

SECTION 7

Legislative tools

This section presents a number of legislative options to be used in combating hate crime. The definitions are separated into different sections, although this is not intended to be a prescriptive guide to the way in which they are implemented. The offences are given their commonly used names, together with the Act and Section. The points to prove for each offence are listed together with the standard penalty, followed by the racially aggravated penalty.

7.1 Introduction

i. Racially aggravated offence

Section 28 Crime and Disorder Act 1998 provides a definition of the term 'racially aggravated'.

An offence is racially aggravated if:

- at the time of committing the offence, immediately before or after doing so, the offender demonstrates towards the victim hostility based on the victim's membership (or presumed membership) of a racial group;

or

- the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

This term applies to the following offences under the Crime and Disorder Act 1998:

- assaults (Section 29)
- criminal damage (Section 30)
- public order offence (Section 31)
- harassment (Section 32).

ii. Racial aggravation and sentencing

In addition to introducing a number of racially aggravated offences, the Crime and Disorder Act 1998 provided a requirement, under Section 82, for the courts to consider racial motivation or racial hostility as aggravating factors when deciding on the sentence for **any** offence which is not a specific racially aggravated offence under the Act.

This applies when a court is considering the seriousness of an offence other than one under Sections 29–32 of the Act.

If the offence was racially aggravated, the court shall treat that fact as an aggravating factor (ie a factor that increases the seriousness of the offence) and shall state this in open court. So, racial aggravation, although not an element of the offence, can be taken into consideration by the court in sentencing for any offence.

iii. Admission of witness statement in court proceedings

Section 23 Criminal Justice Act 1988 provides that in certain circumstances it is possible for a statement made by a witness to be put to a court, rather than for the witness to give oral testimony. One set of circumstances where this is possible is if the witness has made a statement to a police officer (or similar investigator) and is prevented from testifying either physically or through fear.

7.2 Physical assault

i. Grievous bodily harm

<i>Act</i>	Section 20 Offences Against the Person Act 1861
<i>Points to prove</i>	unlawfully maliciously wound/inflict GBH upon any other person with or without weapon/instrument
<i>Penalty</i>	On indictment, 5 years
<i>Power of arrest</i>	Arrestable offence

Racially aggravated grievous bodily harm

<i>Act</i>	Section 29(1)a and (2) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment, 7 years

ii. Actual bodily harm

<i>Act</i>	Section 47 Offences Against the Person Act 1861
<i>Points to prove</i>	assault occasioning actual bodily harm (includes shock and psychological harm)
<i>Penalty</i>	On indictment, 5 years
<i>Power of arrest</i>	Arrestable offence

Racially aggravated actual bodily harm

<i>Act</i>	Section 29(1)b and (2) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment, 7 years

iii. Common assault

<i>Act</i>	Section 39 Criminal Justice Act 1988
<i>Points to prove</i>	unlawfully assault/beat other person
<i>Penalty</i>	Summary, six months
<i>Power of arrest</i>	No specific power

Racially aggravated common assault

<i>Act</i>	Section 29(1)c and (3) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment, 2 years

7.3 Damage

i. Criminal damage

<i>Act</i>	Section 1(1) Criminal Damage Act 1971
<i>Points to prove</i>	without lawful excuse destroys/damages property belonging to another intending/reckless as to the destruction/damage
<i>Penalty</i>	On indictment, 10 years
<i>Power of arrest</i>	Arrestable offence

Racially aggravated criminal damage

<i>Act</i>	Section 30(1) and (2) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment, 14 years

7.4 Witnesses

i. Witness intimidation

<i>Act</i>	Section 51 Criminal Justice and Public Order Act 1994
<i>Points to prove</i>	act which intimidates a person intends to intimidate knowing or believing person is a witness or juror intending that the investigation or course of justice will be obstructed, perverted or interfered with
<i>Penalty</i>	On indictment, 5 years
<i>Power of arrest</i>	Arrestable offence

7.5 Offensive behaviour

i. Threatening words or behaviour

<i>Act</i>	Section 4 Public Order Act 1986
<i>Points to prove</i>	<p>use</p> <ul style="list-style-type: none"> - threatening/abusive/insulting - words/behaviour - towards other person OR <p>distribute/display to another</p> <ul style="list-style-type: none"> - threatening/abusive/insulting - writing/sign/visible representation <p>with intent to: cause that person to believe immediate unlawful violence used or provoked against him by defendant or another or person likely to believe such violence will be used or likely to be provoked</p>
<i>Penalty</i>	Summary 6 months
<i>Power of arrest</i>	Found committing

Racially aggravated threatening words or behaviour

<i>Act</i>	Section 31(1)a and (4) Crime and Disorder Act 1998
<i>Points to prove</i>	<p>As above, plus:</p> <p>that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998</p>
<i>Enhanced penalty</i>	On indictment, 2 years

ii. Intentional harassment, alarm or distress

<i>Act</i>	Section 4A Public Order Act 1986
<i>Points to prove</i>	With intent to cause a person harassment, alarm or distress <ul style="list-style-type: none"> - uses threatening/abusive/insulting words or behaviour, or disorderly behaviour OR - displays any writing/sign/visible representation which is threatening/abusive/insulting - causing that or another person - harassment, alarm or distress
<i>Penalty</i>	Summary 6 months
<i>Power of arrest</i>	Found committing

Racially aggravated intentional harassment, alarm or distress

<i>Act</i>	Section 31(1)b and (4) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment, 2 years

iii. Disorderly conduct

<i>Act</i>	Section 5 Public Order Act 1986
<i>Points to prove</i>	uses threatening/abusive/insulting words or behaviour OR disorderly behaviour OR displays writing/sign/visible representation within hearing/sight of person likely to be caused harassment, alarm or distress
<i>Penalty</i>	Fine not exceeding level 3
<i>Power of arrest</i>	Found committing, but only after warning if conduct continues

Racially aggravated disorderly conduct

<i>Act</i>	Section 31(1)c Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	Fine not exceeding level 4.

Note: Offences contrary to Section 31(1)a and b of the Crime and Disorder Act 1998 may be tried on indictment. If the jury finds not guilty by virtue of lack of proof of the racial aggravation, it may convict of the basic, non-aggravated offences contrary to Sections 4 and 4A respectively of the Public Order Act 1986. Racially aggravated disorderly conduct, contrary to Section 31(1)c of the Crime and Disorder Act 1998, being a summary offence only, allows for no alternative verdict.

iv. Harassment/stalking without violence

<i>Act</i>	Section 2 Protection from Harassment Act 1997
<i>Points to prove</i>	pursue a course of conduct (harassment) on at least two occasions whilst knowing/ought to know amounts to harassment of another
<i>Penalty</i>	Summary 6 months and court may impose restraining order
<i>Power of arrest</i>	Arrestable offence

Racially aggravated harassment/stalking without violence

<i>Act</i>	Section 32(1)a and (3) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment 2 years

v. Harassment/stalking with fear of violence

<i>Act</i>	Section 4 Protection from Harassment Act 1997
<i>Points to prove</i>	knows/ought to know a course of conduct on at least two occasions causes another to fear violence will be used against him/her
<i>Penalty</i>	On indictment 5 years
<i>Power of arrest</i>	Arrestable offence

Racially aggravated harassment/stalking with violence

<i>Act</i>	Section 32(1)b and (4) Crime and Disorder Act 1998
<i>Points to prove</i>	As above, plus: that the offence was racially aggravated in accordance with Section 28 Crime and Disorder Act 1998
<i>Enhanced penalty</i>	On indictment 7 years

vi. Public Order Act racial hatred – Sections 17–29 1986

Section 17 Public Order Act 1986 defines racial hatred for purposes of Sections 17–29 thus:

“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.”

vii. Racial hatred – words/behaviour/written material

<i>Act</i>	Section 18 Public Order Act 1986
<i>Points to prove</i>	uses words or behaviour/displays written material threatening/abusive/insulting with intent/likely to stir up racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Racially aggravated penalty</i>	Not applicable
<i>Power of arrest</i>	Found committing
<i>Comment</i>	Consent of Attorney General required for prosecution

viii. Racial hatred – publish/distribute written material

<i>Act</i>	Section 19 Public Order Act 1986
<i>Points to prove</i>	publish or distribute written material threatening/abusive/insulting intending/likely to stir up racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Power of arrest</i>	Arrestable offence
<i>Comment</i>	Consent of Attorney General required for prosecution

ix. Racial hatred – public performance of a play

<i>Act</i>	Section 20 Public Order Act 1986
<i>Points to prove</i>	public performance of a play threatening/abusive/insulting words or behaviour any person directs intent to stir racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Power of arrest</i>	No specific power
<i>Comment</i>	Consent of Attorney General required for prosecution

x. Racial hatred – distribute/play/show a recording

<i>Act</i>	Section 21 Public Order Act 1986
<i>Points to prove</i>	distribute/show/play recording threatening/abusive/insulting visual images/sounds intending/likely to stir up racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Power of arrest</i>	No specific power
<i>Comment</i>	Consent of Attorney General required for prosecution

xi. Racial hatred – broadcasting racist programme service

<i>Act</i>	Section 22 Public Order Act 1986
<i>Points to prove</i>	provide/produce/direct/use in broadcasting/including material programme service visual images/sounds threatening/abusive/insulting with intent/likely to stir up racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Power of arrest</i>	No specific power
<i>Comment</i>	Consent of Attorney General required for prosecution

xii. Racial hatred – possess racially inflammatory material

<i>Act</i>	Section 23 Public Order Act 1986
<i>Points to prove</i>	possession of – threatening/abusive/insulting – written material for display/publication/distribution OR recording of visual images or sounds – for distribution/show/play/included in programme – by him or herself or another with intent/likely to stir up racial hatred
<i>Penalty</i>	On indictment, 2 years
<i>Power of arrest</i>	No specific power
<i>Comment</i>	Consent of Attorney General required for prosecution

xiii. Football offences – indecent or racist chanting

<i>Act</i>	Section 3 Football (Offences) Act 1991 as amended by Section 9 Football (Offences and Disorder) Act 1999
<i>Points to prove</i>	designated football match engage in/take part indecent/racist chanting
<i>Penalty</i>	Fine not exceeding level 3
<i>Power of arrest</i>	Arrestable offence
<i>Comment</i>	Consent of Attorney General required for prosecution

Notes:

Of a racist nature means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

Chanting means repeated uttering of any words or sounds whether alone or in concert with one or more others.

xiv. Send letter or article to cause distress or anxiety

<i>Act</i>	Section 1(1) Malicious Communications Act 1988
<i>Points to prove:</i>	(a) send to another person – letter/article conveying – indecent/grossly offensive message – OR threat – OR false information known or believed to be false – for purpose of causing anxiety/distress – to recipient/other person to whom intended communicated (b) send to another person – other article – wholly/partly of an – indecent/grossly offensive nature – for purpose of causing distress/anxiety – to recipient/other person to whom intended communicated
<i>Penalty</i>	Fine not exceeding level 4
<i>Power of arrest</i>	No specific power
<i>Comment</i>	6-month statute of limitations

Notes:

Where the offender has been apprehended, the subject of the hate mail ('the victim') may wish to consider a civil claim for damages for defamation. Defamatory material (ie that which is untrue and damaging to one's reputation) is slander if it is spoken and libel if it is written or in another permanent form. The libel must be communicated to a third party. Therefore, a letter impugning the victim's reputation, sent direct by the offender to the victim, would not give rise to a civil claim. However, a displayed poster or a letter circulated to others would suffice.

Where the victim is not identified by name, he or she may still have a claim if the libel refers to an identifiable limited class of which they are members. It must be borne in mind that even if a victim were successful, the offender may be a person of limited or no means and thus not in a position to pay any damages awarded at trial. There is no legal aid to bring this kind of claim.

xv. Nuisance phone calls

<i>Act</i>	Section 43(1) Telecommunications Act 1984
<i>Points to prove</i>	<ul style="list-style-type: none"> (a) send <ul style="list-style-type: none"> - by public telecommunications system - message/other matter - grossly offensive - OR indecent/obscene/menacing character (b) send <ul style="list-style-type: none"> - by public telecommunications system - to cause to another <ul style="list-style-type: none"> - annoyance/inconvenience/needless anxiety - a message knowing it to be false - OR persistently make use of <ul style="list-style-type: none"> - public telecommunications system - for that purpose
<i>Penalty</i>	Summary 6 months
<i>Racially aggravated penalty</i>	Not applicable
<i>Power of arrest</i>	No specific power
<i>Comment</i>	6-month statute of limitations

7.6 Community legislation

The Crime and Disorder Act 1998 introduced a wide range of measures for preventing crime and disorder. Some of the key sections are explored below.

i. Anti-social behaviour orders

Section 1 creates a new community-based order – the anti-social behaviour order. The police or the local authority, in consultation with each other, can apply for this. Orders can be made against an individual or several individuals (eg a family) whose behaviour has caused harassment, alarm or distress to one or more people not in the same household as the offender. Orders can be made on those aged ten years and above, and applications are made to the magistrates' court in its civil capacity. Orders are preventive in nature and are to be used to end persistent and serious anti-social behaviour. The minimum duration for an order is two years, and a breach of the order is an arrestable offence, carrying a maximum penalty of five years' imprisonment.

ii. Parenting orders

Section 8 allows a court to impose a parenting order in any one of four situations:

- when a court makes a child safety order;
- where a court makes an anti-social behaviour order or a sex offender order;
- where a child or young person has been convicted of an offence; or
- where a person has been convicted under Sections 443 and 444 Education Act 1996.

In imposing such an order, the court must be satisfied that it is desirable in the interests of preventing further offending or the kind of behaviour that led to the original order being made.

It may consist of two elements:

- a requirement on the parent or guardian to attend counselling or guidance sessions (which can last up to three months); and
- requirements encouraging the parent or guardian to exercise a measure of control over the child.

These requirements will be overseen by a responsible officer who will be a probation officer, social worker or member of a youth offending team. Any breach of the parenting order may result in a fine of up to £1,000 (level 3).

Parenting orders are intended for national implementation in 2000–01.

They are being piloted in Hammersmith and Fulham, Kensington and Chelsea, and Westminster jointly; Southampton and Portsmouth jointly; Wolverhampton; Sheffield; Lewisham; Luton and Bedford jointly; Devon; St. Helens and Sunderland.

iii. Child safety orders

Sections 11–13 provide a magistrates' family proceedings court with a disposal called a child safety order. It is aimed at children under ten and is designed to prevent them becoming involved in criminal or anti-social behaviour.

On the application of a local authority social services department, the order may be imposed:

- when the child has committed an act which would have constituted an offence if the child was ten or over;
- to prevent anti-social behaviour or offending; and
- because the child has contravened a ban imposed under a local child curfew notice.

Such an order will place the child under the supervision of a responsible officer (see above). The court may impose requirements:

- ensuring that the child receives appropriate care, protection and support and is subject to proper control; and
- to prevent any repetition of the kind of behaviour which resulted in the order being made.

The order will normally be for up to three months, but can in exceptional cases be for up to 12 months.

Child safety orders are being piloted in the same areas as the parenting orders prior to intended national implementation in 2000–2001.

iv. Local child curfew schemes

Sections 14 and 15 put in place arrangements for local authorities to introduce local child curfew schemes to deal with the problem of unsupervised children under ten on the streets late at night.

Section 14 allows local authorities to introduce local child curfew schemes for which they are responsible. A curfew notice will apply to children:

- under ten as specified by the individual local authority;
- unsupervised by a responsible adult or parent;

- during specified hours between 9pm and 6am; and
- for a maximum of 90 days.

Section 15 requires a police officer who has reason to believe that a child has breached a curfew notice to return the child home. The police are required to inform the local authority of any breach of a curfew notice.

v. Removal of truants to designated premises

Section 16 empowers a police officer to take a child or young person whom he or she has reasonable cause to believe is of compulsory school age and is absent from school without lawful authority, back to school or another place designated by the local education authority (LEA). The child or young person must be in a public place.

This power can be used when:

- the LEA has designated a place for the purpose of this provision;
- the LEA has notified the chief officer of police for that area; and
- a police officer of superintendent rank or above has specified an area and time period in which this power can be used.

7.7 Local authority powers

i. Repossession of secure and assured tenancies

Section 144 Housing Act 1996 allows a court to order possession of a dwelling if it considers it reasonable that the tenant or a person residing in or visiting the dwelling:

- has been guilty of conduct causing/likely to cause a nuisance or annoyance to a person residing/visiting/otherwise engaged in lawful activity in the locality; or
- has been convicted of:
 - (i) using dwelling/allowing the dwelling to be used for immoral or illegal purposes; or
 - (ii) has committed an arrestable offence in, or in the locality of, the dwelling.

This section gives power to the courts to evict residents of dwellings providing the above criteria are met.

ii. Injunction for trouble on council estate

Section 152 Housing Act 1996 permits a civil court to grant an injunction against anyone creating problems for their neighbours in council property. On application from a local authority the court may grant an injunction prohibiting a person from:

- (a) engaging in/threatening to engage in conduct causing or likely to cause a nuisance or annoyance to a person residing in/visiting/otherwise engaging in lawful activity in residential premises controlled by the local authority or in the locality; or
- (b) using/threatening to use such premises for immoral or illegal purposes; or
- (c) entering such premises or being found in such locality.

The court may only grant the injunction if it is of the opinion that:

- the individual has used or threatened to use violence against any person mentioned in (a) above; and
- there is significant risk of harm to that or a similar person if the injunction is not granted.

If the court has attached a power of arrest to the injunction then a constable may arrest if there is reasonable cause to suspect a breach of the injunction.

iii. Injunction against a tenant

Section 153 Housing Act 1996 provides that a court may grant an injunction against a tenant of rented property if they are 'misbehaving'. The landlord must be a local housing authority, housing action trust, charitable housing trust or registered social landlord.

The court may grant an injunction in relation to a breach or anticipated breach of terms of a tenancy. This breach/anticipated breach must consist of:

- (a) engaging in/threatening to engage in conduct causing or likely to cause a nuisance or annoyance to a person residing in/visiting/otherwise engaging in lawful activity in residential premises controlled by the local authority or in the locality; or
- (b) using/threatening to use such premises for immoral or illegal purposes; or
- (c) allowing any sub-tenant/lodger/other person residing on the premises, or visitor to act as (a) or (b) above.

The court may only grant the injunction if it is of the opinion that:

- the individual has used or threatened to use violence against any person mentioned in (a) above; and
- there is significant risk of harm to that or a similar person if the injunction is not granted.

If the court has attached a power of arrest to the injunction then a constable may arrest if there is reasonable cause to suspect a breach of the injunction.