

## **EXPLANATORY NOTES IN RESPECT OF AMENDMENTS INTRODUCING OFFENCE OF INCITMENT TO HATRED ON GROUNDS OF SEXUAL ORIENTATION**

### **New clause: Hatred on the grounds of sexual orientation**

1. This new clause gives effect to new Schedule (Hatred on the grounds of sexual orientation), which amends Part 3A of the Public Order Act 1986 (“the 1986 Act”) (Hatred against persons on religious grounds) to create offences involving stirring up hatred on the grounds of sexual orientation.

### **New Schedule: Hatred on the grounds of sexual orientation**

2. This new Schedule amends Part 3A of the 1986 Act (inserted by the Racial and Religious Hatred Act 2006) to extend the offences of stirring up hatred against people on religious grounds to cover hatred against people on grounds of sexual orientation. New section 29AB defines “hatred on the grounds of sexual orientation”. The definition covers hatred against a group of persons defined by reference to their sexual orientation, be they heterosexual, homosexual or bi-sexual.

3. *Paragraphs 6 to 11* of the new Schedule amend, in turn, sections 29B to 29G of the 1986 Act so as to extend the various religious hatred offences in those sections to cover hatred on the grounds of sexual orientation. These offences involve the use of words or behaviour or display of written material (section 29B), publishing or distributing written material (section 29C), the public performance of a play (section 29D), distributing, showing or playing a recording (section 29E), broadcasting or including a programme in a programme service (section 29F), and possession of inflammatory material (section 29G).

4. In relation to each extended offence the words, behaviour, written material or recordings or programme must be threatening, and intended to stir up hatred on the grounds of sexual orientation. In the case of the offence at section 29B, there is a specific defence where the words or behaviour are used or displayed inside a private dwelling and the accused had no reason to believe that they can be heard or seen by a person outside that or any other private dwelling.

5. The offences differ from the offences of stirring up racial hatred, in Part 3 of the 1986 Act, in two respects. First, the offences apply only to “threatening” words or behaviour, rather than “threatening, abusive or insulting” words or behaviour. Second, the offences apply only to words or behaviour if the accused “intends” to stir up hatred on grounds of sexual orientation, rather than if hatred is either intentional or “likely” to be stirred up.

6. No equivalent provision is made to section 29J of the 1986 Act which provides that the offences of stirring up religious hatred do not limit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule or insult or abuse of particular religions or belief systems or lack of religion or the beliefs and practices of those who hold such beliefs or apply to proselytisation, evangelism or the seeking to convert people to a particular belief or to cease holding a belief.

7. *Paragraphs 6(3) and 12 to 15* of the new Schedule rectify technical defects in Part 3A of the 1986 Act as inserted into that Act by the Racial and Religious Hatred Act 2006.

8. *Paragraph 6(3)* of the new Schedule omits section 29B(3) of the 1986 Act (which has not been commenced). This provides that a constable may arrest without warrant anyone he reasonably suspects is committing an offence under section 29B. This provision is unnecessary given the general power of arrest now in section 24 of the Police and Criminal Evidence Act 1984, as amended by the Serious Organised Crime and Police Act 2005.

9. The Racial and Religious Hatred Act extends to England and Wales. However, sections 29H(2) and 29I(2)(b) and (4) of the 1986 Act make provision in respect of Scotland. As such, these sections are redundant and have not been commenced (see Racial and Religious Hatred Act 2006 (Commencement No 1) Order 2007 (SI 2007/2490)). Paragraph 12 and 13 repeal these redundant provisions and remove unnecessary references to England and Wales in sections 29H and 29I. Paragraph 15(2) removes unnecessary references to England and Wales in section 29L.

10. Section 29K of the 1986 Act makes it clear that the Act does not apply to fair and accurate reports of anything done in the United Kingdom or Scottish Parliaments or the fair and accurate contemporaneous reports of judicial proceedings. Paragraph 14 of the new Schedule inserts a reference to the National Assembly for Wales.

11. *Paragraph 15(3) and (4)* of the new Schedule amends section 29L(3)(b) of the Public Order Act, which sets out the maximum penalty for an offence under Part 3A on summary conviction, to take account of Custody Plus, as provided for in the Criminal Justice Act 2003 (but not yet commenced). The maximum sentence on summary conviction is increased from 6 to 12 months and a transitional provision inserted for the period before section 154(1) of the Criminal Justice Act 2003 comes into force, such that during that period the reference to 12 months' imprisonment is read as a reference to a period of 6 months' imprisonment.

#### **Amendments to Schedule 21 (minor and consequential amendments)**

12. *New paragraph 6A* of Schedule 21 adds the offences in Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds or grounds of sexual orientation), as amended by new Schedule (*Hatred on the grounds of sexual orientation*), to the list of trigger offences for football banning orders contained in Schedule 1 to the Football Spectators Act 1989.

13. *New paragraph 6B* of Schedule 21 amends section 167 of the Broadcasting Act 1990 which confers a power on a justice of the peace, where a relevant offence is suspected, to issue an order requiring the production of a recording of a programme for the purposes of making a copy. By virtue of section 167(4) of the Broadcasting Act, the power does not apply where a warrant could be granted under section 24 of the 1986 Act (racial hatred – powers of entry and search). *Paragraph 6B(2)* amends section 167(4) of the Broadcasting Act to include a reference to section 29H of the 1986 Act, which contains the equivalent powers to those in section 24 in respect of Part 3A of the 1986 Act (hatred against persons on religious grounds or grounds of sexual orientation). *Paragraph 6B(3)* extends the definition of a 'relevant offence', which currently includes that in section 22 of the 1986 Act (broadcasting or including

a programme in a programme service threatening, abusive or insulting visual images or sounds), to include the parallel offence in section 29F of the 1986 Act.

14. *New paragraph 19A of Schedule 21* amends Schedule 2 to the Armed Forces Act 2006 to include in the list of offences contained therein the offences under sections 29B to 29G of the 1986 Act (Incitement to hatred against persons on religious grounds or hatred on the grounds of sexual orientation), in addition to the parallel offences in sections 18 to 23 of that Act (Incitement to racial hatred) which are already listed. Section 113 of the Armed Forces Act 2006 requires a commanding officer to notify a service police force when he becomes aware that a serious offence has or may have been committed by a person under his command. Section 116 requires a service policeman who considers there is sufficient evidence to charge a person with a serious offence, or an offence prescribed by regulations made by the Secretary of State under section 128, to refer the case to the Director of Service Prosecutions. Schedule 2 lists those serious offences to which section 113 and section 116 apply. They include serious disciplinary offences, such as mutiny and desertion, and serious criminal offences, such as murder, manslaughter and certain sexual offences.