CABINET

RACIAL DISCRIMINATION AND INCITEMENT TO RACIAL HATRED

MEMORANDUM BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

It was stated in The Queen's Speech on the opening of Parliament that the Government would "take action against racial discrimination and promote full integration into the community of immigrants who have come here from the Commonwealth". During the Committee Stage of the Expiring Laws Continuance Bill I indicated that it was our firm intention to introduce as soon as possible legislation dealing with discrimination against coloured persons in public places; and that if, as I hoped, we could overcome the formidable difficulties of definition, we would couple with it legislation against incitement. (Official Report, 17th November, 1964, cols. 287-8.)

2. I have since given much thought to the form which legislation might take and, following discussions with the Lord Chancellor and the Law Officers, I submitted a memorandum to the Home Affairs Committee. At their meeting on 12th February the Committee expressed general agreement with my proposals, but in view of their political importance and inevitably controversial nature they invited me to bring them before the Cabinet. This I now do.

Racial discrimination

3. If we are to make discrimination a criminal offence we must, I think, define fairly narrowly the area in which that offence may be committed and avoid interference with the rights of the individual where their exercise is not contrary to the public interest. We must also be sure that any provision creating an offence of discrimination can be enforced. These are difficult problems.

4. My proposal is that discrimination on grounds of race or colour should be penalised if it is practised in places to which the public have access—in particular in hotels, restaurants, public houses, places of entertainment or recreation and public transport vehicles. There is not much evidence of discrimination in such places now; but it is indefensible if it should occur and I think it is right to prohibit it. We cannot, I feel, go further and deal (for example)
with the refusal of landladies to take coloured lodgers—which leads to a lot of complaint—without interfering unjustifiably with the rights of the individual.

5. We must recognise that even in places to which the public have access, services may be refused to a coloured person for reasons which have nothing to do with discrimination of this kind. Persons are commonly refused services where, for example, they are the worse for drink or unkempt or their dress is unsuitable for the particular place; and if these grounds of refusal are to continue to be available, they must apply to coloured as to white persons. In the nature of things it would, I think, be impossible to place on the prosecutor the responsibility of proving in every case that the refusal of services was due to discrimination on grounds of race or colour. I propose therefore to make it an offence to refuse to coloured persons—or to persons of a particular race—services which are available at the place in question to other members of the public in general, unless the accused can show that the substantial ground of the refusal was not race or colour.

6. The offence would be a summary one with a maximum penalty of £50 on first conviction and £100 on any subsequent conviction. I propose also to limit the right to prosecute to the Director of Public Prosecutions for two reasons. First, the police, who are worried about the effect of new legislation on their relations with the coloured population, are most unwilling to undertake the difficult and invidious task of prosecution. Secondly, it seems to me right, in principle, to include the additional safeguard of prosecution by the Director against the bringing of proceedings on grounds other than the public interest. The creation of the new offence represents a considerable interference with the rights of the individual; and while I think this is fully justified it is, in my view, desirable to demonstrate that the circumstances of each case will be fully and impartially considered before action is taken and that the law will be consistently administered.

7. I have set out in Appendix A a rough outline of the provisions I have in mind. It will no doubt need alteration by Parliamentary Counsel.

Incitement to racial hatred

8. Amendment of the law to make incitement to racial hatred an offence has been frequently proposed during the last 30 years. The case for it has been strengthened by developments since the war—the growth in the coloured population; the immediate and nation-wide publicity given by television to any disorders; the indignation caused by propaganda of the “Hitler was Right” type after the years of Nazi persecution of the Jews. The problem remains, as it always has been, to frame a provision which will penalise indefensibly scurrilous and inflammatory speeches or publications without curtailing legitimate freedom of comment and controversy.
9. Section 5 of the Public Order Act 1936 provides that—

"Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence."

After the disturbances caused in 1962 by minor Fascist leaders, such as Colin Jordan, and their opponents, at public meetings, the Public Order Act 1963 increased the penalties under Section 5 of the Act of 1936 from a maximum of three months' imprisonment or a fine of £50 or both to a maximum of three months' imprisonment and/or a £100 fine on summary conviction and 12 months' imprisonment and/or a £500 fine on conviction on indictment. During the passage of both Bills amendments were proposed which would have widened their scope to penalise incitement to racial or religious prejudice, or to hatred on grounds of race, colour or creed. The view prevailed, however, that to make such incitement an offence would encroach unacceptably on the right of free expression and was too close to political censorship.

10. There have been no recent troubles on the 1962 scale, and there is at present less general concern about public meetings. The representations which I receive refer to written matter—anti-Semitic articles in Fascist news-sheets, swastika-daubing and the fly-posting of stickers of the "nigger neighbour" variety.

11. The existing law is defective in dealing with written incitement. The common law offence of seditious libel (endeavouring to stir up hatred or hostility between different groups of The Queen's subjects with the intention of promoting violence) has been variously interpreted, and, as the Caunt case showed, a conviction is not easy to secure. At present offensive remarks can be disseminated in writing provided that they are not obscene or blasphemous, or seditious in the comparatively narrow sense indicated above; and a scurrilous campaign could be mounted, e.g., against coloured immigrants, on a sufficient scale to produce a considerable effect without falling foul of the law, in view of the difficulty of proving that publication took place "with the intention of promoting violence by stirring up hatred or hostility between different classes of The Queen's subjects".

12. My present proposals, while they are designed to close this gap in the law dealing with written incitement, would also broaden and strengthen the law on incitement to racial hatred generally. I am satisfied that the time has come when it is right and necessary to penalise deliberate incitement to racial hatred, oral or written, whether or not it can be shown that it was intended or likely to cause a breach of the peace. My proposals are therefore twofold:

(a) The scope of Section 5 of the Public Order Act 1936 (see paragraph 9 above) should be extended to include the dissemination of written matter which is threatening, abusive or insulting, with intent to provoke a breach of
the peace or whereby a breach of the peace may be
occasioned. The penalties (as increased by the Act of
1963) would be the same.

(b) It should be made an offence for a person, with intent to
stir up hatred against an ethnic or racial group, to
disseminate written matter, or in a public place or at a
public meeting to use speech, which is threatening,
abusive or insulting and likely to stir up hatred against
that group on grounds of race or colour. It would thus
be necessary to prove both that the matter complained
of was likely to stir up hatred on grounds of race or
colour and that the accused intended to stir up hatred;
but, if it were shown that the matter was likely to stir
up such hatred, it would be for the accused to satisfy
the court that he did not intend to bring about the
natural consequence of his action. In my view a provision
on these lines would strike a reasonable balance between
the preservation of freedom of speech and the protection
of racial groups from vicious attacks. I propose that
proceedings for this offence should not be instituted
except by or with the consent of the Attorney-General:
this should afford a further safeguard against proceedings
being taken in circumstances which would penalise or
inhibit legitimate controversy.

The provisions I have in mind would be broadly on the lines shown
in Annexes B and C.

Discrimination and incitement to hatred on grounds of religious
belief

13. The Home Affairs Committee invited me, in putting my
proposals to the Cabinet, to refer to a difference of opinion in the
Committee on the question whether the proposed measures should
be applied to discrimination or to incitement to hatred on
religious grounds. Some members feared that a charge of racial
discrimination might be met by the suggestion that the person in
question was refused services, not on grounds of race, but because
he was, for example, a Muslim; and that, in view of the attitude
which the Labour Party had adopted in the past, it would be expected
that the provisions against incitement would protect religious as well
as racial minorities. I doubt whether in practice there is a need for
legislation to deal with discrimination or incitement on religious
grounds; and I am anxious not to have to face a charge of preventing
religious or political controversy except where a clear case for
doing so can be made out. Further, as regards incitement, Section 5
of the Public Order Act already prohibits the use of offensive
language in a public place, irrespective of the persons attacked, if
the result is intended or likely to be a breach of the peace. It would
thus apply to abuse on religious grounds. So therefore would
Annex B. Annex C would only apply to race or colour origin; that
is something one cannot help.
Conclusion

14. I seek my colleagues' approval of my proposals and of my announcing to Parliament the Government's intention to introduce legislation on these lines. Before making any announcement I propose to consult the Opposition informally with a view to reducing controversy in the House of Commons, and I will raise the question of timing again with my colleagues when I have done so, and I shall of course consult the Leader of the House and the Chief Whip about timing.

F. S.

Home Office, S.W.1,
16th February, 1965.

ANNEX A

RACIAL DISCRIMINATION

1. It shall be an offence in a public place to withhold from coloured persons or persons of any particular racial ethnic or national origin facilities, advantages or services which are at that place available whether on payment or otherwise to members of the public in general resorting thereto who are not of that colour or origin, unless the person charged proves that the fact that such persons were of that colour or origin was neither the sole nor the main reason why he withheld such facilities, advantages or services as aforesaid.

2. For the purposes of this section a public place means an hotel within the meaning of Section 1, sub-section 3, of the Hotel Proprietors Act 1956, a restaurant, or a café, or any place kept or used for the sale of food or drink to the public, including premises licensed for the sale of intoxicating liquors, or any place kept or used for dancing, singing, music, a theatrical or cinematographic performance or any other public entertainment or recreation, or any premises or vehicle to which the public have access for the purposes of public transport; and a person withholds facilities, advantages or services who being whether alone or in conjunction with other persons the owner of or in charge of that place and in a position to make available or to cause to be made available such facilities, advantages or services at such place on being at reasonable hours and in a reasonable manner requested to make them available declines or fails within a reasonable time so to do.

3. A prosecution under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

4. A person convicted of an offence under this section shall be liable on summary conviction to a fine not exceeding £50 and on conviction for a second or subsequent offence to a fine not exceeding £100.
ANNEX B

RACIAL INCITEMENT

Extension of Section 5 of Public Order Act to Written Matter

For Section 5 of the Public Order Act 1936 there shall be substituted the following section:

"5. (1) Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour, or disseminates written matter which is threatening, abusive or insulting, with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned shall be guilty of an offence.

(2) For the purposes of the foregoing sub-section, 'written matter' includes any writing, sign or visible representation; and a person disseminates matter if he distributes or publishes it or causes it to be distributed or published."

[Penalties as in Public Order Act 1963—i.e., 12 months and/or £500 on conviction on indictment; 3 months and/or £100 on summary conviction.]

ANNEX C

NEW SPECIFIC OFFENCE OF STIRRING UP RACIAL HATRED

1. A person shall be guilty of an offence if, with intent to stir up hatred against a group of Her Majesty's subjects or persons owing temporary allegiance to Her Majesty, he disseminates written matter, or in any public place or at any public meeting uses speech, which is threatening, abusive or insulting and likely to stir up hatred against that group on grounds of their race, colour or ethnic origin.

2. For the purposes of this section:

(a) "written" matter includes any writing, sign or visible representation;

(b) a person disseminates matter if he distributes or publishes it, or causes it to be distributed or published, to the public at large or to a section of the public not consisting exclusively of members of a club or association of which that person is a member; and

(c) for the purposes of this section a group shall mean any number of persons who possess the same or a similar ethnic or racial characteristic or characteristics or are of the same or similar ethnic or racial origin or origins.

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3. A person convicted of an offence under this section shall be liable:

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £100, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding £1,000, or to both.

4. No prosecution shall be instituted under this section except by or with the consent of the Attorney-General.

5. If upon application being made by the Attorney-General it appears to the High Court that any person convicted of an offence under this section was when he committed the offence a member of an association and when committing the offence did so wholly or substantially in furtherance of the purpose or one of the main purposes of such association, the Court may in relation to such association exercise all or any of the powers contained in Section 2, sub-section (3), of the Public Order Act 1936.