RACE CRIME AND SECTARIAN CRIME LEGISLATION IN NORTHERN IRELAND:
A CONSULTATION PAPER

1. INTRODUCTION

1.1. Following the publication in 1999 of the McPherson Report into the murder of Stephen Lawrence, Adam Ingram, the NIO Minister then responsible for criminal justice, spoke of the great importance which the Government attaches to issues of racial equality in Northern Ireland. He referred to the acknowledgement in the Belfast Agreement of the unique opportunity which exists here to bring about a society “which will recognise the full and equal legitimacy and worth of identities, senses of allegiance and ethos of all sections of the community in Northern Ireland”.

1.2. The Minister said that he would like to see, not just the application of race relations legislation to the police, but the full application generally of all Northern Ireland’s stringent equality legislation.

1.3. Speaking at the Labour Party Conference in October 2001, the Secretary of State for Northern Ireland, Dr John Reid, reiterated the Government’s commitment to eradicating all forms of intolerance, and promised to criminalise such manifestations of hatred, whether based on racism or based on sectarianism. This consultation is designed to establish the measures that will best address this difficult and complex issue in Northern Ireland.
1.4. Any proposed change to the current legislation is a matter for the Northern Ireland Office, which remains responsible for the criminal law in Northern Ireland, but the Government welcomes other practical measures which the Executive had introduced in this area. These are designed to change attitudes and foster a culture of tolerance and equality. They reflected the commitment of the First and Deputy Ministers to the achievement of an inclusive and fair society in Northern Ireland recognising that tackling racism and sectarianism is as much about changing mindsets as about dealing with crime. In particular a new race equality strategy is being developed and will soon be ready for public consultation. The Government is determined to ensure that the arrangements that are introduced will be effective and will guarantee the protection of all sections of society in Northern Ireland.

1.5. The Government has heard representations from several interested parties, who have set out their concerns about racially motivated crime in Northern Ireland. In particular, these discussions addressed the possibility of extending Great Britain legislation to Northern Ireland, and highlighted the difficulties which such extension would entail. They emphasised, in particular, the need to think carefully about whether action should be taken in respect only of racially motivated crime, or of such crime together with offences committed due to sectarian motivation. But they have also affirmed the importance of conducting a detailed and thorough consultation designed to provide the clearest indication of views upon which new measures must draw.

1.6. The Government, therefore, welcomes responses from the widest range of interested parties, and from all sections of the community, to
the options this paper sets out. It further welcomes any other constructive ideas or proposals which are practicable and which would have support across the community. Views are sought on the form legislation should take to deal with the issue of racially motivated crime and crime motivated by sectarianism. Some specific questions are listed at chapter six. Respondents should, however, feel free to comment on any aspect of the paper.

1.7. Responses to the paper, which should be received by 28 February 2003, should be addressed in writing to

Criminal Justice Policy Division
Northern Ireland Office
Massey House
Stoney Road
BELFAST
BT4 3SX

1.8. The Government may be asked to publish the responses to this paper. Those who wish their views to remain confidential should indicate this clearly.

1.9. Further copies of this paper may be obtained by ringing 028-9052-7264.
2. THE CURRENT LEGAL POSITION

2.1. The public order legislation in Northern Ireland differs from that in Great Britain and offences defined by the Public Order Act 1986 do not exist here in the same form. The Public Order Act 1986 defines racial hatred as “hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins”. It provides that a person is guilty of an offence if by his actions he intends to, or is likely to, stir up racial hatred.

2.2. The Northern Ireland equivalent to the Public Order Act 1986, the Public Order (Northern Ireland) Order 1987, contains similar provisions relating to incitement to racial hatred. It goes beyond the Great Britain legislation both by including the concept of arousing fear along with stirring up hatred and by including religious as well as racial grounds. It does not, however, include the offences contained in section 5 of the Great Britain Act (which include the display of any writing, sign “or other visible representation” which is threatening, abusive or insulting “within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby”).

2.3. Recent Home Office legislation (the Anti-Terrorism, Crime and Security Act 2001) amended the Public Order Act to extend the definition of hatred to take in religious groupings, to remove the requirement that such offences be directed against a group of people ‘in Great Britain’ and to increase the maximum penalty for offences from two to seven years. The same legislation removed from the Public Order (Northern Ireland) Order the requirement for offences to
be directed against a group of people ‘in Northern Ireland’, and increased the maximum penalty from two to seven years.

2.4. In England and Wales, the Crime and Disorder Act 1998 made provision for new racially motivated offences which attract significantly higher maximum penalties than their non-racially motivated counterparts. The Act defined an offence as racially aggravated if “the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial group; or [if] the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group” (section 28(1)). The Act created nine racially aggravated offences: grievous bodily harm (malicious wounding); actual bodily harm; common assault; criminal damage; fear or provocation of violence (threatening behaviour); intentional harassment, alarm or distress; public order (disorderly behaviour); putting in fear of violence, and harassment. And it put on a statutory footing (section 82) the need for sentencers to consider evidence of racial motivation as an aggravating factor when deciding on sentence (for any offence other than the newly created ones).

2.5. It was decided during the passage of the Act not to extend these provisions to Northern Ireland. This was largely because of the technical difficulties of doing so which made it impossible either to extend directly the provisions in their entirety or to introduce them by negative resolution procedure.

2.6. It was also considered at the time that it would be anomalous to introduce higher sentencing tariffs for racially motivated offences than would have been available for offences with a sectarian motivation, particularly at a time when there appeared to be very little
evidence of race-related crime on a significant scale. The alternative would have been to include within the Act offences with a sectarian motivation. However, this would have required more careful consideration of the issues than was possible at the time.

2.7. Although there are no specific sectarian or racially motivated offences on the statute book in Northern Ireland, evidence of such motivation may result in longer sentences. This is because, under sentencing guidelines sectarian or racial motivation must be regarded as an aggravating factor. However, in taking into account aggravating factors, a sentencer is still limited by the maximum penalty available. And, of course, the existence of mitigating factors (for example, a guilty plea) may mean that the maximum penalty is not the penalty imposed. Moreover, for the nine specific offences referred to in the Crime and Disorder Act, the maximum penalty is less severe in Northern Ireland than is the case (for the new racially aggravated variant) in England and Wales.

2.8. In the same piece of legislation referred to at paragraph 2.3 above, the Home Secretary also amended the Crime and Disorder Act to extend the provisions to create religiously aggravated or motivated offences. These amendments do not, of course, affect Northern Ireland.
3. RACIAL INCIDENTS AND PREJUDICE IN NORTHERN IRELAND

3.1. There is evidence that racial prejudice and racially motivated crime in Northern Ireland, whilst not commonplace, has increased at a significant rate. Police statistics indicate that the total number of racially motivated incidents rose from 106 between 1998 and 260 in 2000/01, before dropping to 185 in 2001/02 (the most recent available figures). These figures cover attacks on home and property, graffiti, physical assault, verbal abuse, written material and other offences and, with the exception of the most recent year, have shown an increase in each category. There were, for example, 49 attacks on the home in 2000/01 compared with 13 in 1998 and 77 incidents of verbal abuse in 2000/01 compared with 30 in 1998.

3.2. Although these figures appear low in comparison with the 47,814 racial incidents reported and recorded in England and Wales in 1999/00, they represent a disturbing picture. While it is not currently possible to accurately quantify the minority ethnic population of Northern Ireland, using an estimate of 15,000 (which may itself be generous) the rate of racial incidents in 1999/00 was 16.40 per 1,000 minority ethnic population. In England and Wales the rate was 12.75 per 1,000 (the most recent available figures).

3.3. A research report published last year by the Northern Ireland Statistics and Research Agency, ‘Racial Attitudes and Prejudice in Northern Ireland’, concluded that, although most people in Northern Ireland hold quite liberal views on race relations, racial prejudice appears to be around twice as significant as sectarian prejudice. For example, around twice as many respondents would be unwilling to
mix with members of minority ethnic communities as would be unwilling to mix with members of the other main religious tradition.

4.1. There is a legitimate view that legislation should reflect the particular unpleasantness of racially motivated crime. While it is important that the law should be adequate to protect all vulnerable groups in society, racist crime poses a particular threat to the development of a stable society and to good relations between communities. This was the approach upon which the Crime and Disorder Act was based.

4.2. The Act was welcomed by the police, Crown Prosecution Service, and magistrates as useful in focusing attention on the racist element in crimes. It was intended to send a message both that racist crime would not be tolerated, and that judges and magistrates would impose firmer sentences for racist offences. Since its passage, racist incidents reported to the police in England and Wales have trebled in two years, although it is thought that this is due to increased reporting rather than greater incidence. In comparison, though, the numbers of racially aggravated offences sentenced by the courts is very small (1,150 in 1999, compared with nearly 48,000 incidents reported in 1999-2000).

4.3. The provisions in the Crime and Disorder Act have now been evaluated by the Institute of Criminology at Cambridge University, and the evaluation report “Racist Offences – How is The Law Working?” was published in July 2002.

4.4. The evaluation found that the legislation had been successful in sending a message that racist crime will not be tolerated, and in concentrating the minds of sentencers, particularly the magistracy. However, it also uncovered a number of areas where the legislation
may not yet be achieving what was intended. These are set out briefly below, but copies of the full report may be obtained from the Communications and Development Unit, Home Office, Room 201, 50 Queen Anne’s Gate, London, SW1H 9AT.

4.5. Section 28 of the Act defines an offence as racially aggravated if

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\text{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 the victim’s membership (or presumed membership) of a racial group; (s.28(1)(a))}
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\[
\text{or the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group (s.28(1)(b)).}
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4.6. This definition is open to wide interpretation and has led to cases being prosecuted under s.28(1)(a) as racially aggravated offences where the racist element, while quite unacceptable, is not the actual cause of the offence. An example might be a road rage incident where racist language is used, but where the ‘hostility’ demonstrated during the encounter is based on the victim’s driving rather than his/her race. In addition, no definition of ‘hostility’ is given in the Act. The distinction between the two types of aggravation at s.28(1)(a) and (b) is rarely drawn out in the magistrates’ courts. Many Crown Court judges, on the other hand, insist on being told which limb of section 28 is being relied on.

4.7. The creation of new offences has caused problems, particularly in the magistrates’ courts. A magistrate can only sentence, or find someone guilty, for the offence on the information. So, if a person appears before a magistrate charged with a racially aggravated offence, but the
racial aggravation element is not proven, the whole case must be lost even where there is enough evidence to prove the basic offence. But if the offence were to be prosecuted in its basic form, any racist element could not be presented or used in sentencing as no-one may be sentenced for an offence which is more serious than that for which he or she has been found guilty. The report concludes that, in marginal cases where an aggravated variant to the basic offence is available but not charged, the legislation has made it harder to obtain a conviction as well as a sentence reflecting the full picture of the incident.

4.8. A jury may, in most instances, choose to find an alternative charge without it being specified. The evaluators met with a strong body of opinion in favour of magistrates having a similar power in relation to racially aggravated offences. A solution is to present two charges (or two indictments): the basic offence and the racially aggravated variant. In practice, Crown Court judges prefer the alternative to be specified, as this makes it easier for the jury to understand the summing up.

4.9. Presenting alternatives, though, has its drawbacks. It weakens the case for the aggravated offence, makes it harder to open the case in the Crown Court, places a lot of pressure on victims’ credibility, and is seen as an open invitation to the defence to press for the aggravated version to be dropped in exchange for a plea to the basic offence. And this in turn, of course, leads to all evidence of racist language etc. being inadmissible at sentencing.

4.10. There are significant resource implications to the English approach. Racially aggravated offences are twice as likely to be committed to the Crown Court for trial as equivalent ‘either way’ basic offences, both because of that Court’s sentencing powers and as
a result of the Court of Appeal’s emphasis on the seriousness of racial aggravation. In addition, a far higher proportion of cases are contested: 83% across the country (compared with 47% for basic offences), rising to 92% in London (65% for basic). Interestingly, the evaluation shows a strong resistance, on the part of defendants, to being tagged as racist, illustrated by the insistence on contesting the racially aggravated offences when the basic offence would be readily admitted. This high proportion of contested trials has led to racially aggravated offences having less than half the conviction rate of the basic offences.

4.11. The report recommends that:

- magistrates should be given the power to find alternative verdicts on racially aggravated offences;

- more should be done to differentiate the great range of seriousness encompassed in the concept of racial aggravation;

- more should be done through restorative methods at the lower level of racist offending;

- prosecution should remain in reserve for the most serious or recalcitrant cases (with multi-agency strategies used in the majority of instances).
5. OPTIONS FOR CHANGE IN NORTHERN IRELAND

5.1. Clearly, current arrangements cannot be left as they are, and four options for change are suggested below. However, fear of being caught and successfully prosecuted is likely to act as a stronger deterrent than the possibility of having to serve a longer sentence after prosecution. Putting in place mechanisms to ensure that racially motivated crime and crime motivated by sectarianism is pursued robustly through the investigation and prosecution stages and that all evidence of motivation is presented at sentencing must be the first priority.

5.2. There is, however, an obligation to act in the face of gathering evidence of an increased number of racially motivated offences and a hardening of racial prejudice. Racist crime poses a particular threat to the development of a stable society and to good relations between communities and if the aspirations and undertakings contained in the Belfast Agreement in relation to recognition of “the full and equal legitimacy and worth of identities” are to be realised, together with the recommendations of the McPherson Report on tackling racial intolerance, then these should be given practical expression in law as a matter of priority.

5.3. One of the recommendations of the evaluation was that more should be done through restorative methods at the lower level of offending. A person who, in anger over some other matter, has used a racist (or sectarian) epithet should – if the victim finds the idea acceptable – be given a chance to apologise in place of prosecution. This could be particularly appropriate for young people, and the introduction of
restorative mechanisms for juveniles provided for in the Justice (Northern Ireland) Act 2002 would facilitate such an approach.

5.4. Prior to the Crime and Disorder Act 1998, two main types of racist crime caused concern. One, in the wake of the Lawrence case, was the serious, potentially fatal, attack. The other, highlighted by a series of research studies and surveys, was the persistent racist harassment endemic in some communities in England and Wales. The former type of crime is extremely rare, as is planned violence motivated by ideological race hatred. The second, however, continues to blight race relations. In Northern Ireland, the Executive had stated its commitment to tackling such harassment by means of a number of different strategies, and using a multi-agency approach. This is in line with a further conclusion of the evaluation, that tackling racism is as much about changing attitudes and mindsets as about dealing with crime, and that multi-agency preventative strategies to address prejudice and intolerance hold the key to bringing about genuine and lasting change.

Option One: legislate in respect of sentencing

5.5. The first option is to introduce provisions equivalent to those at s.82 of the Crime and Disorder Act here. These put on a statutory footing the need to consider racial motivation as an aggravating factor when sentencing. The researchers evaluating the English legislation uncovered a body of opinion which believed that it would have been quite sufficient, and less cumbersome, to have limited the legislation to this, requiring the sentencer to treat racial aggravation as making any offence more serious and to say so in open court.
5.6. Against this, there is evidence to suggest that, in England and Wales, magistrates take much more notice of specific racially aggravated offences, and that having these offences on the statute book there sends a clearer message of the condemnation of racist crime.

5.7. There is also the possibility that introducing longer maximum sentences for offences will result in a greater number of cases being contested, with resulting resource and delay implications, or in a willingness to plead guilty to a lesser charge which does not accurately reflect the facts of the offending.

5.8. Sentencing guidelines in Northern Ireland already require sentencers to treat racial or sectarian motivation as an aggravating factor, but putting this on a statutory footing might send a stronger message. This option would, however, fail to address the difference in maximum sentence available in respect of certain offences in Northern Ireland and in England and Wales.

5.9. A further possible change which might be considered would be to amend the sentencing framework so that the maximum penalty for an offence could be exceeded by a set amount – say, two years – if racial or sectarian aggravation were proved.

Option Two: allowing magistrates to find alternative verdicts

5.10. The second option would be to give magistrates the power to find someone guilty of an alternative charge in cases of racially aggravated offences (see paras 4.7, 4.8 above). A strong body of opinion in England was in favour of giving magistrates this power, thus enabling them to find a defendant guilty of a basic offence if they did not believe that the racial aggravation element had been proved.
But while this would ensure that guilty defendants were still convicted of an offence it would not address the problem of ensuring that the resulting sentence fully reflected the incident.

Option Three: legislate to create racially aggravated offences only AND

Option Four: legislate to create racially aggravated offences and offences aggravated by sectarianism

5.11. Options three and four require detailed consideration of how to define aggravated crime. Within the Northern Ireland context there is clearly some difficulty in formulating definitions which would effectively differentiate racial offences from sectarian offences. The Crime and Disorder Act defines a ‘racial group’ in Great Britain as “a group of persons defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins.” This definition, if used in Northern Ireland, might apply to sectarian offences and, given the level of such offences, would significantly increase both the volume and complexity of cases.

5.12. Assuming that a new formulation could be arrived at which would exclude sectarian offences, it must also be considered whether doing this sends the message that racially motivated crime is somehow worse than that committed for sectarian motives. On the other hand, addressing sectarian and racial offences in the same way would arguably weaken the symbolic impact in relation to race crime which the Crime and Disorder Act 1998 sought to exert. It would also not address the fact that, in cases of racially motivated attacks, the victims in by far the majority of cases belong to a relatively small group within the overall population whereas, in the case of sectarian
offences, there are victims in both the main groups, neither of which is particularly small.

5.13. Although endemic and widespread racist harassment does not exist on a comparable scale in Northern Ireland, it arguably finds its equivalent here in offences which are rooted in sectarian division and discrimination. In view of this there are strong arguments in favour of legislating in respect of crime committed for either racial or sectarian motives, attaching stiffer penalties to such crimes. To do so would provide for consistency of sentencing between Northern Ireland and England and Wales; it would send a signal that there can be no legitimate differentiation between racially motivated crime and crime motivated by sectarianism. It would also represent a pledge of the Government’s commitment to act forcefully and consistently in law against both racism and sectarianism, in the context of the continuing development towards a tolerant and stable society in Northern Ireland envisaged by the Belfast Agreement.

5.14. The definition of a racially aggravated offence contained in the Crime and Disorder Act 1998 is open to wide interpretation, covering offences from ‘heat of the moment’ racist language to serious, even fatal, premeditated offending. It covers offences where the racist element is not the cause of the offence. An option would be to limit any definition of aggravation to motivation only, which would reduce prosecutions but also place more emphasis on seeking evidence of motivation in all offences where it might apply. However, the impact of racist abuse, including racial hostility demonstrated during the commission of an offence, on the individual, his/her family, and the wider community should not be underestimated.
6. SOME QUESTIONS FOR CONSIDERATION

6.1. Do you consider current legislative arrangements in relation either to racial or sectarian crime to be satisfactory?

6.2. Is there sufficient reason for Great Britain legislation on racially motivated crime not to apply in exactly the same way to Northern Ireland?

6.3. Should any action taken in respect of racially aggravated crime apply equally to sectarian crime too, or should provisions be modified in some way in respect of one or other category of offence?

6.4. Should any new offences concentrate on the motivation for offending, or should they encompass behaviour/language which is related to, but not the cause of, the offence?

6.5. Is it better to proceed by introducing new categories of offence, or would it be preferable instead to look at the sentencing framework, and whether that could be modified to address the problem?

6.6. Are there other arrangements which would address effectively the issue of racially motivated or sectarian crime in Northern Ireland?
List of Consultees

Age Concern NI
Help the Aged
Barnardos
Child Poverty Action Group (NI)
Child Care NI
Children’s Law Centre
NSPCC
Save the Children
Al-Nisa Women’s Group (BIC)
AL-NUR Craigavon Asian Association
Baha’I Office for NI
Belfast Hebrew Congregation
Belfast Islamic Centre
Chinese Lay Health Project
Chinese Welfare Association
Council for Ethnic Minorities
Indian Community Centre
Mandarin Speakers Association
Mid Ulster International Cultural Group
Multi-Cultural Resource Centre
Multi-Cultural Group Windsor Women’s Group
NI African Cultural Centre
NI Counsel for Ethnic Minorities
NI Filipino Association
NI Filipino Community in Action
NI Pakistani Cultural Association
Oi Kwan Chinese Women’s Group
Oi Wah Chinese Women’s Group
Oi Yin Bangor Chinese Women’s Group
Sai Pak Northwest
Sikh Cultural Centre
Soairse
Wah-Hip Chinese Community Association
Belfast Travellers Support Group
Belfast Travellers Education & Development
Craigavon Traveller Supportive Committee
Traveller Movement NI
Trust Equality Forum NI
BIIPB Committees B,C,D
Human Rights Watch
Liberty
SAVE
NIGRA
Relatives for Justice
Survivors of Trauma
Derry Well Woman
Fermanagh Women’s Network
Mid-Ulster Women’s Network
Newry & Mourne Women
NI Women’s Aid Federation
NI Women’s European Platform
Omagh Women’s Area Network
The Women’s Centre
Women’s Resource & Development
Women’s Forum NI
Women’s Information Group
Women’s Support Network
Youth Council for NI
The Rainbow Project
Carafriend
Coalition on Sexual Orientation
Gay & Lesbian Youth NI
Lesbian Line
Queer Space
Foyle Friend
NUS USI
British Deaf Association (NI)
Down’s Syndrome Association
Disability Action
Employers’ Forum on Disability
MENCAP
North East Forum of People with Disabilities
North West Forum of People with Disabilities
NI Association for Mental Health
Parents and Professionals and Autism
Royal National Institute for the Blind
Sense NI
The Guide Dogs for the Blind Association
The Cedar Foundation
Carers National Association NI
Equality Forum NI
Liberty
East Belfast Community Development Agency
NI Council for Voluntary Action
Association of Chief Officers of Voluntary Associations
Gingerbread Northern Ireland
West Belfast Economic Forum
Rural Community Network
North West Community Network
Falls Community Council
The Local Government Staff Commission for NI
Staff Commission for Education and Library Boards
Community Relations Training/Learning Consortium
Community Development and Health Network (NI)
Chief Constable, Police Service of Northern Ireland
Superintendents’ Association, PSNI
Police Service of Northern Ireland
Police Federation for NI
Association Chief Police Officers
Northern Ireland Policing Board
Director of Public Prosecutions
NI Prison Service
Prison Officers’ Association
Prison Governors’ Association
Prison Reform Trust
Prison Fellowship NI
Prisoner Aid Network Group
HM Chief Inspector of Prisons
NI Juvenile Courts Association
The President, Law Society of NI
Law Society of NI
Law Centre (NI)
Lord Chief Justice of NI
Committee on the Administration of Justice
Professional Judiciary
General Council of the Bar of NI
Attorney General of Northern Ireland
NI Resident Magistrates’ Association
Council of HM County Court Judges in NI
NI Court Service
Padraigin Drinan LLB
Probation Board for NI
NI Human Rights Commission
Equality Commission
Justice
Association of Local Authorities
NIACRO
Ulster Quaker Service Committee
Tar Anall
Northern Ireland Affairs Committee
International Department The Red Cross
The Extern Organisation
Victim Support Northern Ireland
Coiste na n-larchimi
Amnesty International
NI Association of Citizens’ Advice Bureaux
Community Relations Council
Chamber of Commerce House
British-Irish Rights Watch
Chinese Chamber of Commerce
NI Voluntary Trust
Association of Chief Officer of Voluntary Associations
Chief Electoral Office
Committee on the Prevention of Torture Council of Europe
The Lord Glentoran
Dept of Agriculture and Rural Development
NI Statistics and Research Agency
PRAXIS
Antrim Borough Council
Ards Borough Council
Armagh City and District Council
Ballymena City Council
Banbridge District Council
Belfast City Council
Carrickfergus Borough Council
Coleraine Borough Council
Craigavon Borough Council
Derry City Council
Down District Council
Dungannon District Council
Fermanagh District Council
Larne Borough Council
Lisburn City Council
Magherafelt District Council
Newry & Mourne District Council
Newtownabbey Borough Council
North Down Borough Council
Omagh District Council
Strabane District Council
NI Housing Executive
The Moderator, Presbyterian Church in Ireland
The Secretary & Trustees, Methodist Church in Ireland
Church of Ireland Board of Social Responsibility
The Cardinal and Primate of all Ireland
The Most Reverend Bishop Walsh, Bishop of Down & Connor