



EQUALITY COMMISSION FOR NORTHERN IRELAND

Response to consultation:

**Department of Justice – Improving the effectiveness
of Hate Crime Legislation in Northern Ireland**

March 2022

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1 Introduction

- 1.1 The Commission welcomes the opportunity to respond to this Department of Justice consultation on ‘Improving the effectiveness of Hate Crime Legislation in Northern Ireland’. We have previously raised as a matter of urgency the taking forward of revised and strengthened hate crime legislation¹.
- 1.2 We note that this consultation² focuses on five Strategic Themes: a new Statutory Aggravation Hate Crime Model; Sectarian Offending in Hate Crime Law; Stirring Up Offences; Special Measures and Cross- Examination; and Exploring Misogyny/ Transmisogyny in Hate Crime Law.
- 1.3 Whilst recognising this focus in our below response, the Commission has made wider recommendations relating to hate crime that we consider are required to improve the effectiveness of the hate crime legislation. These further recommendations include steps which can be taken across government to promote positive attitudes and combat prejudice, as well as legislative changes out with the hate crime legislation; for example, changes to equality law so as to address gaps in protection against harassment experienced by equality groups. Our full recommendations are summarised in Annex B, and further detail can be found in [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#).
- 1.4 The Commission has responded only to those questions and issues within its remit and expertise.
- 1.5 The below response builds on our response³ to Judge Marrinan’s Independent Review of the Hate Crime legislation and our 2020 Policy Position Paper⁴. It may be of use to consider these alongside the below.

¹ ECNI (2020) [Hate Crime in Northern Ireland Policy Recommendations and Supporting Rationales](#), p. 2.

² DOJ (2022) [Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views](#)

³ ECNI (2020) [Response to Consultation: Hate Crime Legislation in Northern Ireland. Independent Review](#)

⁴ ECNI (2020) [Hate Crime in Northern Ireland Policy Recommendations and Supporting Rationales](#)

- 1.6 Our recommendations have been informed by, and have taken into account, the views of a range of stakeholders representing a number of equality groups, as well as stakeholders represented on the Hate Crime Working Group of which the Commission was a member.

2 Overarching comments

- 2.1 At the outset we both recognise and welcome the steps that have already been taken by a range of stakeholders to tackle hate crime in Northern Ireland; including to address the under-reporting of hate crime, raise awareness of hate crime, and to support victims of hate crime.
- 2.2 However, it is clear that much more needs to be done both to ensure a more robust, co-ordinated and effective policy response to tackling the persistent and growing problem of hate crime against a range of equality groups in Northern Ireland. Action is required to address the nature and scale of hate crime including the high overall level of hate crime and the increasing levels of particular types of hate crime, and to tackle hate crime experienced by people due to their multiple identities⁵.
- 2.3 This includes the need to update, harmonise, consolidate, and strengthen the hate crime legislation, including by addressing the significant gaps in the legislation.
- 2.4 We welcome the Department's response⁶ to many of the recommendations made by Judge Marrinan in line with our recommendations, including the introduction of a statutory aggravation model, and the consolidation of the hate crime legislation into a single piece of legislation.
- 2.5 We underline the importance of responses to hate crime that go beyond legislative reform; actions to prevent and tackle hate crime and reform equality law are also vital. A holistic, co-ordinated, and collaborative approach to tackling hate crime should be adopted, with clear leadership by public bodies, public representatives and others, ensuring effective engagement with equality groups. As above, the range of the

⁵ ECNI (2020)) [Hate Crime in Northern Ireland Policy Recommendations and Supporting Rationales](#), paras 3.140-3.162.

⁶ DOJ (2021) [Review of Hate Crime Legislation NI - Departmental Response](#)

Commission's recommendations are summarised in Annex B, and can be found in [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#).

Equality Duties

- 2.6 Designated public authorities should ensure compliance with their public sector equality duties, including the good relations duty, when developing and implementing hate crime policies, and use the equality duties to inform decision making
- 2.7 Designated public authorities are required to have due regard to the need to promote equality of opportunity in relation to the nine equality categories and to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. They are also subject to the public sector disability duties⁷. In addition, there are specific good relations duties on councils⁸.
- 2.8 Public bodies should ensure that equality and good relations are mainstreamed across all policies, including any hate crime related policies, including by using the tools of equality budgeting⁹ and impact assessment¹⁰.
- 2.9 The framework associated with the Section 75 equality duties can assist Departments and public authorities to identify and mitigate equality impacts. They also enable policymakers to identify and seek out ways to promote equality and good relations, for the Section 75 groups.
- 2.10 The Commission has also advised that public funding programmes should be screened in accordance with Equality Scheme commitments; and that public authorities may wish to consider how they can equality proof these to ensure that they are not running the risk of inadvertently funding activities that

⁷ The public sector disability duties require public bodies to have due regard to the need to promote positive attitudes towards disabled people, and to encourage the participation by disabled people in public life See ECNI (2015), [Short Guide: Section 75, Northern Ireland Act 1998 and Section 49A, Disability Discrimination Act 1995](#).

⁸ Under the race relations legislation, there is also a duty on local councils, who are also subject to the public sector good relations duty, to have due regard to the need to promote good relations between different 'racial groups'. Article 67 of the Race Relations NI Order 1997 places a specific duty on Councils "to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need to eliminate racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups."

⁹ Quinn, S. (2013) [Equality Responsive Budgeting](#), *Expert paper*, commissioned by ECNI.

¹⁰ Equality Commission (2017), [Effective Section 75 Equality Assessments: Screening and Equality Assessments](#).

are discriminatory against groups belonging to the equality categories, including activities which give rise to hate speech.

- 2.11 It is important that equality screening and EQIA, (where the policy is highly relevant to the promotion of equality of opportunity), should be conducted at the earliest opportunity in the policy development process. This is so that it happens while the policy itself is still being formulated and there is an opportunity to influence it - equality and good relations considerations can be built in and mitigations or alternative policy proposals can be given realistic consideration.

Human Rights obligations

- 2.12 In reforming the hate crime legislation, measures are needed to address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations and standards relating to hate crime, including under the Convention on the Rights of Persons with Disabilities (UNCRPD).
- 2.13 There are a range of international human rights obligations on the UK Government relevant to combating hate crime.
- 2.14 These include: UNCRPD, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Framework Convention for the Protection of National Minorities (FCNM), and the European Convention on Human Rights (ECHR). In addition, obligations under EU Directives, such as the EU Victims Directive¹¹, as well as EU Decisions¹², are relevant to policing and hate crime.

Article 2 of the Ireland/Northern Ireland Protocol

- 2.15 Following the UK's exit from the EU, the UK Government has committed under Article 2 of the Ireland/Northern Ireland Protocol ('the Protocol') to ensuring that certain equality and human rights in Northern Ireland will continue to be upheld after Brexit. Since 1 January 2021, the Equality Commission, together with the Northern Ireland Human Rights Commission,

¹¹ EU Victims Directive, [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime.

¹² For example, [Council Framework Decision 2008/913/JHA](#) on combating certain forms and expressions of racism and xenophobia by means of criminal law (28 November 2008).

has been given additional powers and responsibilities, as the ‘dedicated mechanism’, to ensure that the UK Government’s commitment under Article 2 of the Protocol is met¹³.

- 2.16 Under Article 2 (1) of the Protocol the UK Government has committed to ensuring there is no diminution of the rights, safeguards and equality of opportunity provisions as set out in the chapter of the same name in the Belfast (Good Friday) Agreement as a result of Brexit. There is also a commitment to ensuring that Northern Ireland’s equality laws will keep pace with any changes by the EU to the Annex 1 EU equality Directives in the Protocol that enhance protections in these Directives¹⁴¹⁵.
- 2.17 In addition, UK courts when considering the interpretation of any of the equality directives listed in Annex 1, must do so in conformity with any relevant case law of the Court of Justice of the EU (CJEU)¹⁶.
- 2.18 It should be noted that neither the Northern Ireland Assembly, nor the Northern Ireland Executive, can act in a way that is incompatible with the UK Government’s commitment under Article 2 of the Protocol. If they do, those actions can be challenged in courts, by way of judicial review proceedings.
- 2.19 Section 6 (2)(ca) of the Northern Ireland Act 1998¹⁷ as amended by Schedule 3 to the European Union (Withdrawal Agreement) Act 2020¹⁸, makes clear that legislation created by

¹³ Schedule 3 of the European Union (Withdrawal Agreement) Act 2020 amended the Northern Ireland Act 1998 to confer these additional powers on the Commissions – to monitor, advise, report on and enforce the UK Government’s adherence to its commitment in Article 2 Protocol. More information on our role can be found in our publication ‘A Short Guide: Equality and Human Rights after Brexit: The UK Government’s commitment under the Ireland/Northern Ireland Protocol Article 2(1) of the Protocol’.

¹⁴ Ireland/Northern Ireland Protocol Annex 1 Directives: [Gender Goods and Services Directive \(Gender\)](#): Directive 2004/113/EC of 13 December 2004, [Recast Directive \(Gender\)](#): Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, [Race Equality Directive \(Race\)](#): Directive 2000/43/EC of 29 June 2000, [Framework Directive \(religion and belief; age; sexual orientation; and disability\)](#): Directive 2000/78/EC of 27 November 2000, [Equal Treatment Directive: Self-employment \(Gender\)](#): Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010, [Equal Treatment Directive: Social security \(Gender\)](#): Directive 79/7/EEC of 19 December 1978.

¹⁵ UK Government, [Explainer Document](#): UK Government commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland, 7 August 2020

¹⁶ The Northern Ireland Office has, in its 2020 Explainer Document, stated that when a UK Court is considering the interpretation of any of the directives listed in Annex 1, this will be done in conformity with any relevant case law of the CJEU

¹⁷ [Northern Ireland Act 1998](#)

¹⁸ [European Union \(Withdrawal Agreement\) Act 2020](#)

the Northern Ireland Assembly in contradiction to the Article 2 obligations would be outside its legislative competence.

- 2.20 While no potential breach of Article 2 has been identified by the Commission in relation to the proposal for a Hate Crime Bill at this stage, the Commission recommends that at all stages of legislative development there is consideration of, and compliance with, Article 2 obligations. The Commission recommends that an assessment of the Bill's compliance with Article 2 obligations should be detailed in the Bill's Explanatory and Financial Memorandum.
- 2.21 The Commission would also like to highlight the relevance of the EU Victims' Directive¹⁹ in relation to the development of the legislation. The Victims' Directive establishes minimum standards and obligations on the rights, support and protection of victims of crime, including hate crimes. The objective of the Directive is to ensure that all victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- 2.22 The Northern Ireland Office, in its 2020 Explainer Document²⁰ makes it clear that the Victims' Directive falls within the scope of the Protocol's Article 2 non-diminution principle. Therefore, it is the responsibility of the Northern Ireland Executive and departments to ensure that legislation progressed does not reduce the rights of victims under the Victims Directive in a manner that is contrary to the UK Government commitment under Article 2 of the Protocol.

3 Specific comments

- 3.1 We have set out below specific comments and recommendations in relation to some of the issues raised within this consultation, on the understanding that there will be a further consultation later in the year.

¹⁹ [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

²⁰ UK Government, [Explainer Document](#): UK Government commitment to "no diminution of rights, safeguards and equality of opportunity" in Northern Ireland, 7 August 2020

- 3.2 Where we have not made specific comment, that is not to detract from the importance of considering equality implications throughout legislative development and implementation.
- 3.3 Further, these should be read in conjunction with the wider range of recommendations that we consider are required to improve the effectiveness of the hate crime legislation, available at [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#), and summarised in Annex B.

A new Statutory Aggravation Hate Crime Model

- 3.4 We welcome the acceptance of the need for a new legislative statutory aggravation model²¹.
- 3.5 Likewise, we welcome that the new model will recognise the importance of intersectionality²². The hate crime legislation and policy responses must effectively address hate crime experienced by people who, due to a combination of factors, such as gender, disability or race, may be subject to multiple and intersectional forms of prejudice, and as a result be the target of hate crime.

New Model: Definition of Hate Crime

- 3.6 The Commission **recommends** the adoption of a working definition of hate crime that includes a reference to acts of ‘hostility’. We advocate this approach so as to ensure clarity and consistency of purpose, and to ensure a reference to three key concepts; ‘prejudice’, ‘hatred’ and ‘hostility’.
- 3.7 In general, we consider that the working definition of hate crime should include references to three key concepts; ‘prejudice’, ‘hatred’ and ‘hostility’. In order to achieve this, we consider that the working definition should include a reference to acts of ‘hostility’, and, as set out below, the definition of ‘hostility’ should make clear that the term ‘hostility’ includes a reference to ‘prejudice and hatred’.

²¹ DOJ (2022) [Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views](#), para 6.6.

²² DOJ (2022) [Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views](#), para 6.10.

- 3.8 Our 2007 guidance, [*Promoting Good Relations – A Guide for Public Authorities*](#), considers a number of related issues and includes a working definition of good relations. Further, in 2015 (in the context of the Northern Ireland Executive strategy on good relations, *Together: Building a United Community*) the Commission proposed that there should be a definition of good relations in statute, to ensure clarity and consistency of purpose in shaping actions and promoting good relations.
- 3.9 The Commission also indicated that there are a number of elements that would be helpful in the formulation of such a definition, including that good relations could be said to exist where there is: a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility; and a fair level of participation in society.
- 3.10 We consider that the above points are relevant to the development of a definition of hate crime.
- 3.11 We note that Chakraborti and Garland comment ‘most credible definitions are consistent in referring to broader notions such as prejudice, hostility [our emphasis] or bias as key factors in the classification of a hate crime²³. In addition, we note that the Organisation for Security and Co-operation in Europe (OSCE) define hate crimes as ‘criminal acts motivated by bias or prejudice [our emphasis] towards particular groups of people’²⁴.
- 3.12 In addition, the hate crime legislation review consultation paper (2020) makes clear that ‘the boundaries of hate, which are central to the commission of a hate crime in most current definitions included broader notions such as prejudice, hostility [our emphasis] or bias and are key factors in the classification of a hate crime’²⁵.
- 3.13 Further, we note that in the *Independent Review of Hate Crime Legislation in Scotland*²⁶ (2018) (‘Scottish Review’), Lord

²³ Chakraborti, N. and Garland, J. (2015) *Hate Crime: Impact, Causes and Responses*, 2nd edn. London: Sage, p.5, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper* at para 1.6.

²⁴ OSCE ODIHR Hate Crime Reporting (2019), Criminal Offence + Bias Motivation = Hate Crime, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 1.5.

²⁵ Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 6.3.

²⁶ Lord Bracadale (2018), [*Independent Review of Hate Crime Legislation in Scotland: Final Report*](#), Scottish Government.

Bracadale’s definition of hate crime included a reference to acts motivated by ‘hatred’ or ‘prejudice’, and he indicates that ‘prejudice’ is expressed in terms of hostility²⁷. However, he makes clear that the definition is qualified in the sense that it is *not necessary to prove motivation* as it is sufficient that the perpetrator demonstrates hostility based on a particular feature of the victim’s identity. We also note that the PSNI’s definition of hate crime includes reference to being motivated by ‘prejudice’ or ‘hate’²⁸.

3.14 We support the introduction of a statutory definition of the term ‘hostility’, as this will provide greater legal certainty and clarity, including for individuals, as well as for criminal justice agencies who seek to enforce the law.

3.15 The hate crime legislation, and the definitions therein on what constitutes a hate crime, should make clear that crimes motivated by, or which demonstrate, ‘prejudice and hatred’ are captured by the hate crime legislation.

3.16 The inclusion of the term ‘prejudice’ within the definition, for example, will provide legal clarity and certainty that prejudice is considered a form of hostility within the hate crime legislation.

3.17 In the event that the working definition of hate crime does not include references to these three key concepts, then consideration should be given to how best to encapsulate them within the hate crime legislation.

Addition of a Third Threshold of ‘By Reason of’

3.18 We note the proposal not to include a ‘by reason of’ threshold in the legislation²⁹. We **recommend** the introduction of an additional ‘by reason of’ threshold so that there is potential for the hate crime legislation to cover crimes against equality groups where there is no outward visible manifestation of

²⁷ Offences “which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ‘ordinary’ crimes.” See (2018) [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), p. 10.

²⁸ The definition of hate crime used by the PSNI is “any hate incident which constitutes a criminal offence perceived by the victim or any other person as being motivated by prejudice or hate.”, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 6.3.

²⁹ DOJ (2022) [Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views](#), para 6.44.

hostility or evidence to show the person was motivated by hostility.

- 3.19 It would, for example, cover crimes committed because of perceived vulnerability of an individual due to being a member of a particular equality group.
- 3.20 This would mean that offences against disabled people, or people from different religious or racial backgrounds, who are targeted ‘by reason of’ their membership of these equality groups, but where there is no evidence of hostility, would come within the protection of the hate crime legislation.
- 3.21 If, as **recommended** by the Commission, the equality grounds protected under the hate crime legislation are extended to include gender, gender identity, intersex, and age, then there is the potential for the hate crime legislation to also cover such offences against all individuals covered within these equality categories.
- 3.22 Our recommendation is also consistent with the recommendations of the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*³⁰. It stated: ‘To ensure that the law applies where a victim had been selected because they were disabled, we **recommend** that it abolish the need to prove that hate crime against disabled people is motivated by hostility. It should be enough to prove that an offence was committed by “by reason of” their disability’.
- 3.23 We note the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*³¹ also stated: ‘In hate crime against disabled people, hostility and perception of vulnerability often go hand in hand. It is also not always clear whether a person was targeted because they were vulnerable (or perceived vulnerable) or whether they were targeted because of hatred or hostility³²’.
- 3.24 We consider the introduction of such a threshold will send a clear message that such crimes are unacceptable. It will also recognise the impact of such crimes on particular equality groups, including older people and disabled people, who are

³⁰ Parliamentary Inquiry (2019) [Online abuse and the experience of disabled people](#).

³¹ Parliamentary Inquiry (2019) [Online abuse and the experience of disabled people](#).

³² Parliamentary Inquiry (2019) [Online abuse and the experience of disabled people](#).

targeted not due to hostility, but because of an equality characteristic. It could also lead to better recording of such crimes, and as it will be recorded on a criminal record, it will allow a judge to take into account when considering repeat offenders. It could also lead to a consistency of approach in terms of sentencing.

- 3.25 Further, we consider that the introduction of such measures would protect disabled people against abuse in a way that is consistent with the recommendations of the UNCRPD Committee in its Concluding Observations on the UK (2017). In particular, it recommended that the UK Government: ‘Establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation’; and to ‘define comprehensively the offense of disability hate crime and ensure appropriate prosecutions and convictions’³³.
- 3.26 However, if, as the consultation proposes, a ‘by reason of’ threshold is not introduced, consideration should be given as to how to best ensure those offences are protected outwith the hate crime legislation.
- 3.27 There is a clear need for offences to be covered which are targeted at equality groups where there is no evidence of hostility but which are due to their perceived vulnerability.
- 3.28 Such a legislative approach could, for example, cover crimes, such as elder abuse, abuse of financial trust, care home neglect or exploitation committed against older people, not due to hatred, but by reason of their age.
- 3.29 However, in considering the most appropriate legislative vehicle to use, care must be taken to ensure that the legislative approach does not perpetuate negative stereotypes towards people of different equality groups.
- 3.30 In particular, whilst we recognise that crimes may be targeted at some equality groups, including older people and disabled people, because they may be *perceived* by some to be vulnerable, we draw attention to the concerns of some equality

³³ UNCRPD Committee (2017) [Concluding Observations on the UK](#).

groups, including some older people and disabled people, who do not wish to be stereotyped as ‘vulnerable’.

- 3.31 We therefore consider that the most appropriate legislative approach is to provide protection for equality groups under the hate crime legislation by introducing the ‘by reason of’ threshold, rather than through the introduction, within the hate crime legislation, of a general statutory aggravation that is framed in terms of the ‘vulnerability’ of a victim.

Sectarianism

- 3.32 We welcome a specific reference to sectarianism in hate crime legislation.
- 3.33 This would have a symbolic value by sending a clear message, to victims, perpetrators and the general public that sectarian hate crime is unacceptable. It will also make clear that one of the aims and purposes of the hate crime legislation is to protect against sectarian hate crime.
- 3.34 Further, we note that the term ‘sectarian’ is already contained within wider hate crime legislation in Northern Ireland protecting against sectarian chanting at sports matches. It is also contained within the fair employment legislation, which outlaws sectarian harassment, though none of these provide a further definition of the term.
- 3.35 The specific reference to ‘sectarianism’ in the hate crime legislation would also be a recognition of the high level of sectarian hate crime and incidents that occur in Northern Ireland, as well as the damaging impact of those crimes/incidents on different communities and individuals.
- 3.36 We consider that there are clear gaps in protection under the hate crime legislation in terms of addressing sectarian hate crime that urgently need addressed. The indicators of sectarianism should be expanded to include: religious belief, national identity, nationality and citizenship.
- 3.37 As regards the category of ‘political opinion’, the hate crime review consultation paper highlights that there were ‘concerns that the use of ‘political opinion’ as a category of offence dealing with hate expression would risk capturing legitimate

political speech, and conflict with human rights obligations on freedom of expression'³⁴.

- 3.38 We recognise the need to balance the protection of freedom of expression under Article 10 of the ECHR with the need to tackle hate speech. We also recognise that the right to freedom of speech is not absolute and is subject to the restrictions considered necessary in a democratic society, including public safety or the prevention of disorder or crime. Government should ensure that any proposed provisions relating to tackling sectarian hate crime are compliant with the human rights legislation.
- 3.39 While it is important that hate crime legislation keep pace with Northern Ireland's increasingly diverse population, any proposals by DoJ to further expand the definition or scope of sectarianism beyond the historic Northern Ireland context to include different denominations from non-Christian religions/faiths should be evidence-based and widely consulted on. It should also draw on best-practice internationally and consider what costs or benefits might accrue beyond providing intersectional protection against hate crime on religion and other grounds.
- 3.40 In addition, we highlight the link between the need to tackle discrimination on grounds of race, and ensuring adequate discrimination laws, and effectively tackling hate crime, including on grounds of race. The Commission has called for the race equality legislation to be strengthened to ensure stronger protection against racial harassment both inside and outside the workplace³⁵. We **recommend** these gaps in protection are addressed out with the hate crime legislation.

Special Measures

- 3.41 The Commission notes the consultation questions regarding special measures, and that such questions were not asked in the initial review.
- 3.42 When considering whether to include special measures in line with Judge Marrinan's recommendation, Government should

³⁴ Hate crime review team (2020) Hate crime legislation, Independent Review, Consultation Paper, at p. 239.

³⁵ ECNI (2014) [Race Equality law reform recommendations](#).

take account of lessons from the experience of domestic violence and sexual violence witnesses using special measures; consider equality impacts and take account of lessons from other jurisdictions, as well as reflect best practice and international equality and human rights standards

- 3.43 The Department may also wish to note that whilst we recognise that courts already have a general power to withhold the identity of a complainant³⁶ from the public, we consider it would be beneficial for there to be express provision for courts to make restrict press reporting in certain circumstances. Such a legislative provision could be underpinned by guidance for courts on the particular circumstances they should take into account. Such an approach would provide clarity and certainty both for the courts and for complainants, and witnesses.
- 3.44 Such circumstances should include a consideration of whether the disclosure of a person's identity will make the complainant or witness, due to an equality characteristic(s), more susceptible to victimisation or retaliation, or result in that characteristic, such as sexual orientation, being made public without their permission.
- 3.45 We consider that each case should be decided on a case by case basis and should focus on the particular circumstances and nature of the hate crime, and the potential impact that disclosing the complainant's (or witnesses') identity will have on them.
- 3.46 In particular, the disclosure of a complainant's, or witness's identity, and the fact that they belong to a particular equality group, may make them more vulnerable to victimisation or retaliation, or result in that equality characteristic being made public, without their permission.
- 3.47 For example, consideration should be given as to whether or not press reporting of the identity of a victim, who is LGB and has reported a homophobic hate crime, would result in the complainant being 'outed' as a result of the court proceedings.
- 3.48 Further, consideration should be given as to whether or not press reporting of the identity of a victim, who is a trans individual and has reported transphobic hate crime, would

³⁶ Contempt of Court Act 1981 (section 11).

result in that person's gender identity being made public, in circumstances where they did not wish to publicly disclose their gender identity.

- 3.49 In addition, consideration should be given to the fact that other complainants or witnesses due, for example, to their age or disability, or who experience multiple and intersectional prejudice, may be particularly targeted as regards victimisation or retaliation.
- 3.50 Further, there is already clear evidence of under-reporting of hate crime, including by LGBT individuals. It is important that fears due to lack of anonymity during and after court proceedings do not act as a barrier to LGBT people or other equality groups seeking, and being provided with, protection against hate crime.

Call for Views Exploring Misogyny/ Transmisogyny in Hate Crime Law

- 3.51 We welcome that all currently protected characteristics in Northern Ireland will continue to receive protection.
- 3.52 The Commission has **recommended** that the legislation be extended to cover the additional grounds of gender, gender identity and intersex.
- 3.53 The Commission has consistently highlighted the need for effective strategies that tackle the nature and specific impact of gender-based violence on women and men³⁷. We consider that extending the hate crime legislation to cover the additional ground of gender will contribute to tackling gender-based violence experienced by women and men.
- 3.54 We **recommend** a targeted approach to tackling the specific nature and impact of hate crime taking account of issues associated with specific multiple identities / equality categories.
- 3.55 While we propose that the legislation be extended to cover the additional grounds of gender, gender identity and intersex, we also stress that policy approaches to tackling hate crime on should be gender specific.

³⁷ ECNI (2016) [Gender Equality: Policy Priorities and Recommendations](#), paras 10.1-10.17.

- 3.56 This gender specific approach should be adopted in policy areas, such as when adopting targeting interventions; providing support for victims; undertaking awareness raising measures, including amongst the public; providing guidance and training for criminal justice agencies; and in tackling the under-reporting by victims.
- 3.57 We consider that women are disproportionately targeted as regards gender-based hate crime and note that the consultation document records the disproportionate experience of females³⁸. Policy approaches to tackling hate crime, including in the policy areas set out above, should reflect the fact that women are disproportionately affected by gender-based hate crime.
- 3.58 It will be noted that in GB, the Committee on Standards in Public Life's (2017) review on *Intimidation in Public Life*³⁹ found that some groups were disproportionately more likely to be the targets of intimidation and abuse both online and offline, and that 'candidates who are female, black minority ethnic or LGBT were disproportionately targeted in terms of scale, intensity and vitriol'.
- 3.59 Evidence to the UK Parliament's Home Office's Inquiry on hate crime (2017) included that 'women in particular have become targets for abuse and misogynistic harassment on social media'^{40 41}.
- 3.60 A legislative response to tackling violence and abuse against individuals due to their sex would also be consistent with international obligations to prevent and protect against discrimination and violence targeted at women and girls. These include the Council of Europe's *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention (2014))⁴².

³⁸ DoJ (2022) [Improving the effectiveness of Hate Crime Legislation in Northern Ireland: A Public Consultation and Call for Views](#), para 10.27.

³⁹ Committee on Standards in Public Life (2017) *Intimidation in Public Life*, p. 28.

⁴⁰ Home Affairs Committee, (2017) [Hate crime: abuse, hate and extremism online](#), 1 May 2017, HC 609, paras 15-16.

⁴¹ The UK Government has also indicated that there is evidence that women, as well as minority racial and religious groups, the LGBT community and disabled people, are disproportionately at risk of harmful conduct online. See UK Government (2019), [Code of Practice for providers of online social media platforms](#).

⁴² The [Istanbul Convention](#) is based on the understanding that 'violence against women' is a form of gender-based violence. "Violence against women" is considered to be a "violation of human rights and a form of discrimination against women...".

- 3.61 It also includes the *UN Sustainable Development Goals* (2015)⁴³ which have been adopted by the UK Government and which includes the Goal (Goal 5) on Gender Equality and the underpinning target to eliminate all forms of violence against all women and girls *in the public and private spheres*. It is also consistent with the UK Government's obligations under the *Convention for the Elimination of Discrimination Against Women* (CEDAW) and *UN Security Council Resolutions*, including UNSCR 1325⁴⁴.
- 3.62 The inclusion of gender within the current offence of 'chanting at regulated matches' would be consistent with action to increase women's participation in sport, as **recommended** by the Commission^{45 46}.
- 3.63 We **recommend** that the hate crime legislation should protect both men and women. Where a man or woman has been subjected to a crime due to hostility or prejudice *due to their gender*, then this scenario should be protected within the legal framework.
- 3.64 Our **recommendation** is consistent with our view that there is a need for action to tackle the nature and specific impact of gender-based violence on both women and men⁴⁷. It is also consistent with the approach taken in the Sex Discrimination (Northern Ireland) Order 1976⁴⁸, and subsequent amendments which makes it unlawful to discriminate on grounds of sex, and which protects both men and women against discrimination.

⁴³ See [UN Sustainable Development Goals](#) 2015

⁴⁴ [UN SCR 1325](#) (2000) on women, peace and security. UN SCR 1325 recognises that women and girls have critical roles to play as active agents in conflict prevention and resolution, peace negotiations, peace building and post conflict reconstruction. Other UN SCR's pertain including [UN SCR 2122](#) on involving women in decision making in post conflict reconstruction.

⁴⁵ ECNI (2016) [Gender equality policy priorities and recommendations](#).

⁴⁶ Examples of where women in Northern Ireland have been subjected to sexist abuse and harassment by spectators at matches include an incident where a female referee was subjected to sexual harassment and abuse at a rugby match. [BBC news report](#), 28 October 2018 [accessed 23 March 2022]

⁴⁷ ECNI (2016) [Gender Equality: Policy Priorities and Recommendations](#), para 10.17

⁴⁸ [Sex Discrimination \(Northern Ireland\) Order 1976](#)

- 3.65 Whilst there is evidence to suggest that both men and women are subjected to hate speech^{49 50 51}, including online abuse, it is also the case that there is limited evidence that the targeting of men is based on hostility or prejudice due to their gender. As set out above, it is clear that women are disproportionately affected by gender based hate crime.
- 3.66 However, we note in the Scottish Review (2020)⁵², that Lord Bracadale, whilst agreeing that the essence of the conduct which it was sought to cover was usually against women, stated that: ‘it is not inconceivable that there could be hostility against a man (or non-binary person) based on their gender’ and had concerns that an approach which focused only on hostility towards women would risk stereotyping (all) men as perpetrators and (all) women as victims, which I do not consider to be an accurate or helpful message’. He also stated that ‘a human rights-based approach suggests that having a consistent approach which is capable of applying in equivalent cases, regardless of the sex of the victim, is better’⁵³.
- 3.67 As noted, we welcome that the new model will recognise the importance of intersectionality. It is recognised that gender may intersect with other protected characteristics, for example, race, age, and/or disability, to increase the risk of a woman or a man being the target of a hate crime. As highlighted above, perpetrators of hate crime are not always motivated by a single type of prejudice but can be influenced by a combination of different prejudices.
- 3.68 It is important that any consideration and policy responses recognises and takes into account that victims can be targeted on an intersectional basis. Whilst hate crimes can be recorded

⁴⁹ For example, an OFCOM (2020) survey on Internet users’ experience of online harms found that equal percentages of men and women reported ‘hateful speech’ online (11%) with more women (19%) than men (15%) reporting online Bullying/abusive behaviour/threats. See OFCOM (2020), [Internet users experiences of harm](#).

⁵⁰ Evidence from a study by Sheffield University (2018) in GB which tracked trends on the frequency and direction of twitter abuse targeting MPs in the run up to the 2015, 2017 and 2019 general elections found that on average male MPs were more likely to receive online abuse than female MPs, but that women candidates were more likely to receive gendered abusive words. See Sheffield University (2018), [News Article](#), of 23 August 2018.

⁵¹ Research (2017) in GB indicates that young people, particularly men were more likely to be victims of personal hate crime Home Office (2018) : [Hate crime: A thematic review of the current evidence](#)

⁵² Lord Bracadale (2018) [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government.

⁵³ Lord Bracadale (2018) [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government, para 4.43.

under more than one ground, there is a need, in terms of judicial considerations, and policy responses, including support for the victim, to effectively address situations where a hate crime is committed due to an individual having multiple identities.

- 3.69 For example, the Council of Europe has set out certain groups of women are in an especially vulnerable position⁵⁴, and a UN report (2017) has made clear that women and girls with disabilities experience gender-based violence at disproportionately higher rates and in unique forms owing to discrimination and stigma based on both gender and disability⁵⁵. Further, with regards to violence against men, in our *Promoting Sexual Orientation Equality - Priorities and Recommendations* (2013) we highlighted that gay men were particularly vulnerable to being subjected to homophobic hate crime⁵⁶. Men are also, for example, particularly vulnerable to sectarian hate crime⁵⁷
- 3.70 The Commission has **recommended** that gender identity be included under hate crime protections, and should be widely defined so as to also cover a range of people whose gender identity differ in some way from traditional gender assumptions, and should be up to date, reflect best practice and be informed by the views of key stakeholders, particularly trans people and organisations representing trans people. The definition should not be restricted to the narrow ground of ‘gender reassignment’⁵⁸ (the ground which is currently protected under the sex equality legislation in Northern Ireland).
- 3.71 There is also a need to ensure that intersex people are protected under the hate crime legislation. We note that the Council of Europe has recommended that the framework for tackling hate crimes and “hate speech” also expressly covers violence against intersex people⁵⁹.

⁵⁴ Council of Europe (2007) [Recommendation 17](#)

⁵⁵ UN Assembly (2017) [Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.](#)

⁵⁶ ECNI (2013) [Promoting Sexual Orientation Equality - Priorities and Recommendations](#)

⁵⁷ For example, in 2018/19, 310 sectarian crimes were reported in relation to male victims, compared to 176 sectarian crimes in relation to female victims. See PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#)

⁵⁸ ECNI (2016) [Gender Law Reform Summary Report: Policy Priorities and Recommendations](#), pp. 11-12.

⁵⁹ Council of Europe, (2015) [Issue Paper: Human rights and intersex people](#)

- 3.72 The Commission has **recommended** that hate crime legislation be extended to cover the additional grounds of gender, gender identity and intersex. When considering which *offences* could be excluded from hate crime legislation protections, if any, Government should consider equality impacts and take account of lessons from other jurisdictions, as well as reflect best practice and international equality and human rights standards.

4 Conclusion

- 4.1 We welcome this consultation, as a further step in the development of strengthened hate crime legislation, which we regard as an urgent matter.
- 4.2 We have responded above in line with the questions in the consultation paper. However, we would urge the Department to continue to consider and act upon our full range of recommendations relating to hate crime, as outlined in Annex B.
- 4.3 We trust that the recommendations set out in this response are of assistance. We look forward to further engagement on these issues, and other issues relating to the forthcoming hate crime legislation.

Annex A: Role and remit of the Equality Commission NI

- 4.4 The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998.
- 4.5 Our powers and duties derive from a number of statutes enacted over the last decades. These provide protection against discrimination in employment and in the provision of goods, facilities and services on grounds of disability, race, religion and political opinion, sex and sexual orientation. On the grounds of age, protection against discrimination is available only in respect of employment.
- 4.6 We also have responsibilities arising from the Northern Ireland Act 1998 and Disability Discrimination Act 1995 in respect of the statutory equality and good relations duties which apply to public authorities - the s75 duties and the disability duties.
- 4.7 The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of Disabled Persons (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.
- 4.8 The European Union (Withdrawal Agreement) Act 2020 gave new duties and powers to the Commission, and to the Northern Ireland Human Rights Commission (NIHRC), effective from 1 January 2021. These enable the Commission to monitor, advise and report on, and enforce the UK Government’s adherence to its commitment set out in Article 2 (1) of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. This commitment is to ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from the UK’s withdrawal from the Union, including in the area of protection against discrimination.
- 4.9 In general terms, our statutory remit provides that we are to:
- promote equality of opportunity and affirmative action
 - work towards the elimination of unlawful discrimination and harassment

- keep relevant legislation under review
- promote good relations between persons of different racial groups and good disability practice
- oversee the effectiveness of statutory equality duties on public authorities.

Annex B: ECNI Policy Recommendations: Hate Crime in NI

The below outlines the key points in our policy recommendations relating to hate crime in Northern Ireland. For further detail, see our [full policy position](#).

Our Recommendations:

Prevent and Tackle Hate Crimes

A: Combat Prejudicial Attitudes and Promote Equality and Diversity

- Prejudicial Attitudes: Prevent hate crime, including by tackling prejudicial attitudes and negative stereotypes against equality groups.
- Equality and Good relations Strategies: Promptly implement equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.
- Mutual Respect and Sharing of Public Spaces: Ensure the greater regulation of the display of flags and emblems.
- Shared and Safe Housing: Adopt actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.
- Sharing in Education: Ensure a move to a system of education which routinely teaches all pupils together via a shared curriculum in shared classes, in support of better advancing a shared society.
- Anti-bullying: Promote an anti-bullying culture within education; combat negative attitudes and behaviours towards equality groups, and embed equality in the curriculum.

B: Tackle harassment, hate speech and hate crime

- Under-reporting: Address the under-reporting of hate crime.
- Emergent Hate Crime: Be alert for, and promptly tackle, emergent hate crime including, for example, any linked to BREXIT or the COVID-19 pandemic.
- Online Hate Speech: Tackle online hate speech and abuse targeted at different equality groups.
- Harassment when Accessing Health Services: Ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment.

C: Support Victims

- Victim Support: Ensure support for victims of hate crime.
- Anonymity for Victims: Remove barriers to victims accessing justice by ensuring that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime is not permitted.

D: Improve Criminal Justice Response to Hate Crime

- Outcome Rates: Improve outcome rates for hate crime.
- Sentencing Guidelines: Introduce sentencing guidelines for hate crimes in Northern Ireland.
- Restorative Justice: Lessons learnt from youth restorative justice approaches to hate motivated offending that have resulted in positive outcomes should be used to inform the development of services for adult offenders.
- Guidance and Training: Ensure an effective focus on equality issues within guidance and training for criminal justice agencies.

E: Cross-cutting themes

- Targeted Approach: Adopt a targeted approach that tackles the nature and scale of hate crime, and that takes account of issues associated with specific multiple identities / equality categories.
- Holistic, Co-ordinated Approach: Adopt a holistic, co-ordinated, and collaborative approach to tackling hate crime, with clear leadership by public bodies, public representatives and others, ensuring effective engagement with equality groups.
- Compliance with Equality Duties: Use the equality duties to inform decision-making.
- Human Rights Obligations: Address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations on hate crime.
- Hate Crime Data: Ensure the collection of comprehensive data to better identify trends in, and inform effective responses to, hate crime.

Strengthening Legal Protections - Reform of the Hate Crime Legislation

A: Definitions

- Definition of Hate Crime: Adopt a working definition of hate crime that includes a reference to acts of 'hostility' (which in turn should include a reference to prejudice and hatred).

- Statutory Definition of ‘Hostility’: Introduce a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.

B: Approach to Enhanced Sentencing

- Statutory Aggravation Model: Adopt a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.

C: Protected Groups

- Protected groups: Extend the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex.
- Presumption and Association: Ensure protections for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, are extended to the grounds of age, gender, gender identity, and intersex.

D: Additional Thresholds

- ‘By reason of’ Threshold: Include an additional threshold so as to provide protection against crimes which are committed against, or targeted at, individuals ‘by reason of’ their membership of a particular protected group/s, and apply this protection to equality groups covered by the hate crime legislation.
- Alternative Provisions: In the event that the hate crime legislation does not cover offences targeted at equality groups ‘by reason of’ their membership of an equality group, give consideration to how to best ensure those offences are protected out with the hate crime legislation.

E: Incitement to Hatred Offences

- Legislative Gaps: Address legislative gaps in protection against hate crime under the Public Order legislation; ensuring that the legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.
- Coverage: Extend the Public Order incitement to hatred provisions to cover the additional grounds of age, gender, gender identity and intersex.
- Defences: The Commission is not persuaded that express defences to the Public Order incitement to hatred offences relating to freedom of expression are necessary. However, if such defences are to be introduced, Government should ensure that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.
- Incitement to Discriminate: Ensure the ‘incitement to hatred’ legislation prohibits ‘incitement to discriminate’ on the protected grounds.

F: Sectarianism

- Specific Reference: Include a specific reference to the term 'sectarian' within the hate crime legislation.
- Indicators of Sectarianism: Expand the indicators of sectarianism to include: religious belief, national identity, nationality and citizenship; address legislative gaps in protection relating to sectarian hate crime; and ensure recognition that victims of sectarian hate crime can be targeted due to their multiple identities.

G: Consolidation and Review of Legislation

- Consolidation of Hate Crime Legislation: Consolidate the hate crime legislation into a single piece of legislation.
- Review of Hate Crime Legislation: Ensure that legislative changes to the hate crime legislation are subject to post-legislative review, with the review being carried out within 5 years of the legislation being passed so as to assess the overall effectiveness of the legislative changes in tackling hate crime.

Strengthening Legal Protections - Reform of Equality Law

- Equality Law: Strengthen equality law, including as regards harassment and multiple discrimination.

Further detail can be obtained via www.equalityni.org/HateCrimePolicy