive or insulting. Furthermore the offences do not apply to anything that takes place in one's own home. All prosecutions require the consent of the Attorney General, which will prevent the offences being misused through private prosecutions.

This provision will protect people's freedom to practise their religion without fear, not restrict it. Proselytising is recognised as an integral activity for many faith communities. The new provision would make it an offence to stir up hatred, not to practise one's religion or proselytise.

These measures accord with, and will operate in the light of, the guarantees afforded by the European Convention on Human Rights and the Human Rights Act.

Article 9 of the European Convention states that everyone has the right to freedom of thought, conscience and religion and that this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. It also states that freedom to manifest one's religion or beliefs may be subject to limitations prescribed by law and necessary in the interests of public safety, for the protection of public order and the rights and freedoms of others.

Article 10 of the European Convention states that everyone has the right to freedom of expression and that this includes the freedom to hold opinions and to receive and impart information and ideas. Similarly it also states that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to restrictions prescribed by law that are necessary in the interests of public safety, the prevention of disorder or crime and the protection of the reputation or rights of others.

These offences are justifiable, necessary and proportionate measures for the prevention of disorder or crime and the protection of the rights of others; the need for which is reflected in these articles. Indeed because these provisions protect groups from hatred directed against them because of religious belief, they safeguard the right to freedom of thought, conscience and religion enshrined in Article 9 of the European Convention on Human Rights.

9. What does the Government think about the case of two Australian pastors being brought to trial in Victoria for vilifying Islam?

It is not appropriate for the Government to comment on ongoing legal proceedings in another jurisdiction. However there are a number of differences between section 8 of the Victorian Racial and Religious Tolerance Act 2001, under which the defendants are being charged, and the incitement to religious hatred offence we propose.

Section 8 of the Victorian Racial and Religious Tolerance Act makes it an offence for a person to engage in conduct which incites not only hatred against, but also serious contempt for, or revulsion or severe ridicule of, another person or class of persons on the ground of the religious belief or activity. The threshold for the incitement to religious hatred offence we propose is substantially higher and will only capture those who knowingly use words or behaviour or to publish or distribute material that is threatening, abusive or insulting with the intention or likelihood that religious hatred would be stirred up.

Another difference is that, under our existing and proposed offences, prosecutions require the consent of the Attorney General, which prevents the legislation being misused by feuding religious groups.

There is a distinction between criticising a religion and the inciting hatred against its followers. The Government is confident that the new legislation prohibits the latter without interfering with the former.

10. Has the Government carried out a consultation on this issue?

The issue has been explored in depth by the House of Lords Select Committee on Religious Offences in 2003 and has also been considered as part of the Strength in Diversity consultation in 2004. Following the Home Secretary's announcement on this issue on 7 July, the Home Office undertook a further targeted consultation with a variety of organisations representing different religions and beliefs, civil liberties groups, trade unions, enforcement agencies and others.

11. Will the government repeal/extend existing blasphemy laws?

The Government has no immediate plans to amend the current law on blasphemy. We acknowledge that there are a wide variety of views on whether the blasphemy laws should be retained, repealed, or extended. We will keep this matter under review, particularly as the benefits of the new provision against incitement to religious hatred are realised.

12. Will the government be doing anything to address the general issue of discrimination on religious grounds?

Yes. As the Home Secretary outlined in his speech to the Institute of Public Policy Research on 7 July 2004, the Government knows that people can be and are discriminated against because of their religion, and that people of faith cannot have full access to jobs, careers and services if their religious needs are ignored or overridden.

In December 2003, the Government implemented the EU regulations against religious discrimination in employment and training. We have funded ACAS and community organisations like the Muslim Council of Britain to help employees as well as employers understand their rights and obligations.

At the Labour Party Conference the Prime Minister also announced new proposals to afford protection against religious discrimination in the provision of goods, facilities and services. This will be taken forward in this session, complementing the work being undertaken to establish the Commission for Equality and Human Rights.

13. Are the incitement to religious hatred proposals the same as the religious discrimination proposals?

No. Stirring up hatred against people because of their religious beliefs or lack of religious beliefs is a criminal matter whereas religious discrimination comes under civil law. The Government's religious discrimination proposals are being taken forward as part of the Single Equality Commission Bill. They will afford protection from discrimination in the provision of goods, facilities, services or premises for followers of all religions. The new provisions on religious discrimination are intended to close a loophole where case-law has extended the protections of the Race Relations Act to followers of some religions, namely Jews and Sikhs, as they are recognised as mono-ethnic groups, but followers of other multi-ethnic religions are not equally protected.

14. How will the new provisions be enforced? Will there be a high number of convictions obtained?

The Government is working with the Police, the CPS and other key agencies, to ensure that the new provisions make a full and effective contribution to our work against hate crime.

We do not expect a large number of prosecutions, just as there have not been a large number of prosecutions under incitement to racial hatred. In the past 3 years 84 cases have been referred to the CPS, of which 4 proceeded to prosecution, of which 2 resulted in convictions. However, the offence has provided a powerful response and a strong deterrent to the conduct of racist and other extremists organisations and individuals.