



# Crime and Disorder Act 1998

## 1998 CHAPTER 37

### PART II

#### CRIMINAL LAW

##### *Racially-aggravated offences: England and Wales*

#### **28 Meaning of “racially aggravated”.**

- (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.

#### **Modifications etc. (not altering text)**

C1 S. 28 applied (25.8.2000) by 2000 c. 6, ss. 153(3), 168(1)

*Status: Point in time view as at 01/04/2001.*

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#### Commencement Information

- I1** S. 28 wholly in force; S. 28 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

### 29 Racially-aggravated assaults.

- (1) A person is guilty of an offence under this section if he commits—
- an offence under section 20 of the Offences Against the <sup>M1</sup>Person Act 1861 (malicious wounding or grievous bodily harm);
  - an offence under section 47 of that Act (actual bodily harm); or
  - 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—
- on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - 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—
- on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

#### Commencement Information

- I2** S. 29 wholly in force; S. 29 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### Marginal Citations

- M1** 1861 c.100.

### 30 Racially-aggravated criminal damage.

- (1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the <sup>M2</sup>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—
- on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - 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.

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#### Commencement Information

**I3** S. 30 wholly in force; S. 30 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### Marginal Citations

**M2** 1971 c.48.

### 31 Racially-aggravated public order offences.

- (1) A person is guilty of an offence under this section if he commits—
  - (a) an offence under section 4 of the <sup>M3</sup>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.

#### Commencement Information

**I4** S. 31 wholly in force; S. 31 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

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### Marginal Citations

M3 1986 c.64.

## 32 Racially-aggravated harassment etc.

- (1) A person is guilty of an offence under this section if he commits—
  - (a) an offence under section 2 of the <sup>M4</sup>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 <sup>M5</sup>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.

### Commencement Information

I5 S. 32 wholly in force; S. 32 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

### Marginal Citations

M4 1997 c.40.

M5 1997 c.40.

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### *Racially-aggravated offences: Scotland*

## **33 Racially-aggravated offences.**

After section 50 of the <sup>M6</sup>Criminal Law (Consolidation) (Scotland) Act 1995 there shall be inserted the following section—

### *“ Racially-aggravated harassment*

#### **50A Racially-aggravated harassment.**

- (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—

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“conduct” includes speech;  
 “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.”

#### Commencement Information

**I6** S. 33 wholly in force; S. 33 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### Marginal Citations

**M6** 1995 c.39.

### Miscellaneous

#### 34 Abolition of rebuttable presumption that a child is doli incapax.

The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is hereby abolished.

#### Commencement Information

**I7** S. 34 wholly in force; S. 34 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### 35 Effect of child’s silence at trial.

In section 35 of the 1994 Act (effect of accused’s silence at trial), the following provisions shall cease to have effect, namely—

- (a) in subsection (1), the words “who has attained the age of fourteen years”; and
- (b) subsection (6).

#### Commencement Information

**I8** S. 35 wholly in force; S. 35 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### 36 Abolition of death penalty for treason and piracy.

(1) In section I of the <sup>M7</sup>Treason Act (Ireland) 1537 (practising any harm etc. to, or slandering, the King, Queen or heirs apparent punishable as high treason), for the words “have and suffer such pains of death and” there shall be substituted the words “be liable to imprisonment for life and to such”.

(2) In the following enactments, namely—

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- (a) section II of the <sup>M8</sup>Crown of Ireland Act 1542 (occasioning disturbance etc. to the crown of Ireland punishable as high treason);
- (b) section XII of the <sup>M9</sup>Act of Supremacy (Ireland) 1560 (penalties for maintaining or defending foreign authority);
- (c) section 3 of the <sup>M10</sup>Treason Act 1702 (endeavouring to hinder the succession to the Crown etc. punishable as high treason);
- (d) section I of the <sup>M11</sup>Treason Act (Ireland) 1703 (which makes corresponding provision),

for the words “suffer pains of death” there shall be substituted the words “ be liable to imprisonment for life ”.

- (3) The following enactments shall cease to have effect, namely—
  - (a) the <sup>M12</sup>Treason Act 1790;
  - (b) the <sup>M13</sup>Treason Act 1795.
- (4) In section 1 of the <sup>M14</sup>Treason Act 1814 (form of sentence in case of high treason), for the words “such person shall be hanged by the neck until such person be dead”, there shall be substituted the words “ such person shall be liable to imprisonment for life ”.
- (5) In section 2 of the <sup>M15</sup>Piracy Act 1837 (punishment of piracy when murder is attempted), for the words “and being convicted thereof shall suffer death” there shall be substituted the words “ and being convicted thereof shall be liable to imprisonment for life ”.
- (6) The following enactments shall cease to have effect, namely—
  - (a) the Sentence of <sup>M16</sup>Death (Expectant Mothers) Act 1931; and
  - (b) sections 32 and 33 of the <sup>M17</sup>Criminal Justice Act Northern Ireland) 1945 (which make corresponding provision).

#### Commencement Information

**I9** S. 36 wholly in force; s. 36 not in force at Royal Assent, see s. 121; s. 36 in force at 30.9.1998 by [S.I. 1998/2327](#), [art. 2\(1\)](#) (subject to savings in [arts. 5-8](#))

#### Marginal Citations

**M7** 1537 c.7.  
**M8** 1542 c.1.  
**M9** 1560 c.1.  
**M10** 1702 c.21.  
**M11** 1703 c. 5.  
**M12** 1790 c.48.  
**M13** 1795 c.7.  
**M14** 1814 c.146.  
**M15** 1837 c.88.  
**M16** 1931 c.24.  
**M17** 1945 c.15 (N.I.).

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