

DEPARTMENT OF JUSTICE: CONSULTATION ON HATE CRIME LEGISLATION



Response from Northern Ireland Humanists, April 2022

ABOUT NORTHERN IRELAND HUMANISTS

Northern Ireland Humanists is a section of Humanists UK, working with the Humanist Association of Ireland. We want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 115 members of the All-Party Parliamentary Humanist Group. We work with MLAs from across the political spectrum, and hope to soon see the establishment of an All-Party Humanist Group in Stormont.

We support the protection of vulnerable people from harassment and incitement, as long as legitimate criticism of religions and religious practices is fully protected in law. We worked for several years on England and Wales's Racial and Religious Hatred Act 2006 and were one of the leading proponents of the freedom of expression clause contained within it. We supported our sister charity Humanist Society Scotland in its work during the passage of the Hate Crime and Public Order Act 2021.¹ In 2020 we responded to the review of hate crime legislation in Northern Ireland, led by Judge Marrinan.² In that consultation we stated that the Criminal Justice (Northern Ireland) (No 2) Order 2004 and the Public Order (Northern Ireland) Order 1987 defines 'religious group' as 'a group of persons defined by reference to religious belief or lack of religious belief'. Therefore they don't include non-religious beliefs such as humanism. We recommend that this is amended, to be in line with human rights and equality legislation.

KEY RECOMMENDATIONS

- Any legislative reform to hate crime laws in Northern Ireland would be an ideal vehicle for repeal of both the common law and statutory offences of blasphemy and blasphemous libel, as occurred in Scotland with the Hate Crime and Public Order Act 2021 – currently awaiting commencement.
- This new legislation should replicate the protections for criticism of religious beliefs that exist within the Racial and Religious Hatred Act 2006 for England and Wales and the Hate Crime and Public Order (Scotland) Act 2021.
- We support the introduction of a statutory aggravator for sectarianism.
- The Public Prosecution Service for Northern Ireland should amend its guidance on hate crime to include references to the treatment of apostates and converts, and start recording incidents of apostate-based hate crime alongside other types of religiously-motivated hate.

¹ *Response to Justice Committee Call for Views from Humanist Society Scotland supported by Humanists UK – Hate Crime and Public Order (Scotland) Bill*, 27 July 2020. <https://humanists.uk/wp-content/uploads/Response-to-Justice-Committee-Call-for-Views-from-Humanist-Society-Scotland-1-1.pdf>

² *Review of Hate Crime in Northern Ireland: Response from Northern Ireland Humanists and Faith to Faithless*, March 2020. <https://humanists.uk/wp-content/uploads/2020-01-23-RTR-Review-of-Hate-Crime-Legislation-in-Northern-Ireland.pdf>

BLASPHEMY LAWS IN NORTHERN IRELAND

Northern Ireland's blasphemy laws are no longer fit for purpose and new hate crime legislation should be used to repeal them. As described above, blasphemy and blasphemous libel remain criminal offences both under the common law and by statute in Northern Ireland – the only part of the United Kingdom or the Republic of Ireland to have not yet repealed these laws. Repealing them is a policy supported by the Sinn Fein, SDLP, Alliance, Green, and People Before Profit. parties. The UUP does not have an official policy position, but most of its MLAs are supportive of repeal.

Blasphemy and blasphemous libel are criminal offences under the common law of Northern Ireland, underpinned in legislation by the Criminal Libel Act 1819,³ the Libel Act 1843,⁴ the Newspaper Libel and Registration Act 1881,⁵ and the Law of Libel Amendment Act 1888.⁶ These Acts would need to be amended to omit references to 'blasphemy', and the common law offences would need to be repealed, to remove these crimes from the statute books.⁷ A prosecution has not occurred since 1855, although use of the law could be revived at any time, as it was in Denmark in 2017 with respect to Islam, and as was threatened in the Republic of Ireland that same year with respect to Stephen Fry.

Every year since 2018, the Northern Ireland Human Rights Commission has recommended that: 'the NI Executive introduce legislation to the NI Assembly to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ICCPR, Article 19.'⁸ Blasphemy laws also run counter to Articles 18 and 27 of the ICCPR and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The assumption that the European Convention on Human Rights trumps any successful blasphemy prosecution is itself not understood in case law. For example, in *Wingrove v. UK* (1996) the European Court of Human Rights decided that even within a human rights framework, the state was within its rights to restrict blasphemous content within its allowed margin of appreciation.⁹ The same finding was made in *E.S. v. Austria* (2018) where the margin of appreciation was allowed and therefore a blasphemy prosecution upheld.¹⁰ Therefore we must rely upon states, rather than courts, to strike down blasphemy laws.

The UN Special Rapporteur on Freedom of Religion and Belief has repeatedly recommended the

³ Criminal Libel Act 1819, section 1(1) <http://www.legislation.gov.uk/ukpga/Geo3and1Geo4/60/8>

⁴ Libel Act 1843, section 7: <http://www.legislation.gov.uk/ukpga/Vict/6-7/96/section/7>

⁵ Newspaper Libel and Registration Act 1881, section 4: <http://www.legislation.gov.uk/ukpga/Vict/44-45/60/section/4>

⁶ Law of Libel Amendment Act 1888, Section 4: <http://www.legislation.gov.uk/ukpga/Vict/51-52/64/section/4>

⁷ For both the common law and statutory offences, judges have discretion over sentencing and can impose either a fine, or imprisonment, or both. The common law offence refers just to Christianity, whereas the statutory offences, although devised with Christianity in mind, don't specify a particular religion, so theoretically could apply to other religions as well.

⁸ *The 2021 Annual Statement: Human Rights in Northern Ireland*, Northern Ireland Human Rights Commission, December 2021. <https://nihrc.org/publication/detail/annual-statement-2021>

⁹ *Wingrove v. The United Kingdom*, European Court of Human Rights [1996]. <https://www.refworld.org/cases/ECHR,3ae6b6900.html>

¹⁰ *E.S. v. Austria*, European Court of Human Rights [2018] <https://www.bailii.org/eu/cases/ECHR/2018/891.html>

repeal of blasphemy laws globally, including in his most recent annual report,¹¹ because maintaining such laws is a violation of human rights and legitimises the violent persecution of religious minorities and the non-religious in totalitarian regimes. In 13 countries blasphemy or apostasy is punishable by death and in a further 47 a person can be imprisoned. Therefore, even if a law has not recently been used to prosecute an individual, its maintenance has negative consequences for human rights as it can be cited around the world.

England and Wales abolished its blasphemy law in 2008, and as described above, repeal is only pending commencement in Scotland as part of a wider reform of hate crime law. Since 2015, Canada, Denmark, Greece, Norway, Iceland, Malta, New Zealand, the Republic of Ireland, and the Alsace-Moselle region of France (the only part to still have such a law) have also abolished their blasphemy laws. Spain is also in the process of bringing forward legislation to do so.

There is a fundamental difference between blasphemy laws, which protect ideas and beliefs from criticism, and hate crime laws, which protect individuals against acts of abuse based on their religion or belief. Such acts are covered by the Public Order (Northern Ireland) Order 1987 and the aggravated hostility provisions of the Criminal Justice (Northern Ireland) (no.2) Order 2004, and would continue to be protected under this new legislation. Repealing blasphemy laws will not change the protection provided to Christians (or any other religion or belief group) against hate and incitement. Similarly, the repeal of blasphemy laws would have no impact on laws that protect Christians from discrimination or the right to conscientious objection, which are part of separate and unconnected legal frameworks.¹²

Scotland's Hate Crime and Public Order Act 2021, which will repeal the common law offence of blasphemy when the relevant provision is brought into force, was widely welcomed by religious and belief groups across the country, including the Church of Scotland. It stated that it conversely was a means of protecting Christians abroad:

'Over the past number of years, the Church of Scotland has regularly expressed concern at the blasphemy laws which exist in other parts of the world that persecute Christians and other religious groups...It therefore makes sense that the Church of Scotland would also support the abolition of the offence of blasphemy in Scotland as it does across other parts of the world.'¹³

The repeal of Scotland's blasphemy law was uncontroversial. Criticisms levelled against the Hate Crime and Public Order Act 2021 did not relate to this provision, but to ensuring that there were strong freedom of expression protections (including the right to criticise religious beliefs) under the separate provisions in the Act for new hate crimes. The success in Scotland could be replicated in

¹¹ Dr Ahmed Shaheed, *Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity - Report of the Special Rapporteur on freedom of religion or belief*, 2 March 2022. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4944-rights-persons-belonging-religious-or-belief-minorities>

¹² Northern Ireland's blasphemy laws were not and could not have been cited as part of the *Ashers Bakery* case, and their repeal would not have affected the outcome of that case.

¹³ *Justice Committee Inquiry into the Hate Crime And Public Order (Scotland) Bill: Submission From The Church Of Scotland*, Church of Scotland, 23 July 2020. [https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC317_Church_of_Scotland\(1\).pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC317_Church_of_Scotland(1).pdf)

Northern Ireland with new legislation reforming hate crime laws being used as a vehicle for removing these laws, which incite so much hatred around the world.

Recommendation: Any legislative reform to hate crime laws in Northern Ireland would be an ideal vehicle for repeal of both the common law and statutory offences of blasphemy and blasphemous libel.

PROTECTION OF CRITICAL EXPRESSIONS AGAINST RELIGIOUS BELIEFS

We strongly believe that there needs to be protection of critical expressions against religious beliefs, to ensure that such legitimate expressions are not wrongly captured under stirring up offences, on the face of this legislation. Such protection exists within hate crime laws in England and Wales under the Public Order Act 1986 and the Racial and Religious Hatred Act 2006. Last year, the Hate Crime and Public Order (Scotland) Act replicated these protections closing this legislative gap in Scotland. However, there are no equivalent protections in Northern Ireland hate crime legislation. This is an opportunity to resolve this gap.

Discriminatory actions, incitement to violence, and hatred based upon a person's race or religion or belief should not be tolerated. However, all measures to address prejudice and discrimination must be in line with human rights principles, specifically the right to freedom of thought, conscience, religion, or belief (including the right to change your religion or belief), and the right to freedom of expression. Currently stirring up offences within the Criminal Justice (Northern Ireland) (No 2) Order 2004 and the Public Order (Northern Ireland) do not sufficiently differentiate between (i) prejudice and discriminatory actions against people who identify or are identified as being a member of a particular religious group, and (ii) criticism of the beliefs, ideas, and practices that might fall under the umbrella of that religious belief. They therefore pose a risk both to freedom of expression and thought and freedom of religion or belief. They particularly fail to consider the impact upon former members of religious groups (apostates).

Freedom of expression is not a luxury that is being abused nor a weapon against the oppressed, but a fundamental right that belongs to all persons in our society, whether or not you agree with or like what others might have to say. It is not an optional or secondary consideration. Every person has the human right to criticise (say) Islam or Christianity or the ideas, beliefs, and practises of those professing it (or any other religious or non-religious belief system). This freedom is protected by law through Article 10 of the European Convention and internationally by the Universal Declaration of Human Rights. It is within this human rights framework that any definition of religious hatred must be considered, recalling always the dictum of the Strasbourg court that 'those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.'¹⁴

The Racial and Religious Hatred Act 2006, which applies in England and Wales, strikes a good balance between these two competing rights and could be used as a comparator for what this bill should seek to achieve. It makes it an offence for a person to use 'threatening words or behaviour,

¹⁴ *Otto-Preminger-Institut v. Austria*, European Court of Human Rights, [1994].
<https://www.refworld.org/cases,ECHR,3ae6b6f428.html>

or display any written material which is threatening... if he intends thereby to stir up religious hatred'.¹⁵ Religious hatred is defined as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief.'¹⁶ The Act lays out the minimum requirement for what should be considered religious hatred. But in addition, the Act provides a useful list of actions that ought not to be considered religious hatred:

'Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.'¹⁷

Beyond this baseline, we agree that there may be lawful expression that is nonetheless prejudiced and undesirable and that might be officially discouraged, though it should not become unlawful. Opponents of this clause had argued that including such a provision would risk providing false reassurance to people who may be considering engaging in abusive behaviour. However, there is no evidence from the 15 years of the Act's operation in England and Wales that there has been an increase of behaviour that would otherwise be an offence were it not for the inclusion of this provision. Thus, the claim that it will offer reassurance to offenders is unsubstantiated. Moreover, by providing a clear distinction between what is and what is not considered religious hatred, it has provided an established boundary that actively discourages behaviour that falls outside of these terms.

This provision was included in the 2006 Act after it was proposed by a broad group of civil society organisations, including English PEN, Index on Censorship, and Humanists UK. This showed that under the similar circumstances surrounding the 2006 Act there was broad support for such an approach from across the human rights and equality sectors. It is likely that the Northern Ireland Executive may face a similar assault from these voices if it fails to create such protections in this new legislation.

Recommendations: This new legislation should replicate the protections for criticism of religious beliefs that exist within the Racial and Religious Hatred Act 2006 for England and Wales and the Hate Crime and Public Order (Scotland) Act 2021.

RESPONSE TO CONSULTATION QUESTIONS

- 1. Do you agree / disagree that the threshold for Hate Crime legislation should be of a sufficiently high level when criminalising a person for their behaviours/attitudes leading to hate motivated offences and which results in an increased sentence from the basic offence?**

Agree

Comments

¹⁵ Racial and Religious Hatred Act 2006, clause 29B <https://www.legislation.gov.uk/ukpga/2006/1>

¹⁶ Ibid, clause 29A.

¹⁷ Ibid, clause 29J.

We agree that statutory aggravators should be the main way to tackle hate crime. We believe the use of statutory aggravators strikes the right balance between protecting minorities/protected groups from harassment, violence, and other threatening behaviour, and protecting the right to freedom of religion or belief and to free expression. This is because the statutory aggravation model utilises the existing criminal code to tackle behaviour that is a criminal offence regardless of motivation, but treats it as a hate crime where the criminal offence has been motivated by prejudice. A 'hate crime' is not a new offence under this model but helps target criminal behaviour which is motivated by prejudice. This ensures that people are protected and that hate crime offences are taken seriously by authorities. This model was recently adopted in Scotland under the Hate Crime and Public Order (Scotland) Act 2021, where Humanist Society Scotland supported its introduction.¹⁸

2. Do you agree / disagree that the current threshold of hostility is maintained in legislation as that threshold?

Agree

Comments

Yes, we believe that the current threshold of hostility should be maintained as there should, as far as possible, be parity between hate crime legislation in Northern Ireland and the rest of the UK. This consultation acknowledges that this threshold is already used in England and Wales and was recommended by Lord Bracadale in his review of hate crime in Scotland.¹⁹

Maintaining this threshold would also ensure that legislation in Northern Ireland remains in line with international standards prohibiting advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence – known as the *Rabat Plan of Action*.²⁰ The *Rabat Plan* recommends and uses the term 'hostility' as an appropriate threshold for demonstrating incitement to hatred and strikes the right balance between protecting individuals from incitement to hatred whilst ensuring that critical expression of religious beliefs is not wrongly captured under hate crime legislation.

3. Do you agree / disagree that the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate in subsequent guidance in support of new legislative changes in a Hate Crime Bill?

Disagree

Comments

No, we believe that the expansion of the definition of hostility to include 'bias, prejudice, bigotry, and contempt' is out of step with international standards and is so broad in its scope that it may inadvertently infringe upon the right to freedom of expression. The *Rabat Plan* sets out a definition of 'hostility' that we believe should be used as a basis for understanding this term in guidance

¹⁸ *Response to Justice Committee Call for Views from Humanist Society Scotland supported by Humanists UK – Hate Crime and Public Order (Scotland) Bill*, 27 July 2020. <https://humanists.uk/wp-content/uploads/Response-to-Justice-Committee-Call-for-Views-from-Humanist-Society-Scotland-1-1.pdf>

¹⁹ *Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views*, Department of Justice, January 2022. https://www.justice-ni.gov.uk/sites/default/files/consultation_s/justice/hate%20crime%20legislation%20consultation.pdf

²⁰ *Annual report of the United Nations High Commissioner for Human Rights Addendum: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, United Nations High Commissioner for Human Rights, 11 January 2013. https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf

accompanying this legislation. It says:

'national legal systems should make it clear, either explicitly or through authoritative interpretation, that the terms "hatred" and "hostility" refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.'²¹

In fact, neither of the words 'bias' or 'contempt' are used in the *Rabat Plan*. The right to express dissent from religion, including criticising, ridiculing, mocking, or parodying religious beliefs, is a central tenet of both the right to freedom of religion or belief and the right to freedom of expression. This is laid out in Articles 18 and 19 of the Universal Declaration of Human Rights, Articles 9 and 10 of the European Convention on Human Rights, and the International Covenant on Civil and Political Rights (ICCPR). Such expressions can and often do arise from biased or bigoted worldviews but this does not mean that they are motivated by hatred towards an individual or group of people because of their shared characteristic. Ultimately, legitimate expression does not have to be fair, balanced, or free from the speaker's own biases. Thus a tighter and more specific definition, such as the one offered by the *Rabat Plan*, is more appropriate.

4. Do you agree / disagree that a third 'by reason of' threshold should not be added to the current thresholds in legislation, which are a demonstration of hostility and motivated by hostility?

Agree

Comment

We agree that a third limb to the threshold for demonstrating hostility and motivation should not be added to any new hate crime legislation in Northern Ireland. The current two limb approach is consistent with that taken in England and Wales and the Law Commission of England and Wales has rejected proposals to create a 'by reason of' limb in its recent reform recommendations.²² The main concerns stated by the Law Commission

'was that a "by reason of" approach would be over-inclusive and would risk capturing some offenders whose conduct does not justify the label of "hate crime" and the case for such a limb was only demonstrated for the disability characteristic where the specific vulnerability of victim was a motivating factor for the crime. In terms of the former, we cannot support an overly inclusive approach which further criminalises action where there is no justified cause for it to be considered a hate crime. This would dilute the power of hate crime legislation to have a transformative normative effect in removing the underlying motivation for hate. In terms of the latter, we are generally opposed to measures that would create disparity between the protected characteristics.'²³

Overall, we would advise against Northern Ireland setting a different and lower standard for demonstrating hatred than exists in the rest of the UK.

²¹ Ibid, p10.

²² *Hate crime laws: Final report*, Law Commission of England and Wales, December 2021.

<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/12/Hate-crime-report-accessible.pdf>

²³ The similar 'likely to' third threshold was also not recommended by Lord Bracadale in his review of Scottish hate crime legislation and was subsequently not taken forward by the Scottish Government in the Hate Crime and Public Order (Scotland) Act 2021.



5. In supporting the understanding of a statutory sectarian aggravator in hate crime law, do you agree / disagree that 'sectarian' should be defined in law?

Agree

Comments

Overall, we agree with the Minister of Justice's view that there is evidence of a need for a specific aggravator to tackle sectarian-motivated offending, which is not adequately covered by the definition of 'religious belief' under the Criminal Justice (Northern Ireland) (No 2) Order 2004 and the Public Order (Northern Ireland) Order 1987.²⁴

We believe, therefore, that it is important to define sectarianism in law to adequately capture the unique historical and cultural causes of division within Northern Ireland's communities, which may stem from perceptions of nationality, heritage, or custom, as well as religious belief. Additionally, and importantly, such a definition is needed to ensure that such an aggravator does not impede upon the freedom of expression. It must not weaken protections for critical expression against religious beliefs or indeed of Northern Ireland's national, historical, or cultural identities.

6. In supporting a statutory sectarian definition, in relation to hate crime law, do you agree / disagree that the definition should include the following elements?

- **membership (or presumed membership) of a Roman Catholic or Protestant denominational group;**
- **social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation; or**
- **membership (or presumed membership) of a group based on their Irish or British nationality (including citizenship) or ethnic or national origins.**

Agree

Comments

We agree that the above elements adequately cover the type of sectarian-motivated offending that has been identified and recorded by the Northern Ireland Police Service. These criteria reflect both the broader cultural and national identity associated with membership (or perceived membership) of organisations or groups of individuals associated with the Roman Catholic and Protestant religions, but goes beyond just the 'religious beliefs' associated with these denominations.

7. The suggested definition of sectarianism does not include political opinion. Do you agree / disagree that political opinion should be excluded?

Agree

Comments

We agree that the definition must not include political opinion as this would be an unjustified limitation on the right to freedom of expression as defined under Article 10 of the European Convention on Human Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declaration of Human Rights. This is a view shared by Judge Marrinan.²⁵

²⁴ *Improving the effectiveness of Hate Crime Legislation in Northern Ireland A Public Consultation and Call for Views*, Department of Justice, January 2022. https://www.justice-ni.gov.uk/sites/default/files/consultation_s/justice/hate%20crime%20legislation%20consultation.pdf

²⁵ *Final Report into Hate Crime legislation in Northern Ireland Independent Review*, Department of Justice, December 2020. <https://www.justice-ni.gov.uk/publications/hate-crime-legislation-independent-review>

8. Are there any other elements that you believe would assist defining sectarianism in the context of Northern Ireland's history? If yes, please include details.

No

Comments

N/A

9. Whilst Judge Marrinan has suggested that a sectarian aggravator should be created and defined in a Northern Ireland and Christian context, do you consider any future changes to the hate crime legislation should include future proofing to include different denominations from non-Christian religions/faiths should evidence emerge to show this was required?

As far as possible we believe that hate crime law, and criminal law more generally, should be consistent across all four jurisdictions across the UK and the Republic of Ireland. We agree with the view of Judge Marrinan that the provision for a sectarian aggravator to tackle the unique type of hate crime offending within Northern Ireland is necessary and, therefore, it is appropriate for new legislation to take a different approach from the rest of the UK on this specific point.

However, we caution against this legislation taking a wider divergent approach and creating further criminal offences that do not have equivalents in the rest of the UK, the Republic of Ireland, or other comparable jurisdictions. Although there is evidence of sectarian discrimination within non-Christian religious groups in the UK, the most notable victims being the Ahmadiyya community within Islam, we do not believe that there has been significant consideration within Northern Ireland (or the UK as a whole) of the extent of this hate crime offending or whether it can be best addressed through the type of aggravated offence model being here proposed. It is significant that the Scottish Government rejected proposals to introduce a sectarian provision in the recent Hate Crime and Public Order (Scotland) Act 2021, on the basis that sectarian behaviour within the Scottish context can be captured using the race and religious aggravation provisions already within Scots Law.²⁶ This would suggest there is no one size fits all approach to addressing sectarian hatred. Rather than creating provisions within this legislation to possibly expand the definition of sectarianism in the future, we recommend this provision is strictly limited to the Roman Catholic/Irish–Protestant/British sectarian offending that Judge Marrinan has outlined. If evidence emerges in the future of a need for such a non-Christian sectarian aggravator this is likely to be in a UK-wide context and would be better addressed in a separate bill or by an appropriate future amendment.

There is a divergence in guidance with regards to hate crime experienced by apostates, a type of sectarian prejudice. In contrast to the situation in England and Wales, there are no explicit references in the Public Prosecution Service for Northern Ireland's hate crime policy document to hate crimes committed against apostates. The Crown Prosecution Service's prosecution guidance states that the definition of sectarian hostility under 'religious group' covers hostility towards converts and apostates.²⁷ We would like to see apostates be explicitly named in the guidance and also for data on apostasy hate crime to be collected and reported alongside other types of hate crimes.

²⁶ Hate Crime and Public Order (Scotland) Act 2021. <https://www.legislation.gov.uk/asp/2021/14/contents>

²⁷ *Racist and Religious Hate Crime – Prosecution Guidance*, Crown Prosecution Service.

<https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>

Recommendation: We support the introduction of a statutory aggravator for sectarianism.

Recommendation: Public Prosecution Service for Northern Ireland should amend its guidance on hate crime to include references to the treatment of apostates and converts, and start recording incidents of apostate-based hate crime alongside other types of religiously-motivated hate.

10. Given the prevalence of online communications that now exist within private dwellings, but have a reach outside those private dwellings, do you agree that the dwelling defence is no longer fit for purpose?

No

Comments

We would not go as far as to say that the private dwelling exemption is not fit for purpose, however we agree that it should be reformed to take into account changes in methods of communication. We would caution against its entire repeal without replacement with a 'private conversation' or 'private communication' defence, as used in Canada. This is a view shared by the Law Commission in its recent review of hate crime legislation in England and Wales.²⁸

Recommendation: This new legislation should replicate the protections for criticism of religious beliefs that exist within the Racial and Religious Hatred Act 2006 for England and Wales and the Hate Crime and Public Order (Scotland) Act 2021.

11. Do you agree that repealing the dwelling defence and replacing it with a specific defence for private conversations would balance the need to protect individuals or groups of persons from accusations of stirring up offences, along with the need to ensure freedom of expression and debate of matters which are not, of themselves, threatening, abusive or insulting?

Yes

12. If a specific defence for private conversations was introduced, should consideration be given to defining the term "private conversations"?

Yes

13. If you agree that consideration should be given to defining the term "private conversations", do you have any proposals on the criteria for the concept of private conversations?

We recommend that the term 'private conversation' be changed and extended to 'private communications' in recognition of the fact that not all types of private speech will be in the form of conversations but could be expressed through the sharing of voice, image, video, or other forms of artistic or expressive content.

²⁸ *Hate crime laws: Final report*, Law Commission of England and Wales, December 2021.
<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/12/Hate-crime-report-accessible.pdf>



14. Under the current arrangements, decisions on whether or not to prosecute stirring up offences can be taken by or with the consent of the DPP (meaning that a prosecutor who has a delegated authority to initiate proceedings can do so without the need to seek the Director's personal consent). Do you agree this arrangement is an adequate safeguard in the consideration of stirring up offences by the Public Prosecution Service?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

15. Do you agree that all decisions on whether or not to prosecute stirring up offences do not necessitate being taken personally by the Director of Public Prosecution?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

16. The criminal justice system currently provides the opportunity for victims of hate crime to apply for special measures in that an application can currently be made by PPS to explain that a victim of hate crime is in fear/intimidated and requires special measures. Do you agree/disagree that these current provisions are sufficient for hate crime victims?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

17. Do you agree/disagree that hate crime victims in criminal proceedings, involving the proposed aggravated offences or stirring up offences, should automatically be eligible for consideration of special measures when giving evidence?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

18. Do you agree/disagree that victims in hate crime criminal proceedings, involving the proposed aggravated offences or stirring up offences, would benefit from protection from cross examination where the alleged perpetrators choose to exercise a right to cross examine their victims in person?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

19. Do you agree/disagree that automatic eligibility to protection from cross examination by the alleged perpetrator would support reporting of hate crime by victims?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

20. Do you agree/disagree that there is a potential detriment for abuse of the criminal justice system if the defendant is unable to cross examine the hate crime victim?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

21. Of the options outlined as proposals for addressing violence against women and girls, which is your preferred option, if any (please tick one):

- Sex/Gender as a protected characteristic

Comments

Sex/gender is our preferred method of addressing violence against women and girls as this will create parity with other protected characteristics already protected under existing legislation and mirrors the language used in equivalent legislation in England and Wales and Scotland.



22. Many of the issues surrounding misogyny are closely linked to sexual offences and domestic abuse. If misogyny is considered for inclusion as a hate crime statutory aggravator, do you agree/disagree that domestic abuse and sexual offences be excluded?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

23. Whilst evidence demonstrates the disproportionate experience of females, if misogyny is considered for inclusion in hate crime law, to ensure fairness in legislation, do you agree/disagree an act of misandry should also be considered to recognise the experience of male victims?

We have chosen not to answer this question as it falls outside of our areas of interest/expertise.

For more details, information, and evidence, contact Northern Ireland Humanists:

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