

**CRIMINAL JUSTICE (NO 2)
(NORTHERN IRELAND) ORDER 2004**

S.I. 2004 1991

EXPLANATORY MEMORANDUM

1.

INTRODUCTION

The Criminal Justice (No. 2)(Northern Ireland) Order 2004 (“the Order”) was made on 27 July 2004.

The Explanatory Memorandum has been prepared by the Northern Ireland Office (“the Department”) to assist the reader in understanding the Order. It does not form part of the Order.

2.

BACKGROUND AND POLICY OBJECTIVES

Racial, sectarian, disability and homophobic crime

Recent years have seen an increase in the number of racist incidents recorded by police in Northern Ireland and although the actual number of attacks may seem small, Northern Ireland has a higher ratio of racist incidents for the size of the ethnic minority population compared with England and Wales. There have also been increases in recorded incidents involving victims defined by their sexual orientation and a rising concern about attacks on the disabled.

Road Traffic Offences and Penalties

Road safety is an issue which is of great concern throughout the community in Northern Ireland. Car theft is and has been one of the most frequently committed crimes in Northern Ireland and each year witnesses an unacceptably high number of road deaths. What is often wrongly referred to as “joy-riding” is a significant problem for many communities in Northern Ireland.

3.

CONSULTATION

A consultation document, “ Race Crime and Sectarian Crime Legislation in Northern Ireland”, was published in October 2002 and widespread support was received for the proposals in the document. In addition respondents highlighted the growing problem of attacks against people in Northern Ireland because of their sexual orientation and wanted any changes to legislation to include measures to address this problem.

Draft Proposals for legislation were issued for public consultation in February 2004 and again there was broad support for the legislative approach adopted to deal with this issue. Several respondents stated that attacks against people with disabilities was a significant problem in Northern Ireland and wanted the legislation to address this issue.

Again in exploring what might be done in law, Government held a separate public consultation – also in 2003 - on road traffic penalties. The consultation comprised some 25 proposals spanning a wide variety of issues including a reform of the points system and fixed penalty regime, heavier penalties for drink-driving, and dangerous driving. Responses were received from a wide variety

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of respondents, the overwhelming majority of whom positively supported the Government's proposals for reform. Government has already legislated in respect of two of the most serious matters raised in the consultation by increasing the penalty from 10 to 14 years with regard to both causing death or grievous bodily injury by dangerous driving, and causing death or grievous bodily injury by careless driving when under the influence of drink or drugs. Those on so-called "joy-riding" are being taken forward by this draft Order. (The remaining proposals in the consultation document will be taken forward in due course.)

The draft proposal for an Order was also scrutinised by the Northern Ireland Affairs Committee as part of its inquiry into Hate Crime in Northern Ireland. The Committee published its Report on 19 May 2004. The main recommendation of the Committee was the inclusion of disability as a category in the legislation. The Government accepted this recommendation.

4.

MAIN ELEMENTS OF THE ORDER

This Order creates new legislation for Northern Ireland in the area of "hate crime" and road traffic offences and penalties. It provides increased penalties for offences motivated by hostility towards a person's race, religion, sexual orientation or disability. It also creates new road traffic offences and penalties to deal with what is often wrongly referred to as "joy-riding".

5.

COMMENTARY ON PROVISIONS

Title, commencement and interpretation

Article 1 provides the title of the Order, deals with its commencement and attracts to it the provisions of the Interpretation Act (Northern Ireland) 1954.

Increase in sentence for offences aggravated by hostility

Article 2 requires the court to treat hostility as an aggravating factor that increases the seriousness of the offence and to state this fact in open court.

Article 2(3) sets down two ways by which a court can determine whether an offence is aggravated by hostility.

First, Article 2(3)(a) defines an offence as aggravated by hostility if, either at the time of the offence, or immediately before or after its commission, the offender demonstrates hostility towards the victim based on the victim's membership, or presumed membership, of a racial, religious or sexual orientation group, or based on the victim's disability or presumed disability. Second, under Article 2(3)(b) an offence is aggravated by hostility if it is motivated, in whole or in part, by hostility towards members of a racial, religious or sexual orientation group based on their membership of that group, or towards persons who have a disability or a particular disability. Article 2(3)(b) therefore provides for aggravation when it is motivated by hostility towards racial, religious or sexual orientation groups. For disability, Article 2(3)(b) covers those with a particular disability as well as those more generally viewed as disabled. Article 2(3)(a) requires that there must be a demonstration of hostility towards an individual ("the victim") because of their membership (or presumed) membership of a specified group.

If the hostility is also based on other factors, this is immaterial in the court's consideration of the racial, religious, disability or sexual orientation hostility involved (Article 2(4)).

Article 2(5) defines racial, religious and sexual orientation groups. It also defines disability.

Racial group has the same meaning as in the Race Relations (Northern Ireland) Order 1997 i.e. "a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls". Racial group includes the Irish Traveller community. It defines religious group as meaning a group of persons defined by reference to religious belief or lack of religious belief. And it defines sexual orientation group as a group of persons defined by reference to sexual orientation. It defines disability as any physical or mental impairment.

Article 2(5) also defines membership of racial, religious or sexual orientation groups as including association with members of those groups. It provides that when an issue of "presumed" membership is involved, this means presumed by the offender.

Inciting hatred or arousing fear on grounds of sexual orientation or disability

Article 3 extends the protections of Part III of the Public Order (Northern Ireland) Order 1987 to include groups defined by reference to sexual orientation or disability. (Part III currently provides offences and penalties against the use of threatening, abusive or insulting words or behaviour, the display and distribution of written material, and related activities intended or likely to stir up hatred or arouse fear.) The protections, currently provided with regard to religious belief, colour, race, nationality, ethnic or national origins, are extended by Article 3 to include sexual orientation and disability. The penalties for stirring up hatred or arousing fear in such cases is: on summary conviction, a maximum of 6 months imprisonment, a fine not exceeding the statutory maximum, or both; on conviction on indictment, a maximum of 2 years imprisonment, a fine, or both.

Increase of penalties

Article 4 increases the maximum penalties for a series of offences – largely offences of violence but also including offences of fear and harassment. It also increases the maximum penalty for dangerous driving. The offences and penalties being provided by each individual paragraph are listed below.

Article 4(1) increases the maximum sentence of imprisonment on conviction on indictment for *malicious wounding or grievous bodily harm* from 5 years to 7 years.

Article 4(2)(a) *Assault occasioning actual bodily harm* – the maximum sentence of imprisonment on conviction on indictment to increase from 5 years to 7 years.

Article 4(2)(b) *Common assault* –when tried on indictment, a maximum penalty of 2 years imprisonment, an unlimited fine, or both.

Article 4(3) *Criminal damage* – the maximum sentence of imprisonment on conviction on indictment to increase from 10 years to 14 years imprisonment.

Article 4(4) *Harassment* – previously a summary offence, this offence to be alternatively tried on indictment with a maximum penalty of 2 years imprisonment, an unlimited fine or both.

Article 4(5) *Putting in fear of violence* – the maximum sentence of imprisonment on conviction on indictment to increase from 5 years to 7 years.

Article 4(7) *Dangerous driving* – the maximum sentence of imprisonment on conviction on indictment to increase from 2 years to 5 years.

Article 4(8) provides that none of the proposed penalties will apply to offences committed before the commencement of Article 4.

New offences of aggravated vehicle taking

Article 5 creates two new offences of aggravated vehicle taking and aggravated vehicle-taking causing death or grievous bodily injury.

Article 5(1) inserts a new provision (Article 172A) into the Road Traffic (Northern Ireland) Order 1981 to create a new offence of aggravated vehicle-taking. This offence will apply when a person takes a motor vehicle without an owner's consent or other authority.

Article 172A(1)(b) provides that, if it is proved that at any time after the vehicle was taken and before it was recovered – recovered being when it is restored to its owner or to other lawful possession or custody (Article 172A(6)) - the vehicle was driven, or injury or damage caused in specified circumstances, then an offence of aggravated vehicle taking will have been committed. The specified circumstances are provided in Article 172A(2)(a)-(d). They are that the vehicle was driven dangerously on a road or other public place; that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person; that damage was caused to any property or to the vehicle itself irrespective of whether the vehicle was taken by the accused person or by another person.

A vehicle is driven dangerously if it is driven in a way which falls far below what would be expected of a competent and careful driver; and it would be obvious to such a driver that driving in such a way would be dangerous (Article 172A(5)).

A person will be not guilty of such an offence if he proves that the driving, accident or damage occurred before the vehicle was taken without consent or authority; or if he proves that he was neither in nor on nor in the immediate vicinity of the vehicle when the driving, damage or accident occurred (Article 172A(3)). The person can be convicted of the offence of taking without consent or authority even if not guilty of aggravated vehicle-taking.

Article 5(2) inserts a new provision Article 172B into the Road Traffic (Northern Ireland) Order 1981 to create a new offence of aggravated vehicle-taking causing death or grievous bodily injury.

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A person is guilty of such an offence if he commits an offence of aggravated vehicle taking (being created under Article 172A) and it is proved that the accident caused the death of, or grievous bodily injury to, the person concerned (Article 172B(b)). The person can be convicted of the offence of taking without consent or authority even if not found guilty of aggravated vehicle-taking causing death or grievous bodily injury.

Article 5(3) creates new penalties for the offences of aggravated vehicle-taking and aggravated vehicle-taking causing death or grievous bodily injury.

The offence of aggravated vehicle-taking can attract a maximum penalty on indictment of 5 years imprisonment, an unlimited fine, or both. When convicted summarily, the penalties are a maximum of six months imprisonment, a statutory maximum fine, or both. Unless there are special circumstances, the offence will attract an obligatory period of disqualification and an obligatory endorsement on the offender's driving licence.

The offence of aggravated vehicle-taking causing death or grievous bodily injury can attract a maximum penalty on indictment of 14 years imprisonment, an unlimited fine, or both. The offence can also attract an obligatory period of disqualification and an obligatory endorsement on the offender's driving licence. The offence is triable only on indictment – it cannot be prosecuted summarily.

Article 5(4) provides that, even if the person convicted of aggravated vehicle taking or aggravated vehicle-taking causing death or grievous bodily injury did not drive the vehicle in question, that will not be regarded as a special reason under Article 35 of the Road Traffic (Offenders) (Northern Ireland) Order 1996 to avoid disqualification.

Article 5(5) provides that the aggravated vehicle-taking causing death or grievous bodily injury will be a serious arrestable offence under Part II of Schedule 5 to the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).

Article 5(6) provides that a compensation order can be made against the convicted person in respect of damage or injury caused by the new offences.

Article 5(7) provides that the creation of offences of aggravated vehicle-taking and aggravated vehicle-taking causing death or grievous bodily injury and related penalties will not apply to offences committed before the Article 5 comes into operation; nor to any driving, injury, death or damage which occurred before Article 5 comes into operation.

6.

COMMENCEMENT

The Order will come into operation two months from the date on which it is made.