Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2004 No. (N.I.)

NORTHERN IRELAND

The Criminal Justice (No. 2) (Northern Ireland) Order 2004

Made - - - -	*2004*
Coming into operation	*2004*

At the Court at Buckingham Palace, the ** day of ** 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Title, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice (No. 2) (Northern Ireland) Order 2004.

(2) This Order comes into operation on the expiration of the period of two months from the date on which it is made.

(3) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

Increase in sentence for offences aggravated by hostility

2.—(1) This Article applies where a court is considering the seriousness of an offence.

(2) If the offence was aggravated by hostility, the court—

(a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and

(b) shall state in open court that the offence was so aggravated.

(3) For the purposes of this Article an offence is aggravated by hostility 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—

(i) the victim's membership (or presumed membership) of a racial group;

(ii) the victim's membership (or presumed membership) of a religious group;

(iii) the victim's membership (or presumed membership) of a sexual orientation group;

(iv) a disability or presumed disability of the victim; or

(b) the offence is motivated (wholly or partly) by hostility towards—

(i) members of a racial group based on their membership of that group;

(ii) members of a religious group based on their membership of that group;

(iii) members of a sexual orientation group based on their membership of that group;

(iv) persons who have a disability or a particular disability.

(4) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (3) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that sub-paragraph.

(5) In this Article—

"disability" means any physical or mental impairment;

"membership", in relation to a racial, religious or sexual orientation group, includes association with members of that group;

"presumed" means presumed by the offender;

"racial group" has the same meaning as in the Race Relations (Northern Ireland) Order 1997 (NI 6);

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief;

"sexual orientation group" means a group of persons defined by reference to sexual orientation.

Inciting hatred or arousing fear on grounds of sexual orientation or disability

3.—(1) Article 8 of the Public Order (Northern Ireland) Order 1987 (NI 7) (which defines "fear" and "hatred" for the purposes of Part III of that Order) is amended as follows.

(2) In the definition of "fear" after "religious belief," insert "sexual orientation, disability".

(3) In the definition of "hatred" after "religious belief," insert "sexual orientation, disability".

Increase of penalties

4.—(1) In section 20 of the Offences against the Person Act 1861 (c. 100) (malicious wounding or grievous bodily harm) for the words from "shall be guilty" to the end substitute "shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding 7 years.".

(2) In section 47 of that Act (assault occasioning actual bodily harm and common assault)—

(a) for the words "to be kept in penal servitude" substitute "to imprisonment for a term not exceeding 7 years";

(b) for "one year" substitute "two years".

(3) In Article 6(2) of the Criminal Damage (Northern Ireland) Order 1977 (NI 4) (penalties for offences under the Order other than arson or an offence under Article 3(2)) for "ten years" substitute "fourteen years".

(4) In Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (NI 9) for paragraph (2) (maximum sentence on summary conviction of offence of harassment) substitute—

"(2) A person guilty of an offence under this Article shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.".

(5) In Article 6(4)(a) of that Order (maximum sentence on conviction on indictment of offence of putting person in fear of violence) for "five years" substitute "seven years".

(6) Article 6(6) of that Order (which is unnecessary in consequence of paragraph (4)) shall cease to have effect.

(7) In Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) in the entry relating to an offence under Article 10 of the Road Traffic (Northern Ireland) Order 1995 (NI 18) in column 4 for "2 years" substitute "5 years".

(8) Nothing in this Article affects the punishment for an offence committed before the coming into operation of this Article.

New offences of aggravated vehicle-taking

5.—(1) After Article 172 of the Road Traffic (Northern Ireland) Order 1981 (NI 1) (taking vehicle without authority) insert—

"**Aggravated vehicle-taking**

172A.—(1) Subject to paragraph (3), a person is guilty of aggravated taking of a motor vehicle if—

(a) he commits an offence under Article 172(1) (in this Article referred to as a "basic offence") in relation to a motor vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in sub-paragraphs (a) to (d) of paragraph (2).

(2) The circumstances referred to in paragraph (1)(b) are—

(a) that the vehicle was driven dangerously on a road or other public place;

(b) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) that, owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) that damage was caused to the vehicle.

(3) A person is not guilty of an offence under this Article if he proves that, as regards any such proven driving, injury or damage as is referred to in paragraph (1)(b), either—

(a) the driving, accident or damage referred to in paragraph (2) occurred before he committed the basic offence; or

(b) he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.