

# Hate Crime Legislation Review - Terms of Reference

## Introduction

**Hate crime is a generic term used** to describe offences which are motivated by hostility/bias based on a personal characteristic of the victim. Hate crime normally falls into two categories:

- A criminal offence is committed with a prejudice, hostile, or hateful motivation towards the victim; or
- An incitement offence where certain actions are intended, or likely to stir up hatred or arouse fear.

Hate crime violates the ideal of equality between members of society. There is significant evidence which indicates that hate crimes have a pronounced impact on victims, as this type of crime is an attack on a personal attribute or group identity, such as one's ethnicity, disability, religion or sexuality. Hate crime can therefore have a particular and significant impact on victims' self-esteem and personal confidence.

It is also recognised that the repercussions of this type of crime extend beyond the direct victim, by signalling that members of certain groups are not acceptable or not worthy of equal respect. In societies which are already showing manifestations of division, intolerance hate crime can further exacerbate tensions and undermine community cohesion.

It is for this reason that a range of legislation has been enacted which aims to:

- Provide censure, and support for societal change, by sending a message that prejudice-motivated conduct will not be tolerated;
- Enhance punishments for hate crime offences to acknowledge the increased harms caused to victims, minority communities and wider society; and
- Support the effective operation of hate crime policies by law enforcement agencies.

Following calls for a review of Part III of the Public Order (Northern Ireland) Order 1987, from a range of sources, a commitment was made by the then Minister for Justice to come back to the Assembly, and confirm whether she intended to initiate a review of the legislative framework on hate crime.

Momentum for a review of this piece of legislation, and the wider legislative framework for the prosecution of incitement to hatred offences have been heavily influenced by wider societal concerns regarding the display of offensive materials at bonfires, and the proliferation of paramilitary flags displayed across Northern Ireland. However, we are also mindful of the continued broader implication of hate crime for a wide cross section of society.

While a response was not provided prior to the dissolution of the Assembly, as part of our forward work programme on community safety, a commitment to review hate crime legislation was included in the draft Programme for Government.

### **Scope of Review**

The remit for this review is:

To consider whether existing hate crime legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online.

In particular, the review will consider and provide recommendations on:

- A workable and agreed definition of what is a hate crime;
- Whether the current enhanced sentence approach is the most appropriate to take, and determine if there is an evidential basis to support the introduction of statutory aggravated offences;
- Whether new categories of hate crime should be created for characteristics such as gender and any other characteristics (which are not currently covered);

- The implementation and operation of the current legislative framework for incitement offences, in particular Part III of the Public Order (Northern Ireland) Order 1987 and make recommendations for improvements;
- How any identified gaps, anomalies and inconsistencies can be addressed in any new legislative framework for Northern Ireland ensuring this interacts effectively with other legislation guaranteeing human rights and equality.
- Whether there is potential for alternative or mutually supportive restorative approaches for dealing with hate motivated offending.

The review will take cognisance of the Department's review of sentencing policy and will ensure that it does not cut across any options planned for consultation in this regard.

Given that telecommunications legislation is a reserved matter, and the commitments made in the UK Government recent response to the 14th report from the Home Affairs Select Committee Session 2016 to 17, on Hate crime: abuse, hate and extremism online, our intention would be that the review would not include consideration of any issues related to online hate crime that would duplicate this.

The review team will make a written report for consideration, by the Department of Justice, no later than 15 months from the commencement of the review.

### **Delivery Mechanism**

The review team will consist of a senior review manager and an office manager, supported by a researcher.

It would also be our intention for the review process to be supported by a Reference Group, comprising of a core group of relevant experts, and a broader forum of key stakeholders. The review team will develop its thinking and early conclusions with the Reference Group, who will act as a catalyst for developing new ideas and as a quality

mechanism for the review. Setting up the Reference Group will be the responsibility of the Review Team, with support provided by the Department where required.

Given the particular legal complexities involved in incitement legislation, an independent expert will be commissioned to take forward the review – a similar approach was taken when reviews of hate crime legislation were conducted in England and Wales, and in Scotland.