

# **Consultation on Police Powers to Promote and Maintain Public Order**

## **Response from the British Humanist Association**

### **The British Humanist Association**

The British Humanist Association (BHA) is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have around 30,000 members and supporters, and over 70 local and special interest affiliates.

The BHA is deeply committed to human rights, equality, democracy, and an end to irrelevant discrimination, and has a long history of active engagement in work for an open and inclusive society. In such a society, people of all beliefs would have equal treatment before the law, and the rights of those with all beliefs to hold and live by them would be reasonably accommodated within a legal framework setting minimum common legal standards.

The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns.

### **Our response to the consultation**

The BHA joins with other prominent organisations in strongly supporting the amendment to Section 5 of the Public Order Act 1986 put forward by Edward Leigh MP, as detailed in Chapter 1 (pp5-9) of the consultation document, which removes the word 'insulting' from Section 5 of the Public Order Act. We believe that the law as it presently stands represents an obvious and unacceptable breach of civil liberties, and as such should be amended.

We work for an open and inclusive society with freedom of belief and speech. We believe that free speech is an essential liberty without which societies can easily slide into a culture of oppression, suspicion and fear. Freedom of speech has occupied an important part in humanist thinking for centuries and humanist organisations have always been active in campaigns for it.

One of our major past campaigns was against the blasphemy laws, abolished when the Criminal Justice and Immigration Bill received Royal Assent in May 2008. For many years, we also lobbied and worked on what eventually became the Racial and Religious Hatred Act 2006 and welcomed in particular Section 29J, which made clear that its purpose was to protect people and not belief.<sup>1</sup>

As human rights campaigners, we naturally applaud steps taken to protect people from genuine harassment or abuse. However, since the Public Order Act's adoption into law 25 years ago, a wealth of evidence has built up to demonstrate that, in its current wording, Section 5 is open to serious misuse: by those seeking special and unwarranted protection from legitimate criticism; and by police officers given ambiguous and excessive discretion to carry out arrests.

By accepting as a criminal offence behaviour that is merely 'insulting', as distinct from 'threatening or abusive', Section 5 gravely jeopardises peoples' freedom of expression. As observed by the Joint

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<sup>1</sup> Religious and Racial Hatred Act 2006, s29J, accessed online at [http://www.legislation.gov.uk/ukpga/2006/1/pdfs/ukpga\\_20060001\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/1/pdfs/ukpga_20060001_en.pdf) (13/01/12)

Committee on Human Rights (JCHR) in its report of March 2009, it is evident that Section 5 can and has been used to illegitimately stifle protest, such as in the arrest of a teenager demonstrating outside of the London headquarters of the Church of Scientology in 2008 whose placard was taken to be insulting.<sup>2</sup>

With regard to cases such as these, we agree wholeheartedly with JUSTICE's finding on Section 5 that, 'there is no right, either in English law or in the law of the ECHR, not to be offended', and moreover that conduct and speech considered offensive in the past, 'has been responsible for important social and political reforms: the assertion of racial and gender equality; gay Pride marches; etc.'<sup>3</sup> It should be a point of grave embarrassment that the UK's outdated and discriminatory blasphemy laws were abolished only in May 2008, and we consider it essential that a law similarly antithetical to principles of free speech be amended.

Indeed, we would make the observation that Section 5 presently seems to stand in direct opposition to the Racial and Religious Hatred Act 2006 which states:

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, **insult** or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.<sup>4</sup>

It should be noted that the BHA's concerns with Section 5 are not limited to that which would be corrected by the proposed amendment. For instance, while it is reassuring that stipulations exist explicitly to protect behaviour or speech that takes place 'inside a dwelling' (albeit in a limited nature), we must echo organisations such as JUSTICE in questioning the implications of an offence that does not require anyone to have been actually offended against; in contrast to Section 4a, it is currently held as sufficient for arrest that the action *could* have been *perceived* as offensive. We also share JUSTICE's concerns that 'abuse' itself is a heterogeneous term with overbroad interpretations, as well as its recommendation that clear guidance be given to police officers in formulating appropriate and proportional responses.

With all this said, we recognise the concerns raised by groups working closely with vulnerable or minority ethnic communities – specifically that amendment of the law may make it more difficult to prosecute cases of bona fide harassment. However, it is our understanding that neither the government nor the police force has been able to set out adequately the circumstances under which a potentially offensive action could be serious enough to warrant arrest, yet too slight to constitute abuse or a threat – additionally, we could find no example of a successful prosecution under Section 5 made purely on the grounds of insult. Thus, we agree with the conclusion in the report issued by JUSTICE in September 2009 that any racially or religiously aggravated offence truly meriting criminal proceedings would still be adequately covered by an amended Section 5.<sup>5</sup>

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<sup>2</sup> JCHR, Session 2008-2009, 'Demonstrating respect for rights? A human rights approach to policing protest' (March 2009), accessed online at

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/47i.pdf> (13/01/12)

<sup>3</sup> JUSTICE, 'Response to Home Office consultation *Amendment to Section 5 of the Public Order Act 1986*' (September 2009), accessed online at

[http://www.justice.org.uk/data/files/resources/185/Public\\_Order\\_Act\\_1986\\_Section\\_5\\_amendment-JUSTICE\\_response\\_sep09.pdf](http://www.justice.org.uk/data/files/resources/185/Public_Order_Act_1986_Section_5_amendment-JUSTICE_response_sep09.pdf) (13/01/12)

<sup>4</sup> Religious and Racial Hatred Act 2006, s29J

<sup>5</sup> JUSTICE, 'Response to Home Office' (September 2009)

The freedom to criticise and even insult is part and parcel of the principle of free speech – a fundamental human right. The inclusion of ‘insulting’ in Section 5 serves no public good, leads to unjust arrests, stifles free speech and free expression, and we recommend that it is removed from the Public Order Act.

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13 January 2012