

## REVIEW OF HATE CRIME LEGISLATION: CONSULTATION QUESTIONS

**\*Name of Respondent (Individual/Organisation) Rural Community Network.....**

We are grateful to you for taking the time to respond to this consultation paper. Please note it is not necessary to respond to all questions.

**\*It is also not compulsory to give your name.**

Your views and opinions are very important to us. All responses will be used solely to inform the work of the Hate Crime Review team. The information you provide will be used in a sensitive and confidential manner, drawing on your experiences and facts that relate to the Review.

Your information will contribute to a body of evidence that will be taken into account as part of the Review that will be presented to the Department of Justice in the summer of 2020.

No personal information will be shared or passed on to any other body outside the Hate Crime Review team.

We will only retain your data for as long as necessary and your information will be destroyed on completion of the final report.

For further information about the safe-guarding of your personal data please see the Hate Crime Review Privacy Notice, which can be accessed via the following link:  
<https://www.hatecrimereviewni.org.uk/>

**CHAPTER 1**  
**HATE CRIME: DEFINITION AND JUSTIFICATION**

**PART 1: DEFINITION**

**QUESTION 1:**

What do you consider to be hate crime?

**A crime that is motivated by bias, prejudice, damage to property, hate speech, intimidation, physical assault and murder. There should be an enhanced sentence for this. It is also an act towards an individual as well as a group, whose identity is perceived as different.**

Please give reasons for your answer

**QUESTION 2:**

Do you consider that the working definition of a hate crime discussed in this chapter adequately covers what should be regarded as hate crime by the law of Northern Ireland?

Yes

No

Please give reasons for your answer

**We believe that the working definition should also include a specific reference to the fact that hate crime can occur online as well as offline.**

**CHAPTER 1**  
**HATE CRIME: DEFINITION AND JUSTIFICATION**

**PART 2: JUSTIFICATION FOR HATE CRIME LAW**

**QUESTION 3:**

Should we have specific hate crime legislation in Northern Ireland?

- Yes  
 No

Please give reasons for your answer

**Hate crime in NI is growing faster than in the rest of the UK. There are approx. 8 incidents of hate crime per day in NI. Hate crime has a specific character in NI that should be addressed by NI specific legislation. Hate crime in NI is totally unacceptable and it is important to send out a strong societal message that this type of behaviour is unacceptable. It is about providing a cultural shift in attitude and make sure that all members of society are treated as equal members.**

**QUESTION 4:**

Should hate crimes be punished more severely than non-hate crimes?

- Yes  
 No

Please give reasons for your answer

**Yes, hate crimes have a deeper psychological effect on the victim as well as an indirect impact on the community. It can affect both community and individual. It causes greater harm than other crimes and adds an extra layer of stress and hurt that a victim has to deal with, it is a personal attack on their identity which they cannot change, which makes them even more vulnerable. There must be a zero tolerance attitude to any form of hate crime and this message will be sent out to the whole of society if the law is changed to make sure that it is taking this issue very seriously and that this type of behaviour will not be**

**accepted. The additional severity of sentences for hate crime is symbolically important and conveys a message to perpetrators and potential perpetrators. It also sends a wider message to the public about what society deems as unacceptable. Finally, it is important that victims receive recognition that the hate motivation of the crime perpetrated against them was acknowledged and addressed by the criminal justice system.**

**CHAPTER 6**  
**OPERATION OF THE CRIMINAL JUSTICE (NO. 2) (NORTHERN IRELAND)**  
**ORDER 2004**

**QUESTION 5:**

Do you think the enhanced sentencing model set out in the Criminal Justice (No. 2) (Northern Ireland) Order 2004 should continue to be the core method of prosecuting hate crimes in Northern Ireland?

- Yes (If Yes, go to Question 6)
- No (If No, go to Question 7 (Chapter 7))

Please give reasons for your answer

**QUESTION 6:**

If you think the enhanced sentencing model should continue to be the core method of prosecuting hate crimes in Northern Ireland, do you think it requires amendment?

- Yes
- No

Please give reasons for your answer

## CHAPTER 7

### OPERATION OF THE CRIME AND DISORDER ACT 1998 AND THE CRIMINAL JUSTICE ACT 2003 IN ENGLAND AND WALES AND THE MODEL IN SCOTLAND

#### QUESTION 7:

Do you think the statutory aggravation model as used in England and Wales and Scotland should be introduced into Northern Ireland law?

- Yes (If Yes, go to Question 8)
- No (If No, go to Question 9)

Please give reasons for your answer

#### QUESTION 8:

If you think that the statutory aggravation model used in England and Wales and Scotland should be introduced into Northern Ireland law, should it be introduced as well as or instead of the enhanced sentencing model?

Please give reasons for your answer

QUESTION 9:

Irrespective of whichever model is used (aggravated offences or enhanced sentencing), should there be specific sentencing guidelines for hate crimes in Northern Ireland?

Yes

No

Please give reasons for your answer

QUESTION 10:

Irrespective of which model is used (aggravated offences or enhanced sentencing provisions), do you think that courts should be required to state in open court the extent to which the aggravation altered the length of sentence?

Yes

No

Please give reasons for your answer



## CHAPTER 8

### PROTECTED GROUPS - SHOULD ADDITIONAL CHARACTERISTICS BE ADDED?

#### QUESTION 11:

Should gender and gender identity be included as protected characteristics in Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

#### QUESTION 12:

Should Transgender identity be included as a protected characteristic in Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

QUESTION 13:

Should Intersex status be included as a protected characteristic in Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

QUESTION 14:

Should age be included as a protected characteristic in Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

QUESTION 15:

Should a general statutory aggravation covering victim vulnerability and/or exploitation of vulnerability be introduced into Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

QUESTION 16:

Should homeless status be included as a protected characteristic in Northern Ireland hate crime legislation?

- Yes
- No

Please give reasons for your answer

QUESTION 17:

Do you consider any other new characteristics should be protected in Northern Ireland hate crime legislation other than those mentioned above?

- Yes
- No

Please give reasons for your answer

**Intersectionality**

QUESTION 18:

Do you consider that intersectionality is an important factor to be taken into consideration in any new hate crime legislation?

- Yes (If Yes, go to Question 19)
- No (If No, go to Question 20 (Chapter 9))

Please give reasons for your answer

QUESTION 19:

If you consider intersectionality to be an important factor to be taken into consideration in any new hate crime legislation, what is the best way to achieve this?

Please give reasons for your answer

## CHAPTER 9

### TOWARDS A NEW HATE CRIME LAW FOR NORTHERN IRELAND

#### QUESTION 20:

If the enhanced sentencing model remains as the core provision for dealing with hate crime in Northern Ireland, should it be amended to provide for the recording of convictions on the criminal record viewer?

- Yes
- No

Please give reasons for your answer

#### QUESTION 21:

Do you believe there is a need to introduce a statutory aggravation model of hate crime law similar to that which exists in Scotland and in England and Wales under the Crime and Disorder Act 1998?

- Yes (If Yes, go to Questions 22 - 25)
- No (If No, go to Question 26)

Please give reasons for your answer

QUESTION 22:

In dealing with an aggravated offence, should the court state on conviction that the offence was aggravated?

- Yes
- No

Please give reasons for your answer

QUESTION 23:

In dealing with an aggravated offence, should the court record the conviction in a way that shows that the offence was aggravated?

- Yes
- No

Please give reasons for your answer

QUESTION 24:

In dealing with an aggravated offence, should the court take the aggravation into account in determining the appropriate sentence?

- Yes
- No

Please give reasons for your answer

QUESTION 25 (Part 1):

In dealing with an aggravated offence, should the court state where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference?

- Yes
- No

Please give reasons for your answer



OR

QUESTION 25 (Part 2):

In dealing with an aggravated offence, should the court otherwise state the reasons for there being no such difference?

Yes

No

Please give reasons for your answer

QUESTION 26:

Do you consider that aggravated offences should be recorded as such in criminal justice records so that statutory agencies and others are aware of the hostility element of an individual's criminal history?

Yes

No

Please give reasons for your answer

## CHAPTER 10

### ADEQUACY OF THE CURRENT THRESHOLDS FOR PROVING THE AGGRAVATION OF PREJUDICE

#### QUESTION 27:

If any new hate crime law in Northern Ireland follows the statutory aggravation model as in Section 28(1) of the Crime and Disorder Act 1998, do you consider that the current thresholds of (a) demonstration of hostility, and (b) motivation are appropriate or should there be a third threshold: the “by reason of” threshold?

Yes

No

Please give reasons for your answer

QUESTION 28:

If you consider that there should be a third threshold, do you consider that this should be in addition to the two thresholds of “demonstration of hostility” and “motivation”, or should there be a third threshold to replace the motivation threshold?

- Yes
- No

Please give reasons for your answer

QUESTION 29:

Do you consider that there should be a statutory definition of the term “hostility”?

- Yes (If Yes, please provide a suggested definition in the box below)
- No

**Please give reasons for your answer**

(including, if appropriate, a suggested definition of the term “hostility”)

QUESTION 30:

Whether or not you believe that the term “hostility” should be defined or not, do you consider that this term should be expanded to include other terms such as “bias, hostility, prejudice, bigotry or contempt”? .

Yes

No

**Please give reasons for your answer**

**CHAPTER 11**  
**STIRRING UP OFFENCES**

QUESTION 31:

Do you consider there is merit in adding equivalent provisions to Sections 4, 4A and 5 of the Public Order Act 1986 to the Public Order (Northern Ireland) Order 1987?

- Yes
- No

**Please give reasons for your answer**

QUESTION 32:

Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be retained?

- Yes
- No

**Please give reasons for your answer**

QUESTION 33:

Do you consider the requirement that the Director of Public Prosecutions gives consent to any prosecutions taken under Part III of the Public Order (Northern Ireland) Order 1987 to be necessary and appropriate?

- Yes
- No

**Please give reasons for your answer**

QUESTION 34:

Do you consider the term “hatred” as the appropriate test to use in the Public Order (Northern Ireland) Order 1987?

- Yes
- No (If not, what should it be replaced with?)

**Please give reasons for your answer**

QUESTION 35:

If gender, gender identity, age or other groups are included in the protected groups, should they also be included under the groups protected by the stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987?

- Yes
- No

**Please give reasons for your answer**

QUESTION 36:

Should the defences of freedom of expression present in the Public Order Act 1986 for religion and sexual orientation be specifically added as defences to Part III of the Public Order (Northern Ireland) Order 1987?

- Yes
- No

**Please give reasons for your answer**

QUESTION 37:

Should the express defence of freedom of expression for same-sex marriage in Article 8(2) of the Public Order (Northern Ireland) Order 1987 be retained in law or repealed?

- Yes (retained in law)
- No (repealed)

**Please give reasons for your answer**

QUESTION 38:

Under Article 9(1) of the Public Order (Northern Ireland) Order 1987, should the test remain referring to a person using “threatening, abusive or insulting words or behaviour or displaying any similar written material which is threatening, abusive or insulting” or should the words “abusive” or “insulting” be removed from the test for the commission of the offence?

**Please give reasons for your answer**



QUESTION 39:

If there are to be offences dealing with the stirring up of hatred against protected groups, do you consider that there needs to be any specific provision protecting freedom of expression?

Yes

No

**Please give reasons for your answer**

## CHAPTER 12

### ONLINE HATE SPEECH

QUESTION 40:

Should social media companies be compelled under legislation to remove offensive material posted online?

Yes

No

**Please give reasons for your answer**

**In theory social media companies should be compelled to remove offensive material posted online. Can NI courts have jurisdiction over global social media companies is another issue. There will remain questions about how quickly courts can move to compel social media companies and in the interim how far offensive material can spread, can be saved by individuals and re-posted to social media platforms even after a legal decision has been made that such material is offensive.**

QUESTION 41:

Are there lessons from the English and Welsh experience of the Public Order Act 1986 that may apply for Northern Ireland?

Yes

No

**Please give reasons for your answer**

QUESTION 42:

Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be amended/removed?

Yes

No

**Please give reasons for your answer**

QUESTION 43:

Should the term “publication” in the Public Order (Northern Ireland) Order 1987 be amended to include “posting or uploading material online”?

Yes

No

**Please give reasons for your answer**

QUESTION 44:

Should there be an explicit defence of “private conversations” in the Public Order (Northern Ireland) Order 1987 to uphold privacy protection?

Yes

No

**Please give reasons for your answer**

QUESTION 45:

Should gender, gender identity, age and other characteristics be included as protected characteristics under the Public Order (Northern Ireland) Order 1987?

Yes

No

**Please give reasons for your answer**

QUESTION 46:

Should the Malicious Communications (Northern Ireland) Order 1988 be adapted to deal with online behaviour?

Yes

No

**Please give reasons for your answer**

QUESTION 47:

Should the wording of the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and the Communications Act 2003 use terms such as “grossly offensive”, “indecent” and “obscene”?

Yes

No

**Please give reasons for your answer**

QUESTION 48:

Are the offences under the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and Communications Act 2003 too broadly drafted and require some modification to clarify and narrow their application?

- Yes
- No

**Please give reasons for your answer**

QUESTION 49:

Should online harm be part of a general law applying to hate crime?

- Yes
- No

**Please give reasons for your answer**

QUESTION 50:

Is the current law contained in the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and the Communications Act 2003 sufficiently clear to protect freedom of expression?

Yes

No

**Please give reasons for your answer**

## CHAPTER 13

### SECTARIANISM AND HATE CRIME LEGISLATION IN NORTHERN IRELAND

#### QUESTION 51:

Would you support a specific reference to the term 'sectarian' within any new hate crime legislation?

Yes

No

#### **Please give reasons for your answer**

**We support specific reference to the term sectarian in any new hate crime legislation. As the review acknowledges a patchwork of legislation has developed over the decades that refers to sectarianism but no actual definition of sectarianism exists in law. This has proved problematic in recording the nature of hate incidents. As practitioners in communities clarity on the legal definition of sectarianism will provide two benefits: it will give us a clearer picture of the extent and nature of hate crime incidents with a sectarian motivation and will also allow us to clearly state when working with communities how the law defines sectarianism.**

#### QUESTION 52:

Should the list of indicators for sectarianism (i.e. religious belief and political opinion) be expanded?

Yes

No

#### **Please give reasons for your answer**

**The list of indicators for sectarianism should be extended. There has been significant decline in religious adherence in the last twenty years in NI. Sectarianism can now be indicated by perceived community background which may or may not be related to religious background. We agree that nationality and language could also be included as indicators.**



## CHAPTER 14

### REMOVING HATE EXPRESSION FROM PUBLIC SPACE

#### QUESTION 53:

Should the law relating to the duties of public authorities to intervene to tackle hate expression in public space be strengthened or further clarified?

Yes

No

#### **Please give reasons for your answer**

**The law relating to public authorities' duty to intervene to tackle hate expression in public space should be further strengthened. The current system is not working with various statutory agencies often passing the buck to each other. FICT commission had been tasked with looking at this issue, amongst a range of others, as part of its remit but has yet to report.**

## CHAPTER 15

### RESTORATIVE JUSTICE

QUESTION 54:

Should restorative justice be part of the criminal justice process in dealing with hate crime in Northern Ireland?

- Yes
- No

**Please give reasons for your answer**

QUESTION 55:

Should restorative justice schemes be placed on a statutory footing?

- Yes
- No

**Please give reasons for your answer**

QUESTION 56:

Should there be a formal justice system agency responsible for the delivery of adult restorative justice for hate crime?

- Yes (If Yes, go to Question 57)
- No (If No, go to Question 58)

**Please give reasons for your answer**

QUESTION 57:

What role do you envisage for the accredited community based restorative justice organisations in the delivery of adult restorative justice for hate crime?

**Please give reasons for your answer**

QUESTION 58:

Do you consider diversion from prosecution is an appropriate method of dealing with low level hate crimes as per the practice in Scotland?

Yes

No

**Please give reasons for your answer**

## CHAPTER 16

### VICTIMS

QUESTION 59:

Do you have any views as to how levels of under reporting might be improved?

Yes

No

**Please give reasons for your answer**

It is important to understand the reasons why people do not report hate crime. It may be due to legacy issues and a lack of trust in the PSNI/Criminal Justice System. In some communities there remains a residual distrust of the PSNI and a reluctance to be seen to engage with them. In rural communities victims may find it more difficult to report a hate crime as they live further from an effective PSNI response and may be more likely to know their perpetrator. It may be worth exploring if community and voluntary groups in rural areas could act as intermediaries to report hate crime incidents to the PSNI and promote public awareness of the Hate Crime Advocacy Scheme.

QUESTION 60:

Do you consider that the Hate Crime Advocacy Scheme is valuable in encouraging the reporting of hate crime?

- Yes
- No

**Please give reasons for your answer**

QUESTION 61:

Do you consider that the Hate Crime Advocacy Scheme is valuable in supporting victims of hate crime through the criminal justice process?

- Yes (If Yes, go to Question 62)
- No (If No, go to Question 63)

**Please give reasons for your answer**

QUESTION 62:

How might the current Hate Crime Advocacy Scheme be improved?

**Please give reasons for your answer**

QUESTION 63:

Do you consider that the funding model for the Hate Crime Advocacy Service should be placed on a permanent basis as opposed to the present annual rolling contract model?

- Yes
- No

**Please give reasons for your answer**

QUESTION 64:

Do you consider that, in certain circumstances, press reporting of the identity of the complainant in a hate crime should not be permitted?

- Yes (If Yes, go to Question 65)

No (If No, go to Question 66 (Chapter 17))

**Please give reasons for your answer**

QUESTION 65:

In what circumstances should a restriction on press reporting of the identity of the complainant in a hate crime be permissible?

**Please give reasons for your answer**



## **CHAPTER 17**

### **LEGISLATION: CONSOLIDATION AND SCRUTINY**

QUESTION 66:

Do you believe that there is benefit in bringing all hate crime/hate speech legislation in Northern Ireland together in one consolidated piece of legislation?

- Yes
- No

**Please give reasons for your answer**

QUESTION 67:

Should any new legislation on hate crime be subject to post-legislative scrutiny?

- Yes (If Yes, go to Question 68)
- No

**Please give reasons for your answer**

QUESTION 68:

In what way should post-legislative scrutiny be provided for?

**Please give reasons for your answer**