



# Crime and Disorder Act 1998

## 1998 CHAPTER 37

### PART II

#### CRIMINAL LAW

#### *[<sup>F1</sup>Racially or religiously aggravated] offences: England and Wales*

##### Textual Amendments

**F1** Words in the cross-heading substituted (14.12.2001) by 2001 c. 24, ss. 39(2), 127(2) (with s. 42)

#### **28** Meaning of “[<sup>F2</sup>racially or religiously aggravated]”.

(1) An offence is [<sup>F2</sup>racially or religiously 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 [<sup>F3</sup>racial or religious group]; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a [<sup>F3</sup>racial or religious group] based on their membership of that group.

(2) In subsection (1)(a) above—

“membership”, in relation to a [<sup>F3</sup>racial or religious 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, [<sup>F4</sup>on 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.

*Status: Point in time view as at 01/02/2015.*

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[<sup>F5</sup>(5) In this section “religious group” means a group of persons defined by reference to religious belief or lack of religious belief.]

#### Textual Amendments

- F2** Words in s. 28(1) and the sidenote substituted (14.12.2001) by 2001 c. 24, ss. 39(3)(a), 127(2) (with s. 42)
- F3** Words in s. 28(1)(2) substituted (14.12.2001) by 2001 c. 24, ss. 39(3)(b), 127(2) (with s. 42)
- F4** Words in s. 28(3) substituted (14.12.2001) for s. 28(3)(a)(b) by 2001 c. 24, ss. 39(3)(c), 127(2) (with s. 42)
- F5** S. 28(5) inserted (14.12.2001) by 2001 c. 24, ss. 39(4), 127(2) (with s. 42)

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

- C1** S. 28 applied (25.8.2000) by 2000 c. 6, ss. 153(3), 168(1)
- C2** S. 28 applied (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 269(5), 336(2), Sch. 21 para. 2
- C3** S. 28 applied (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 145(3), 336(3); S.I. 2005/950, art. 2(1), Sch. 1 para. 7 (with Sch. 2)
- C4** S. 28 applied (28.3.2009 for specified purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 240(4), 383(2) (with ss. 271(1), 385); S.I. 2009/812, art. 3(a)(b); S.I. 2009/1167, art. 4
- C5** S. 28(2) applied (31.3.2004) by Anti-social Behaviour Act 2003 (c. 38), ss. 47(2), 93(1); S.I. 2004/690, art. 3(g); S.I. 2004/999, art. 2(g)

#### 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 [<sup>F6</sup>Racially or religiously 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 [<sup>F7</sup>racially or religiously 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.

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#### Textual Amendments

- F6** Words in the sidenote to s. 28 substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(a)(6)(a) (with s. 42)  
**F7** Words in s. 29(1) substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(b)(6)(a) (with s. 42)

#### 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 [F8Racially or religiously 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 [F9racially or religiously 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.

#### Textual Amendments

- F8** Words in the sidenote to s. 30 substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(a)(6)(b) (with s. 42)  
**F9** Words in s. 30(1) substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(b)(6)(b) (with s. 42)

#### 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 [F10Racially or religiously aggravated] public order offences.

- (1) A person is guilty of an offence under this section if he commits—
- an offence under section 4 of the <sup>M3</sup>Public Order Act 1986 (fear or provocation of violence);
  - an offence under section 4A of that Act (intentional harassment, alarm or distress); or
  - an offence under section 5 of that Act (harassment, alarm or distress), which is [F11racially or religiously aggravated] for the purposes of this section.

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- (2) <sup>F12</sup> .....
- (3) <sup>F12</sup> .....
- (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.

**Textual Amendments**

**F10** Words in the sidenote to s. 31 substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(a)(6)(c) (with s. 42)

**F11** Words in s. 31(1) substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(b)(6)(c) (with s. 42)

**F12** S. 31(2)(3) repealed (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 111, 174(2), 178(8), Sch. 7 para. 34, Sch. 17 Pt. 2; S.I. 2005/3495 art. 2(1)(m)(u)(xlii)

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**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** [<sup>F13</sup>Racially or religiously aggravated] harassment etc.

- (1) A person is guilty of an offence under this section if he commits—
  - (a) an offence under section 2 [<sup>F14</sup>or 2A] of the <sup>M4</sup>Protection from Harassment Act 1997 ([<sup>F15</sup>offences of harassment and stalking]); or
  - (b) an offence under section 4 [<sup>F16</sup>or 4A] of that Act (putting people in fear of violence [<sup>F17</sup>and stalking involving fear of violence or serious alarm or distress]),
 which is [<sup>F18</sup>racially or religiously aggravated] for the purposes of this section.
- <sup>F19</sup>(2) .....
- (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;

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- (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 [<sup>F20</sup>either 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) <sup>F21</sup> .....

#### Textual Amendments

- F13** Words in the sidenote to s. 32 substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(a)(6)(d), 127(2) (with s. 42)
- F14** Words in s. 32(1)(a) inserted (25.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 144(2)(a)(i) (with s. 97); S.I. 2012/2075, art. 5(d)
- F15** Words in s. 32(1)(a) substituted (25.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 144(2)(a)(ii) (with s. 97); S.I. 2012/2075, art. 5(d)
- F16** Words in s. 32(1)(b) inserted (25.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 144(2)(b)(i) (with s. 97); S.I. 2012/2075, art. 5(d)
- F17** Words in s. 32(1)(b) inserted (25.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 144(2)(b)(ii) (with s. 97); S.I. 2012/2075, art. 5(d)
- F18** Words in s. 32(1) substituted (14.12.2001) by 2001 c. 24, ss. 39(5)(b)(6)(d), 127(2) (with s. 42)
- F19** S. 32(2) repealed (1.10.2002) by Police Reform Act 2002 (c. 30), s. 107(2), Sch. 8; S.I. 2002/2306, art. 2(g)(iii)(f)
- F20** Words in s. 32(5) substituted (25.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 144(3) (with s. 97); S.I. 2012/2075, art. 5(d)
- F21** S. 32(7) repealed (30.9.2009) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 48, Sch. 11 (with Sch. 12 para. 5(1)); S.I. 2009/2616, art. 2

#### 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.

### *Racially-aggravated offences: Scotland*

## 33 Racially-aggravated offences.

After section 50 of the <sup>M5</sup>Criminal Law (Consolidation) (Scotland) Act 1995 there shall be inserted the following section—

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*“ 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—
- “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,

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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**

**M5** 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.**

**F22** .....

**Textual Amendments**

**F22** S. 35 repealed (21.7.2008) by Statute Law (Repeals) Act 2008 (c. 12), s. 1(1), Sch. 1 Pt. 3

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

(1) In section I of the <sup>M6</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—

- (a) section II of the <sup>M7</sup>Crown of Ireland Act 1542 (occasioning disturbance etc. to the crown of Ireland punishable as high treason);
- (b) section XII of the <sup>M8</sup>Act of Supremacy (Ireland) 1560 (penalties for maintaining or defending foreign authority);
- (c) section 3 of the <sup>M9</sup>Treason Act 1702 (endeavouring to hinder the succession to the Crown etc. punishable as high treason);
- (d) section I of the <sup>M10</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”.

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F23(3) .....

(4) In section 1 of the <sup>M11</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>M12</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 ”.

F23(6) .....

**Textual Amendments**

**F23** S. 36(3)(6) repealed (21.7.2008) by [Statute Law \(Repeals\) Act 2008 \(c. 12\), s. 1\(1\), Sch. 1 Pt. 3](#)

**Commencement Information**

**I8** 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**

**M6** [1537 c.7.](#)

**M7** [1542 c.1.](#)

**M8** [1560 c.1.](#)

**M9** [1702 c.21.](#)

**M10** [1703 c. 5.](#)

**M11** [1814 c.146.](#)

**M12** [1837 c.88.](#)



**Status:**

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**Changes to legislation:**

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