



**College of
Policing**

Guidance on the Amendment to Sections 5(1) and 6(4) of the Public Order Act 1986

December 2013

APP Reference Material

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Contents

1	Introduction	4
2	Amended wording	5
3	Context of the amendment	6
4	Legal implications	7
5	Operational implications	12

1 Introduction

- 1.1 Section 57 of the Crime and Courts Act 2013 will amend sections 5(1) and 6(4) of the Public Order Act 1986 to remove the word 'insulting'. The amendment will come into force on 1 February 2014.
- 1.2 The purpose of this guidance is to:
- present the amended wording of section 5(1) and 6(4) of the Public Order Act 1986
 - provide the context to the amendment
 - highlight the legal and operational practice implications of the amendment.
- 1.3 In addition to this guidance, the police service is responding to the amendment by ensuring that other products (eg, Authorised Professional Practice (APP), training) are updated before the amendment to the Public Order Act 1986 comes into force.

2 Amended wording

2.1 When section 57 of the Crime and Courts Act 2013 Act comes into force, the word 'insulting' will be removed so that section 5(1) of the Public Order Act 1986 will provide:

A person is guilty of an offence if he—

(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening or abusive

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

2.2 At the same time, the word 'insulting' will also been removed from section 6(4) of the Public Order Act 1986 so that it will provide:

A person is guilty of an offence under section 5 only if he intends his words or behaviour or the writing, sign or other visible representation, to be threatening or abusive, or is aware that it may be threatening or abusive or (as the case may be) he intends his behaviour to be or may be aware that it may be disorderly.

2.3 The section 5(3) defences to this offence will remain the same. They apply where the accused proves that:

(a) he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or

(b) he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(c) his conduct was reasonable.

3 Context of the amendment

- 3.1 The Government has a duty to balance the protection of the public with the need to protect individual civil liberties. Within this context, the Government published [Home Office \(2011\) Consultation on police powers to promote and maintain public order](#) seeking views on the value of the word 'insulting' in section 5 of the Public Order Act 1986, whether it is consistent with the right to freedom of expression, and the risk of removing it from section 5.
- 3.2 The consultation received nearly 3,000 responses and raised a number of complex issues (see [Home Office \(2013\) Consultation on police powers to promote and maintain public order: Summary of consultation responses and the government response](#)). In summary, the majority of respondents indicated support for reform of section 5 and removal of the word 'insulting' on the grounds that this would enhance the protection to the right of freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). Concerns were raised, however, that removing 'insulting' from section 5 might signal a tolerance of hate crime, low level harassment and disrespectful behaviour.
- 3.3 On considering the findings of the consultation, the Government decided to pursue removing the word 'insulting' from section 5. This decision was informed by parliamentary debates during the passage of the Crime and Courts Bill. The Director of Public Prosecutions (DPP) also offered assurances that 'insulting' could be safely removed on the grounds that it would not hinder the ability of the Crown Prosecution Service (CPS) to prosecute as the DPP could not identify any past cases where the behaviour leading to a conviction could not be described as 'abusive' as well as 'insulting' (see page 3 of the [Home Office \(2013\) Consultation on police powers to promote and maintain public order: Summary of consultation responses and the government response](#)).
- 3.4 This process culminated in the decision to remove the word 'insulting' from sections 5(1) and 6(4) of the Public Order Act 1986.
- 3.5 The remainder of this guidance focuses on the legal and operational practice implications for police officers as a result of the impending amendment.

4 Legal implications

- 4.1 When the amendment comes into force, words or behaviour that are merely ‘insulting’, or the displaying of writing, signs or other visible representations which are merely ‘insulting’, within the hearing of someone likely to be caused harassment, alarm or distress, will no longer constitute a criminal offence under section 5(1).
- 4.2 This chapter focuses on the various powers which may be relevant to an officer faced with a situation where they are considering the use of section 5 as an offence. The legislation presented underpins chapter 5 of this guidance on operational practice implications, and the two chapters should be read in conjunction with each other.
- 4.3 Public Order Act 1986**
- 4.3.1 Section 6(1) of the Human Rights Act 1998 states that, ‘It is unlawful for a public authority to act in a way which is incompatible with a Convention right.’ Officers must ensure, therefore, they do not apply section 5 of the Public Order Act 1986 in a way which is incompatible with the provisions of the ECHR, in particular Article 10 which relates to the freedom of expression (noting that Article 10 is a qualified right). When an officer considers using section 5 as an offence, they will first have to assess:
- whether an offence is being committed under the ‘abusive’ or ‘threatening’ limbs
 - ECHR Article 10.
- 4.3.2 For further advice on assessing Article 10, see the APP on public order (see para 2.7 of the [College of Policing \(2013\) APP Public order: Core principles and legislation \[Internet\]](#)). Advice on the use of section 5 in different contexts can also be found in CPS legal guidance on [Public Protests](#) and [Nudity in Public Places – Guidance on handling cases of Naturism](#).
- 4.3.3 **Note:** although there is no legal requirement to do so, officers should consider giving a warning prior to making an arrest for section 5 offences. Making an arrest without first giving a warning may subsequently be found to have constituted a disproportionate restriction on the person’s right of freedom of expression. For further information, see [Beggs, J., Thomas, G. and Rickard, S. \(2012\) Public Order: Law and Practice](#).

4.3.4 It is also important to note that section 4A of the Public Order Act 1986 will retain the 'insulting' limb:

A person is guilty of an offence if, **with intent** to cause a person harassment, alarm or distress, he—

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

4.3.5 More serious, planned and malicious incidents of insulting behaviour, eg, the burning of poppy wreaths on Remembrance Sunday (see [CPS v Haque and Choudhury Judgment \(7 March 2011\)](#)), could still constitute an offence under section 4A. In cases where such words or behaviour are used, officers will have to consider whether:

- there was intent to cause harm; and
- such harm has been caused.

4.3.6 It should also be stressed that, while it is clear that a police officer may be caused harassment, alarm or distress, they are usually expected to display a greater degree of fortitude than members of the public. For an officer to be caused harassment, alarm or distress, the conduct complained of must go beyond that which he or she would regularly come across in the ordinary course of police duties (see [**DPP v Orum \[1989\] 1 WLR 88**](#)).

4.3.7 Finally, section 4 of the Public Order Act 1986 (fear or provocation of violence) will also retain the 'insulting' limb. This provision makes it an offence to use threatening, abusive or insulting words or behaviour towards another person – or to distribute or display to another person any writing, sign or other visible representation which is threatening, abusive or insulting – with the intention of causing them to believe that immediate unlawful violence will be used against them, or of provoking such violence.

4.3.8 See the APP on public order for the wider legal considerations associated with the Public Order Act 1986.

4.4 Breach of the peace

4.4.1 A breach of the peace is committed when an individual causes harm, or appears likely to cause harm, to a person, or in that person's presence, to his or her property, or puts that person in fear of such harm being done through an assault, affray, a riot, unlawful assembly or other disturbance.

- 4.4.2 Although there is no criminal offence of breach of the peace for which someone can be prosecuted, the specific power of arrest to prevent a breach of the peace can be used to remove people from a situation where an imminent breach is reasonably anticipated.
- 4.4.3 If the behaviour does subsequently escalate to the abusive or threatening threshold, a prosecution under section 5 may be appropriate. Under section 4A, it is also possible to prosecute for using insulting, abusive or threatening language or behaviour, provided that the offence meets the test of intentionally causing harassment, alarm or distress.

4.5 Harassment and hate crime

- 4.5.1 Section 5 will continue to provide protection from threatening or abusive words and behaviour. Insulting words or behaviour **with intent** will also still be covered by section 4A of the Public Order Act 1986, as will intentional abuse and threats. It is worth reinforcing, however, that there are other relevant powers available to officers to respond to allegations of harassment and hate crime.
- 4.5.2 See the APP on public order and the forthcoming hate crime strategy (to be published by the College of Policing) for the wider legal considerations associated with harassment and hate crime.

4.6 Harassment

- 4.6.1 Under the Protection from Harassment Act 1997, a person must not pursue a course of conduct which amounts to the harassment of another and which they know, or ought to know, amounts to the harassment of the other. Harassing a person includes alarming or causing distress to that person. A course of conduct must involve conduct on at least two occasions.

4.7 Hate crime and the Public Order Act 1986

- 4.7.1 Section 31 of the Crime and Disorder Act 1998 designated section 5 of the Public Order Act 1986 as an offence that could be charged as racially or religiously aggravated. This will remain the case for threatening or abusive words or behaviour under section 5, and for threatening, abusive or insulting behaviour under section 4A.
- 4.7.2 Sections 18 and 19 of the Public Order Act 1986 provide a similar offence to section 4A where there is evidence of intent to stir up racial hatred or that racial hatred is likely to be stirred up.

Section 18:

- (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—
- (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

Section 19:

- (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—
- (a) he intends thereby to stir up racial hatred, or
 - (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

4.7.3 Additionally, section 29B of the Public Order Act 1986 makes it an offence for a person to use threatening words or behaviour, or to display any written material which is threatening, with the intention to stir up religious hatred.

4.7.4 **Note:** section 29J of the Public Order Act 1986 is designed to protect freedom of expression, providing:

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 practicing their religion or belief system.

4.7.5 Section 29B of the Public Order Act 1986 also makes it an offence for a person to use threatening words or behaviour, or to display any written material which is threatening, with the intention to stir up hatred against a group of people defined by reference to their sexual orientation.

4.7.6 **Note:** section 29JA of the Public Order Act 1986 is designed to protect freedom of expression, stating:

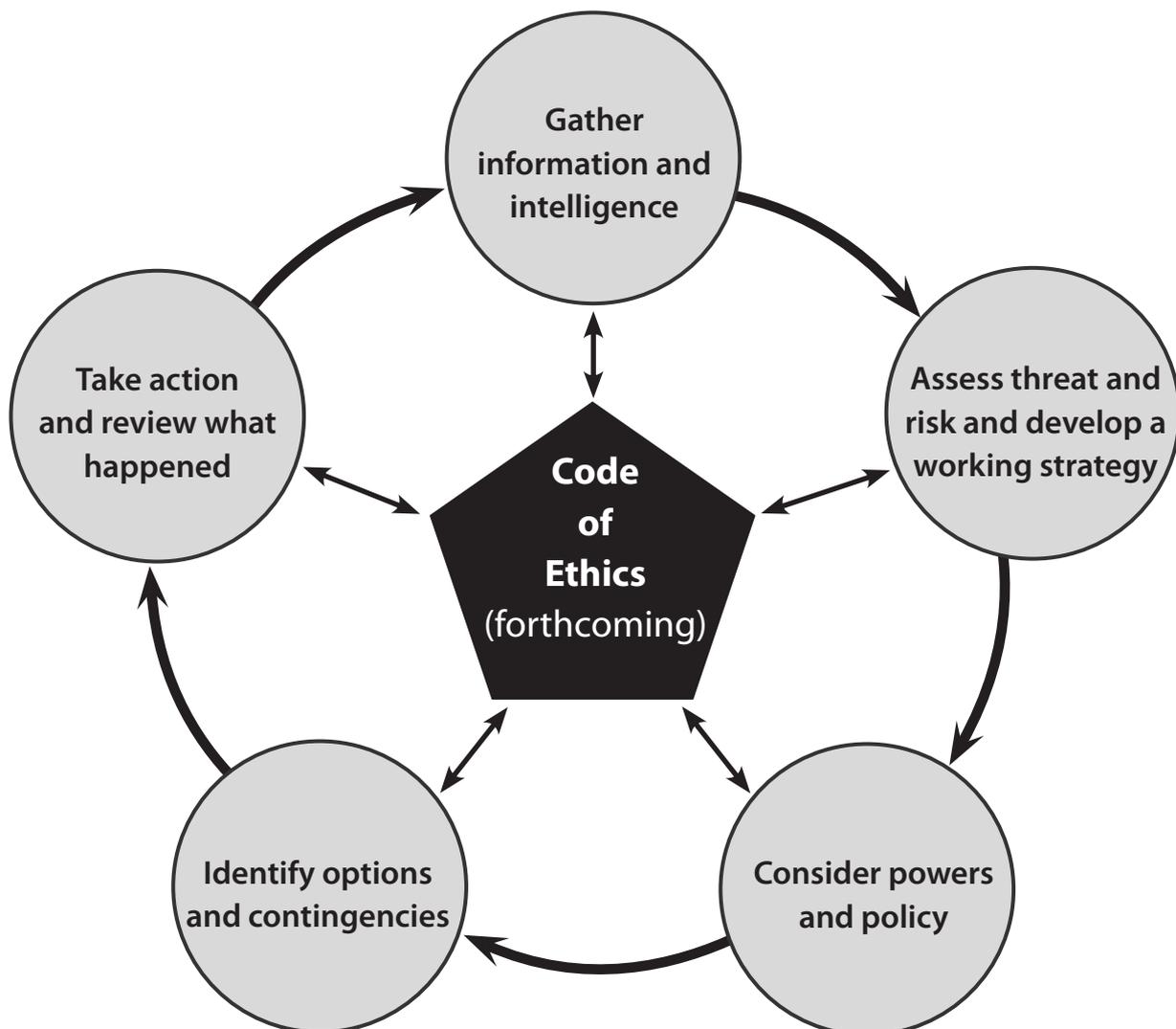
In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.

4.7.7 The consent of the Attorney General is required for a prosecution under sections 18, 19 and 29B.

4.7.8 For information on other specific hate crime offences, see the forthcoming hate crime strategy.

5 Operational implications

- 5.1 The National Decision Model (NDM) provides the framework to help officers respond effectively to any situation or incident: it should, therefore, underpin an officer's approach to dealing with situations or incidents where section 5 of the Public Order Act 1986 might apply.
- 5.2 This chapter presents the NDM and highlights some relevant points from the perspective of section 5 which can guide decision making.
- 5.3 The NDM is a cyclical model made up of five stages and underpinned by the College of Policing's forthcoming Code of Ethics for policing in England and Wales.



- 5.4 For more information, see the APP on the National Decision Model.

5.5 Gather information and intelligence

5.5.1 Example questions:

- what is being said or displayed?
- what behaviour is being demonstrated?
- is anybody being threatened, insulted or abused?
- is there evidence of harassment, alarm or distress?
- what is the location of the alleged offence?
- are there any witnesses?

5.6 Assess threat and risk and develop a working strategy

5.6.1 Assess:

- content of the words or behaviour
- context/circumstances of the words/behaviour
- intention of the person speaking or acting
- probable impact
- Article 10 of the ECHR (freedom of expression).

5.7 Consider powers and policy

5.7.1 Key consideration:

- has the amendment to section 5(1) and 6(4) of the Public Order Act 1986 come into force? If yes, words or behaviour that are merely insulting, or the displaying of writing, signs or other visible representations which are merely insulting, within the hearing of someone likely to be caused harassment, alarm or distress will **no longer constitute a criminal offence**.

5.7.2 Other considerations:

- have the words or behaviour been assessed as threatening or abusive and is there evidence of harassment, alarm or distress? If so, section 5(1) of the Public Order Act 1986 will still apply.
- have the words or behaviour been assessed as threatening, insulting or abusive and is there evidence of intent to cause harassment, alarm or distress? If so, section 4A of the Public Order Act 1986 will apply.
- have the words or behaviour been assessed as threatening, insulting or abusive and is there evidence of fear or provocation of violence? If so, section 4 of the Public Order Act 1986 will apply.

- has a breach of the peace been committed?
- has harassment or hate crime taken place?
- Article 10 of the ECHR (freedom of expression) protections – for example, sections 29J and 29JA of the Public Order Act 1986.

5.7.3 This guidance, in conjunction with other relevant sources (eg, the APP on public order and the forthcoming hate crime strategy), can help to ensure that officers have the appropriate powers and policy context.

5.8 Identify options and contingencies

5.8.1 This stage involves considering the different ways to make a particular decision (or resolve a situation). Officers should consider whether any options they intend to pursue are:

- proportionate
- legal
- accountable
- necessary.

5.8.2 Potential options include:

- no further action
- warning
- summons
- dispersal
- fixed penalty notice
- arrest.

5.9 Take action and review

5.9.1 Example of 'action' considerations:

- **respond** – implement the selected option(s)
- **record** – if required, the action that was taken, along with the rationale for it
- **monitor** – what happened as a result of the decisions made.

5.9.2 Example of 'review' questions:

- what lessons can be taken from how things turned out?
- what might be done differently next time?

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