INCITEMENT OF RELIGIOUS HATRED

Memorandum from the British Humanist Association to the Standing Committee A on the Serious Organised Crime and Police Bill

Summary

This memorandum puts on record the British Humanist Association’s long-standing qualified support for a law on incitement of hatred of people on the basis of their religion or belief. It explains the objections to using the Public Order Act for this purpose and alludes to an alternative draft presented by the BHA to the House of Lords Select Committee on Lord Avebury’s Religious Offences Bill.

It makes detailed criticisms of the present Bill and suggests how its weaknesses can be overcome even on the basis of the Public Order Act. In Annex I it sets out the precise amendments we propose and in Annex II it shows the Public Order Act as it would be if so amended. The memorandum urges rejection of the proposed law if such amendments are not made.

The British Humanist Association

1 The British Humanist Association (BHA) is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to promote Humanism and support and represent people who seek to live good lives without religious or superstitious beliefs. The census in 2001 showed that those with no religion were (at 15.5%) the second largest ‘belief group’, being almost three times as numerous as all the non-Christian religions put together. Other surveys consistently report much higher proportions of people without belief in God1 - especially among the young2. By no means all these people are humanists and even fewer so label themselves, but our long experience is that the majority of people without religious beliefs, when they hear Humanism explained, say that they have unknowingly long been humanists themselves.

2 The BHA’s policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers’ Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.

3 The BHA is deeply committed to democracy, human rights equality and social cohesion. We advocate an open and inclusive society: one "based on the recognition that people have divergent views and interests and that nobody is in possession of the ultimate

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1 A survey of 3000 people in England, Scotland and Wales in 2000 found the proportion of people who say they belong to no religion had grown from 31% to 44%. (British Social Attitudes Survey, National Centre for Social Research, Nov 2000). YouGov in December 2004 found 35% not believing in God and another 21% of Don’t Knows.

2 Young People in Britain: The Attitudes and Experiences of 12-19 Year Olds, a research report for the DfES (2004), found that 65% were not religious. The full report is at http://www.dfes.gov.uk/research/data/uploadfiles/RR564.pdf
truth. In such a society, the government, other public authorities and social institutions would seek to maximise individual freedom (not least of belief and speech) while building on common interests and working to reduce conflict so that people may live together constructively.

4 Thus while we seek to promote the humanist life-stance as an alternative to (among others) religious beliefs, we do not seek any privilege in doing so but rely on the persuasiveness of our arguments and the attractiveness of our position. Correspondingly, while we recognise and respect the deep commitment of other people to religious and other non-humanist views, we reject any claims they may make to privileged positions by virtue of their beliefs.

The Case for Extension of the Law on Incitement of Hatred

5 The BHA has followed closely the discussions on the proposed extension of the law since we met the Home Office before the introduction of the 2001 Bill. We attended almost all the proceedings of the House of Lords select committee on religious offences and gave both written and oral evidence. We issued a joint brief with Justice and the British Muslim Research Council for the Lords debate on the committee's report. We have consulted legal experts and attended several meetings on the subject. We met the Home Office again in December last year. We jointly sponsored a meeting on the subject at Portcullis House on 13 January with the Muslim Council of Britain.

6 Our view is that in an open and inclusive society the community as a whole owes a duty to groups and individuals within it to protect them from the incitement of hatred and from violent attack. Incitement to violence is already illegal, but incitement of hatred stopping just short of violence is similarly inimical to the values of a civilised society and the principles of reciprocal tolerance and cooperation, and it can be devastating to the lives of individuals and communities.

7 Good evidence that Muslims at present are suffering this sort of corrosive hatred is held by the Home Office and was produced to the Lords select committee by the police. It is clearly being incited by racists who find it a convenient way round the law on incitement of racial hatred.

The Home Office approach

8 The BHA therefore supports in principle a law against incitement of hatred. However, we have been concerned from the start not only that the proposals put forward by the Home Office are open (as is plainly now evident) to wide misunderstanding but also that they represent an unacceptable risk to freedom of speech.

9 The Home Office proposes to take the simple course of extending "racial hatred" in Part III of the Public Order Act 1986 to read "racial or religious hatred". This approach is attractive because:

- it builds on the existing jurisprudence under the law about racial hatred;
- similarly, it builds on the popular understanding of the existing law;
- it resolves the problem that Jews and Sikhs are already anomalously covered by the racial hatred law on the somewhat dubious basis of their being ethnic groups

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3 George Soros: appendix to The Bubble of American Supremacy (Weidenfeld & Nicolson, 2004)
something which is plainly and understandably resented by Muslims); and

- the motives and acts of inciting racial and religious hatred will often overlap, and the use of the same law for both will prevent cases falling into a gap between two differently worded enactments.

Moreover, the Law Commission in their final report on blasphemy\(^4\) envisaged that an extension of the law on racial hatred would be the best method to deal with any recrudescence of acts fomenting religious hatred.

However, while it would be much tidier and more convenient simply to insert “or religious” into the various offences of inciting racial hatred, it is not a matter of necessity to apply the same legal regime to incitement of religious as to racial hatred, and tidiness should not be the first objective if its price is, as we suggest, too great.

The problem lies in the essential differences between race and religion which affect the degree to which freedom of expression can legitimately and proportionately be restricted. Restrictions are far more easily defended in the case of race (and to a large extent of gender, sexual orientation and other common grounds of unwarranted discrimination and prejudice), since race is in a sense without content: it has no ideology, teachings or dogma; organisations are rarely based on racial or ethnic groups and when they are they exercise little power in the world. What is at issue when people are characterised by or criticised for their race is their irrevocable identity as individuals or groups of persons.

The differences from religion are many and profound:

- Religions, unlike race, can be chosen or put aside.

- Religions make extensive and often mutually incompatible claims about the nature of life and the world - claims that can legitimately be appraised and argued over. There is no parallel for race.

- Religions, unlike race, set out to and usually do influence their followers’ attitudes and behaviour, often in ways which can be similarly controversial.

- Religions are in principle and often in practice in competition with each other: evangelists come to our front doors, set up television and radio stations and run crusades to make converts. This is plainly untrue of race.

- Religions are expressed through organisations that are often wealthy and powerful. They exercise that power in the name of their faith far outside the realm of religion - in influencing social attitudes and national and international policies (e.g. on contraception, homosexuality, abortion and the use of condoms for safe sex). This controversial influence has no parallel in race.

- Religious believers often feel under a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable. This has little parallel in the case of race.

\(^4\) Criminal Law Offences against Religion and Public Worship (Law Commission no. 145), HMSO, 1985, at paras. 2.29, 2.35, 2.42 and 2.53.
With these differences in mind, it may be seen that carrying over the precedents and jurisprudence related to the law on racial hatred may in fact be more of a threat than a convenience. Thus, however tempting and tidy it may seem simply to add “or religious” after “racial” in the 1986 Act, it clearly carries serious threats to freedom of speech about the controversial claims and influence of religion and religious believers and institutions.

The problem lies not in the need to combat incitement of hatred but in the proposal to apply the same formulation as in the existing law on incitement to racial hatred. This is based on the use of “threatening or abusive or insulting words or behaviour”. Whereas with race this formula offers few hostages to fortune and has in practice worked adequately well, the same would be quite untrue if the formula were applied to religion in all its numerous manifestations from traditional faiths to litigious fringe cults.

One criticism of the formula “threatening, abusive or insulting” was provided by the Law Commission in their final report on blasphemy, insofar as they rejected a blasphemy law based on what was “scurrilous” or “abusive” or “insulting” of Christianity on the grounds that it could:

only be judged ex post facto . . . Delimitation of a criminal offence by reference to jury application of one or more of several adjectives (all of which necessitate subjective interpretation and none of which is absolute) is hardly satisfactory.\(^5\)

More importantly, however, and as suggested above, the formulation “threatening or abusive or insulting words” (we leave aside behaviour) can cover a huge range of speech that should never come near a prima facie case of breach of the law. Indeed, the Law Commission endorsed the use of abuse and insults:

Ridicule has for long been an acceptable means of focussing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context the use of abuse or insults may well be regarded as a legitimate means of expressing a point of view upon the matter at issue\(^6\).

Even if the law technically excludes such speech or offers defences in cases brought against it, it will still have a chilling effect on free speech owing to popular apprehensions or misunderstandings.

The Public Order Act pays too little regard to the motive, context or likely effect of the words used, making the means by which hatred may be incited fundamental rather than the actual incitement and presuming, subject to rebuttal, that abusive and insulting language will in fact incite hatred. Context is important. Mockery in a late night routine delivered to willing customers in a comedy club is different from the same mockery shouted from a soapbox to passers-by in a town suffering from religious tensions. Those who of their own volition attend a public meeting of animal rights activists campaigning against ritual slaughter have only themselves to blame if their religious beliefs are outraged by what they hear. This is very different from the inflammatory leafletting and street-corner agitation that are the proper target of a new restriction of freedom of speech.

\(^6\) Op. cit., para. 2.35.
With these and other points in mind, the British Humanist Association proposed to the Lords select committee alternative draft clauses (quoted in their report - see our evidence at http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/2071807.htm where Annex I includes a detailed critique of the Public Order Act model.). That draft placed the emphasis on inciting hatred (as intention or effect) rather than on the nature of any words etc used, since context and manner can so alter the import of words (consider Antony’s speech in Julius Caesar). We understand that the Home Office examined our version but they have sadly reverted in the current Bill to something very like their original draft.

**Necessary Amendments**

Since the publication of the current Bill the BHA has re-examined whether there is a way to make it acceptable within the framework of the Public Order Act. Any such law needs to satisfy the following conditions:

- it must offer a remedy for the present mischief;
- it must not offer privileges to any group, e.g., followers of a particular religion or religious believers as a class: it needs therefore to cover non-religious as well as religious beliefs and the absence of belief or of any specific belief;
- it must avoid interfering with the free expression of views and beliefs that fall short of inciting hatred of people on religious grounds. These will in the right context include mockery, satire, abuse and insult, denunciation of practices with damaging effects and much that believers will class as vilification.

We have concluded that it is possible if all the following changes are made: otherwise the safeguards for freedom of speech will be inadequate and we shall be forced to oppose the proposal despite our support in principle for better protection for (as we have said) Muslims in particular.

The law should be cast directly in terms of hatred of people, avoiding the phrase “religious hatred” with its inevitable but unintended implication of hatred of religion or religious doctrines or practices. The state owes no duty to religious beliefs, only to its citizens. Indeed, it is objectionable in an open society that the law should protect disputed beliefs from criticism or ridicule. Although the “small print” of the Bill specifies people, the use of the phrase “religious hatred” is misleading both to supporters of the proposal (“What I want is protection against people attacking my religious beliefs... Muslims have fought hard for this bill... I do believe in debate, but...” - letter in The Guardian, 17 December 2004) and to its opponents, who variously see it as outlawing religious jokes or evangelism.

The law should use the formula "religion or belief", the phrase that is found in the European Convention on Human Rights (ECHR). At present the Bill defines "religious hatred" as “hatred against a group of persons defined by reference to religious belief or lack of religious belief." This wording is arguably contrary to the Human Rights Act, which at sn. 6 bars legal or official discrimination on grounds of "religion or belief", where "belief" has been established by case law to include non-religious beliefs such as Humanism. Humanism is a positive belief, not merely the lack of religious belief – a point that the Government fails time and again to understand. Humanists would not be protected by the Bill as it stands.
The answer is to use the term "religious group" and define it as "a group defined by reference to religion or belief or the absence of any, or any particular, religion or belief". This comprehends both religious and non-religious lifestances. It also covers the special case of hatred based on the lack of a particular belief - as might arise between different branches of the same religion.

The offence involving stirring up hatred where intention is not proven needs to be drawn much more narrowly. When the prosecution does not allege intention to stir up hatred, all that the Bill requires for an offence to be committed is that the words were merely "likely" to be heard by someone who was "likely" as a result to feel religious hatred. ‘Likely’ is far too soft and easy a test for a prosecution that explicitly negates freedom of speech. It needs to be changed, we suggest, to an allegation that the accused “having regard to all the circumstances . . . recklessly risked that hatred against a religious group would thereby be stirred up”.

The Attorney General should be required, in considering whether to not to authorise a prosecution, to balance the rights to freedom of religion under Article 9 with those of freedom of speech under Article 10 of the ECHR. These rights can be in conflict, and a law that concentrates on Article 9 could result in infringement of rights under Article 10.

The Attorney General should be required to report annually to both houses of Parliament on the exercise of his discretion over prosecutions. This will allow for Parliament to keep under scrutiny the way use of the law develops over time.

The Bill should also abolish the law on blasphemy and blasphemous libel. The Home Office indicated that they had this in mind but have now told us that they have deferred consideration of the blasphemy law until the new hatred law has become established. We see this as utterly illogical. The blasphemy law is discriminatory in that it protects only one religion. Moreover, it protects that religion’s beliefs, not its adherents. It is outdated and unjustified in a modern society. It is not a total dead letter: the Court of Human Rights finding that the British Board of Film Classification was justified in refusing a certificate to the video Visions of Ecstasy was based on the existence of the blasphemy law and has been used by them subsequently to justify other bans. Abolishing the law on blasphemy and blasphemous libel when introducing legislation on incitement to hatred would send out the clearest possible message that religious beliefs and practices are not covered by the new law. At any later date it would be more difficult to accomplish as it would be seen by many as a gratuitous removal of a symbolic protection for religious beliefs with no quid pro quo.

We have drafted amendments to the current Bill to achieve these changes. We have ventured to apply the same amendments to the provisions concerning racial hatred: although we should have preferred an entirely separate law on hatred on religious grounds, we feel that if the Public Order Act is to be used for both, it is on balance preferable for the provisions on each to be the same. We attach these amendments at Annex I, and the effect they would have on the law at Annex II.

We hope that these amendments may be moved and accepted. Otherwise we must urge with some regret that Parliament rejects this part of the Bill.

Hanne Stinson
British Humanist Association
10 January 2005
ANNEX I

AMENDMENTS TO THE SERIOUS ORGANISED CRIME AND POLICE BILL PROPOSED BY THE BRITISH HUMANIST ASSOCIATION

(For the effect of amendment 4, see Annex II)

Amendment 1

In the cross-heading before clause 119 for "Racial and religious hatred" substitute "Hatred of racial or religious groups".

Amendment 2

For clause 119, substitute:

119 Hatred of racial or religious groups

Schedule 10 (which makes provision about offences of stirring up hatred of racial or religious groups) has effect.

Amendment 3

After clause 119 insert—

119A Blasphemy

The offences of blasphemy and blasphemous libel are hereby abolished.

Amendment 4

For Schedule 10, substitute—

SCHEDULE 10

Section 119

HATRED OF RACIAL OR RELIGIOUS GROUPS

1 Part 3 of the Public Order Act 1986 (c. 64) (racial hatred offences) has effect subject to the following amendments.

2 For the heading for Part 3 substitute HATRED OF RACIAL OR RELIGIOUS GROUPS.

3 For the cross-heading before section 17 substitute "Meaning of Racial or Religious Groups"

4 For section 17 substitute—

17 Meaning of “Racial Group”
In this Part “racial group” means a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

4 After section 17 insert—

17A Meaning of "religious group"

In this Part "religious group" means a group of persons in Great Britain defined by reference to religion or belief or the absence of any or of any particular religion or belief

5 For the cross-heading before section 18 substitute "Acts intended or likely to stir up hatred against a racial or religious group".

6 (1) Section 18 (use of words or behaviour or display of written material) is amended as follows.

(2) For subsection (1) substitute

(1) 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 an offence if

(a) he intends thereby to stir up hatred against a racial or religious group or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(3) In subsection (5) for “racial hatred” substitute “hatred against a racial or religious group”.

7 (1) Section 19 (publishing or distributing written material) is amended as follows.

(2) For subsection (1) substitute

(1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(3) In subsection (2) for “racial hatred” substitute “hatred against a racial or religious group”.

8 (1) Section 20 (public performance of play) is amended as follows.

(2) For subsection (1) substitute

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if
(a) he intends thereby to stir up hatred against a racial or religious group or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(3) In subsection (2) (in both places) for "racial hatred" substitute "hatred against a racial or religious group".

8 (1) Section 21 (distributing, showing or playing a recording) is amended as follows.

(2) For subsection (1) substitute

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(3) In subsection (3) for "racial hatred" substitute "hatred against a racial or religious group".

9 (1) Section 22 (broadcasting or including programme in programme service) is amended as follows.

(2) For subsection (1) substitute

(1) If a programme involving threatening, abusive or insulting visual images or sounds is [included in a programme service], each of the persons mentioned in subsection (2) is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(3) In subsections (1)(a), (3), (4) (in both places), (5) (in both places) and (6) for "racial hatred" substitute "hatred against a racial or religious group".

10 For the cross-heading before section 23 substitute "Inflammatory material".

11 (1) Section 23 (possession of racially inflammatory material) is amended as follows.

(2) In the title of section 23 delete "racially".

(3) In subsection (1) for the words from "if he intends" onwards substitute "if he intends hatred against a racial or religious group to be stirred up thereby or if, having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up."

(4) In subsection (3) for "racial hatred" substitute "hatred against a racial or religious group".

(5) In the sidenote, for "racially inflammatory" substitute "inflammatory".
12 (1) Section 27 is amended as follows.

(2) After subsection (1) insert —

(1A) In deciding whether to authorise a prosecution the Attorney General shall balance the rights set out in Articles 9 and 10 of the European Convention on Human Rights and in particular shall consider whether the act or acts of the proposed defendant stirred up hatred of a racial or religious group in such a way as to be a threat to public order and the safety of a racial or religious group. In reaching his decision the Attorney General shall consider any opinions offered to him by the Commission for Racial Equality (in the case of race) and the Commission for Equality and Human Rights.

(1B) The Attorney General shall lay before Parliament annually a report on the way in which he has exercised his discretion under this section.

13 (1) Section 29 (interpretation) is amended as follows.

(2) For the definition of “racial hatred” substitute—

“racial group” has the meaning given by section 17;

(3) After the definition of "recording" insert—

"religious group" has the meaning given by section 17A;".

10 January 2005
17 Meaning of "Racial Hatred"
In this Part "racial hatred" means hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

17 Meaning of "Racial Group"
In this Part "racial group" means a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

17A Meaning of "Religious Group"
In this Part "religious group" means a group of persons defined by reference to religion or belief or the absence of any or of any particular religion or belief".

Acts intended or likely to stir up hatred against a racial or religious group

18 Use of words or behaviour or display of written material

(1) 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 an offence if

(a) he intends thereby to stir up hatred against a racial or religious group,

(b) having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(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 written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

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

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) A person who is not shown to have intended to stir up racial hatred against a racial or religious group is not guilty of an offence under this section if he did not intend his words or
behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(6) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme [included in a programme service].

19 Publishing or distributing written material

(1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group [hatred], or

(b) having regard to all the circumstances, [hatred against a racial or religious group] will thereby be stirred up.

(2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up [hatred against a racial or religious group] to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

20 Public performance of play

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group [hatred], or

(b) having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

(2) If a person presenting or directing the performance is not shown to have intended to stir up [hatred against a racial or religious group], it is a defence for him to prove

(a) that he did not know and had no reason to suspect that the performance involved the use of the offending words or behaviour, or

(b) that he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting, or

(c) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that [hatred against a racial or religious group] would be likely to be stirred up.

(3) This section does not apply to a performance given solely or primarily for one or more of the following purposes

(a) rehearsal,
(b) making a recording of the performance, or

(c) enabling the performance to be included in a programme service;

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purposes mentioned above.

(4) For the purposes of this section

(a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,

(b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and

(c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance;

And a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.

(5) In this section "play" and "public performance" have the same meaning as in the Theatres Act 1968.

(6) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 [?] of that Act

section 9 (script as evidence of what was performed),
section 10 (power to make copies of script),
section 15 (powers of entry and inspection).

21 Distributing, showing or playing a recording

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group hatred, or

(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) In this Part "recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up hatred against a racial or religious group hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
(4) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be [included in a programme service].

22 Broadcasting or including programme in cable programme service

(1) If a programme involving threatening, abusive or insulting visual images or sounds is [included in a programme service], each of the persons mentioned in subsection (2) is guilty of an offence if

(a) he intends thereby to stir up hatred against a racial or religious group, or

(b) having regard to all the circumstances, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

(2) The persons are

(a) the person providing the programme service,
(b) any person by whom the programme is produced or directed, and
(c) any person by whom offending words or behaviour are used.

(3) If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up hatred against a racial or religious group, it is a defence for him to prove that

(a) he did not know and had no reason to suspect that the programme would involve the offending material, and

(b) having regard to the circumstances in which the programme was [included in a programme service], it was not reasonably practicable for him to secure the removal of the material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up hatred against a racial or religious group to prove that he did not know and had no reason to suspect

(a) that the programme would be included in a programme service, or

(b) that the circumstances in which the programme would be ... so included would be such that hatred against a racial or religious group would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up hatred against a racial or religious group to prove that he did not know and had no reason to suspect

(a) that a programme involving the use of the offending material would be included in a programme service, or

(b) that the circumstances in which a programme involving the use of the offending material would be ... so included, or in which a programme ... so included would
involve the use of the offending material, would be such that hatred against a racial or religious group hatred would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up hatred against a racial or religious group hatred is not guilty of an offence under this section if he did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

(7),(8) . . . .

Racially inflammatory Inflammatory material

23 Possession of racially inflammatory material

(1) A person who has in his possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to

(a) in the case of written material, its being displayed, published, distributed or included in a programme service whether by himself or another, or

(b) in the case of a recording, its being distributed, shown, played or included in a programme service whether by himself or another,

is guilty of an offence if he intends hatred against a racial or religious group hatred to be stirred up thereby or, having regard to all the circumstances, racial hatred is likely to be stirred up thereby. If, having regard to all the circumstances, he reckless risks that hatred against a racial or religious group will thereby be stirred up.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may reasonably be inferred that he has, in view.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up hatred against a racial or religious group hatred to prove that he was not aware of the content of the written material or recording, and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

. . . .

27 Procedure and punishment

(1) No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.

(1A) In deciding whether to authorise a prosecution the Attorney General shall balance the rights set out in Articles 9 and 10 of the European Convention on Human Rights and in particular shall consider whether the act or acts of the proposed defendant stirred up hatred of a racial or religious group in such a way as to be a threat to public order and the safety of a racial or religious group. In reaching his decision the Attorney General shall consider any opinions offered to him by the Commission for Racial Equality (in the case of race) and the Commission for Equality and Human Rights.

(1B) The Attorney General shall lay before Parliament annually a report on the way in which he has exercised his discretion under this section.
For the purposes of the rules in England and Wales against charging more than one offence in the same count or information, each of sections 18 to 23 creates one offence.

A person guilty of an offence under this part is liable-

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

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

29. Interpretation

[ADD:]

“racial group” has the meaning given by section 17;
“religious group” has the meaning given by section 17A;

10 January 2005