

## REVIEW OF HATE CRIME LEGISLATION: CONSULTATION QUESTIONS

**\*Name of Respondent (Individual/Organisation)**..... Probation Board for Northern Ireland

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?

**Please give reasons for your answer.**

An offence against a person or persons that was motivated by hostility or prejudice against one of the following: race, religion, sexual orientation or disability.

**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.**

**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.**

QUESTION 4:

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

Yes

No

**Please give reasons for your answer.**

**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.**

There have been numerous problems with using the enhanced sentence model, such as the risk that a Hate Crime is not recorded accurately by the Courts and it is missed.  
There is evidence that current Hate Crime statistics aren't reliable, there have been queries in the quality and accuracy of information recorded, there is also evidence that the ESM hasn't been used when it should have been, and a view that it doesn't work in practice.

**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.**

The aggravation model labels the offence as serious and the offence is clearly recorded on the Criminal Record, thus recognising the seriousness of Hate Crime.

#### 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.**

Instead of - victims tend to favour the use of statutory aggravation and to have both only adds to the complexity of the area.

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.**

This will aid consistency in sentencing and should also contribute to increased public confidence in the sentencing.

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.**

The court will be fully aware of all the factors and have the full knowledge of the offence.

## 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.**

Gender should not be included as this has the effect of including each individual and therefore dilutes the function and importance of the legislation. Gender identity should however be included.

#### 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.**

This is a particularly vulnerable group and should be protected under law. The number of offences directed at this group continues to increase (8.30 and 8.31).

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.**

This may not be necessary at this time.

QUESTION 14:

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

Yes

No

**Please give reasons for your answer.**

This will contribute to increased public confidence in sentencing. It addresses the concerns of older people and ensures older people feel protected by legislation.



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.**

PBNI believes that this would be difficult to define and to prove. Victims are unlikely to be supportive. Vulnerability is not static. Vulnerability is already considered by sentencers under current legislation.

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.**

It would allow for more comprehensive monitoring of hate crime. It takes full account of victim's experiences. It provides a truer reflection of the issue of hate crime.

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.**

Adding an option of "multiple group hostility".

## 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.**

- The enhanced sentencing model is not working in the best interests of victims;
- Provisions under the enhanced sentencing model are not being consistently applied;
- The aggravated model provides greater potential to address hate crime effectively because it provides a system-wide response i.e. a different response throughout the different stages of criminal justice
- The aggravated model allows for offences to be flagged and for PBNI to deliver offence focused interventions post sentence

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.**

Unlike the English system, where only certain offences can be aggravated, we should be supporting a model (similar to Scotland) where any offence can be aggravated. Probation would also be supportive of widening the factors which are identified as aggravating factors in England beyond race and religion to also include disability, sexual orientation and transgender identity.

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.**

Because unless removed at the earliest opportunity the material posted may continue to offend those who come across the material as well as re-victimising those at whom the material is targeted. The appointment of an Independent Regulator holding internet companies to account may assist.

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.**

But for this to happen legislation would need to be introduced. There should be parity across the UK in terms of what constitutes online hate crime and how it is dealt with.



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.**

The order should be amended to include online harm. Further, whilst the NI legislation applies to disability; gender, gender identity and age need to be included in the list of protected characteristics.

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.**

Clearly the advances in technology and accessibility to the internet necessitates that the 1987 Public Order should be updated.

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.**

Type text here

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.**

As has been evidenced recently, women in particular have been subject to particular onslaughts of abuse online. “Vulnerable” groups should be afforded any additional protection as is possible.

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.**

As in England and Wales, the Order needs to be amended in Northern Ireland to explicitly bring within its orbit, electronic communications.

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.**

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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.**

Law relating to Hate Crime definitely needs to include online harm.

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.**

A specific reference to the term 'sectarian' within any new hate crime legislation would make it easier to target specific interventions, as the person has then been found guilty of an offence involving sectarianism. The legislation does not currently provide such specificity.

#### 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.**

PBNI does not believe so, as this is how sectarianism is widely understood at present, particularly within the NI context.

## 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.**

PBNI believes that all expression of hate, including for example graffiti, should be able to be targeted and tackled, and current legislation sufficiently robust to enable same.

## 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.**

Restorative Justice (RJ) supports constructive dialogue between victims and the person who caused the harm, it gives victims an opportunity to meet or communicate with the relevant people who have harmed them to explain the impact crime has had. RJ has the potential to help some victims by giving a voice within a safe and supportive setting and giving them a sense of closure and those who have caused the harm an opportunity to reflect on what they have done and evidence indicates by doing so the risk of reoffending can be reduced.

#### QUESTION 55:

Should restorative justice schemes be placed on a statutory footing?

Yes

No

**Please give reasons for your answer.**

There is currently no structure or guidance in NI for RJ for adult offenders, a statutory footing would allow for a clear structure could potentially offer diversion from prosecution, or lengthy sentences. A statutory footing would also allow for consistent governance and oversight.



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.**

PBNI are a statutory body who have experience in delivering RJ to adult offenders and have public confidence throughout all parts of NI, we have already developed interventions such as Accepting differences and partnership work such as Get Real with NIACRO, we have trained facilitators in RJ, and have established partnership working with Alternatives and CRJI, PBNI are held in high esteem throughout NI by all sectors and there is a high level of public confidence in the organisation.

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.**

There can be a role for community organisations, they can be trained mediators often community organisations have community confidence and this can increase victim participation but it needs a co-ordinated approach to make it effective and comprehensive, the Get Real programme is a good example of partnership work between PBNI and NIACRO.

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.**

RJ must be a voluntary process for the victim and the person who has caused the harm and it should be stopped at any time if either party wishes, evidence indicates if an individual enters into a RJ process they are less likely to reoffend if they really understand the impact of their offending and RJ can give the victim a stronger voice than the current system.

## 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.**

More community resources, continued efforts made in build confidence in policing, increased emphasis on HC in training for investigating officers and PPS community engagement, knowledge building, show that its being taken seriously. Efforts made to overcome any language barriers, challenging perceptions, and appropriate levels of support given to victims at all levels of the process.

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.**

The Hate Crime Advocacy Scheme can help victims understand the Criminal Justice System and assist them to feel supported, local advocacy schemes tend to have public confidence, but this needs to be appropriately resourced.

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.**

Yes it can support at all stages of the CJS system leading to greater public confidence in the system and better outcomes for victims.

QUESTION 62:

How might the current Hate Crime Advocacy Scheme be improved?

**Please give reasons for your answer.**

Increased resources to allow a consistent level of support throughout NI.

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.**

This will allow for effective planning, resourcing and allocation of staffing by Advocacy services.

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.**

In all cases press reporting should be on case by case basis to allow for awareness of community sensitivities.

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.**

Only when it is deemed in the best interests of the victim and public.

## 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.**