

Anti-terrorism, Crime and Security Bill

Clause 39

THE LORD ROOKER

92A* Page 20, line 16, at end insert—

"(8) The Attorney General may issue guidance as to conduct in respect of which he will not institute proceedings for an offence under Part 3 of the Public Order Act 1986 (c. 64), or consent to the institution of such proceedings, on the grounds that the conduct consists of the legitimate expression of religious belief."

Comments on Amendment 92A

1. The guidance is entirely discretionary. It is not "shall" issue guidance but "may". Under the amendment the Attorney General does not have to issue guidance at all.
2. Guidance is not binding. It can be set aside.
3. Guidance not subject to Parliamentary approval. Will Parliament even see it? Presumably not.
4. Guidance can be changed and withdrawn at any time.
5. The amendment makes even clearer what is already the case under the Bill : that the Attorney General becomes the arbiter of what constitutes a legitimate expression of religious belief.
6. The amendment is an admission that religious incitement offence will catch legitimate expression of religious belief.
7. Under the Licensing Act (which Parliament finally refused to renew in 1694) every publication was subject to the censorship of the Lord Chancellor and other Privy Counsellors. Under this Bill the Attorney General is the censor of religious belief.
8. The amendment creates an uncertainty – it starts from the assumption that something is an offence. No defence in law is created at all. It is not saying legitimate religious belief is a defence, merely a reason not to prosecute.
9. The offence of religious hatred is a very powerful offence. It carries a power of arrest. The Attorney General has to consent to a prosecution, but he does not have to consent to an arrest. Under section 18 of the Public Order Act 1986, as amended by the Bill, a Policeman may arrest any one ("without warrant") who he "reasonably suspects is committing an offence" of incitement to religious hatred.
10. The offence of religious hatred will cover "religiously inflammatory material". Under section 24 of the Public Order Act 1986 this includes the power for the police to raid premises suspected of housing "inflammatory material" Will Christian bookshops be raided by the Police?
11. Lord Rooker's amendment underlines the that there will be a massive pressure on religious people to engage in self-censorship. They will keep quiet for fear of arrest.

Colin Hart, The Christian Institute
Monday 11th December 2001