



HATE CRIME: THE CASE FOR EXTENDING THE EXISTING OFFENCES

RESPONSE TO QUESTIONS

This optional response form is provided for consultees' convenience in responding to our Consultation Paper on hate crime.

The Consultation Paper is available free of charge on our website at:
http://lawcommission.justice.gov.uk/consultations/hate_crime.htm.

The response form includes the text of the questions in Chapter 5 of the Consultation Paper, with checkboxes for answers and space for comments. You do not have to respond to every question. Comments are not limited in length (the box will expand, if necessary, as you type).

Each question gives a reference in brackets to the paragraph of the Consultation Paper at which the question is asked. Please consider the surrounding discussion before responding.

We invite responses from 27 June 2013 to **27 September 2013**.

Please return this form:

by email to: hate.crime@lawcommission.gsi.gov.uk or

by post to: Catherine Heard, Law Commission, Steel House, 11
Tothill Street, London SW1H 9LJ

Tel: 020 3334 0275

We are happy to accept responses in any form – but we would prefer, if possible, to receive emails attaching this pre-prepared response form.

Freedom of information statement

We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000.

If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the Data Protection Act 1998.

YOUR DETAILS

Name of respondent:

Type: 

Postal address:

Telephone:

Email:

Confidentiality:

Please read the Freedom of Information statement above before checking this box.

I wish to keep this response confidential.

Please explain why you regard the information as confidential:

CHAPTER 3: THE AGGRAVATED OFFENCES: PROVISIONAL PROPOSALS

Reform option 1 - enhanced sentencing provisions

Proposal 1: We consider that the enhanced sentencing regime under the CJA 2003 could provide an adequate response to hostility-based offences on the grounds of disability, sexual orientation and transgender identity, if the provisions were properly applied and resulted in an adequate record of the offender's wrongdoing. Do consultees agree? If not, why not? [paragraph 3.45]

Agree:	Disagree:	Other:
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Possible proposals to improve the operation of the enhanced sentencing provisions

Proposal 2: We provisionally propose that a new guideline from the Sentencing Council should be produced to deal exclusively with aggravation on the basis of hostility under sections 145 and 146 of the CJA 2003. Do consultees agree? If not, why not? [paragraph 3.51]

Agree:	Disagree:	Other:
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Proposal 3: We provisionally propose that where section 145 or 146 is applied, this should be recorded on the Police National Computer and reflected on the offender's record. Do consultees agree? If not, why not? [paragraph 3.53]

Agree:	Disagree:	Other:
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Question 1: Do consultees consider that proposals 2 and 3, if implemented, would adequately address the problems identified above in relation to (a) the under-use of section 146 and (b) the inadequate recording of the nature of the offender's wrongdoing? If not, why not? [paragraph 3.54]

Yes:	No:	Other:
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Proposal 4: If consultees consider that proposals 2 and 3 are likely to be effective in achieving their stated aims, these reforms to the enhanced sentencing provisions should be implemented regardless of whether the aggravated offences are extended to include disability, sexual orientation and transgender identity. Do consultees agree? If not, why not? [paragraph 3.55]

Agree:	Disagree:	Other:
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Reform option 2: creating new aggravated offences

Proposal 5: If proposals 2 and 3 are regarded as inadequate, we consider that an alternative solution would be the extension of the aggravated offences to include disability, sexual orientation and transgender identity. These offences would only apply where the perpetrator of a basic offence demonstrated, or was motivated by, hostility on the grounds of disability, sexual orientation or transgender identity. Do consultees consider that the aggravated offences ought to be extended? [paragraph 3.76]

Yes:	No:	Other:
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Disability: A new aggravated offence

DEFINING “DISABILITY”

Proposal 6: We consider that the definition of disability in any new aggravated offence should mirror the definition in section 146: “any physical or mental impairment”. Do consultees agree? If not, why not? [paragraph 3.91]

Agree:	Disagree:	Other:
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Question 2: Do consultees agree that the definition of “disability” in the Equality Act 2010 is inappropriate for any new disability aggravated offence that might be enacted? If not, why not? [paragraph 3.94]

Agree:	Disagree:	Other:
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Question 3: Do consultees agree that the definition of disability in the UN Convention on the Rights of Persons with Disabilities is inappropriate for a new disability aggravated offence? If not, why not? [paragraph 3.100]

Agree:	Disagree:	Other:
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MOTIVATION BY HOSTILITY

Question 4: Do consultees consider that any particular difficulties would be likely to arise with these elements of hostility, membership of a group and motivation in their application to a new aggravated offence based on disability? If not, why not? [paragraph 3.110]

Yes:	No:	Other:
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Sexual orientation: A new aggravated offence

DEFINING "SEXUAL ORIENTATION"

Proposal 7: We consider that the definition of sexual orientation in any new aggravated offence should mirror the existing definition adopted in case law: "orientation towards people of the same sex, opposite sex or both". Do consultees agree? If not, why not? [paragraph 3.116]

Agree:	Disagree:	Other:
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MOTIVATION BY HOSTILITY

Question 5: Do consultees consider that any particular difficulties would be likely to arise with these elements of hostility, membership of a group and motivation in their application to a new aggravated offence based on sexual orientation? If not, why not? [paragraph 3.124]

Yes:	No:	Other:
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Transgender identity: A new aggravated offence

DEFINING “TRANSGENDER IDENTITY”

Proposal 8: We consider that the definition of transgender identity in any new aggravated offence should mirror the definition in section 146: “references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment”. Do consultees agree? If not, why not? [paragraph 3.136]

Agree:	Disagree:	Other:
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Question 6: Do consultees consider that in any new aggravated offence the definition in section 2(8) of the Scottish (Aggravation by Prejudice) (Scotland) Act 2009 would be preferable to that in section 146 of the CJA 2003? [paragraph 3.140]

Yes:	No:	Other:
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MOTIVATION BY HOSTILITY

Question 7: Do consultees consider that any particular difficulties would be likely to arise with these elements of hostility, membership of a group and motivation in their application to a new aggravated offence based on transgender identity? If not, why not? [paragraph 3.148]

Yes:	No:	Other:

CHAPTER 4: THE STIRRING UP OFFENCES: PROVISIONAL PROPOSALS

The arguments for and against the new stirring up offences

Proposal 9: On the basis of the arguments set out above, our provisional view is that there is a case in principle for new offences of stirring up hatred on grounds of disability and transgender identity. Do consultees agree? If not, why not? [paragraph 4.63]

Agree:	Disagree:	Other:
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The need for new stirring up offences

Question 8: Do consultees consider that there is a practical need for the new offences? If so, why? [paragraph 4.66]

Yes:	No:	Other:
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Defining any new offences

Question 9: If consultees consider that a new offence of stirring up hatred on grounds of disability is necessary both in principle and in practice, should it follow the “broad” or the “narrow” model discussed above? [paragraph 4.76]

Broad:	Narrow:
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Question 10: If consultees consider that a new offence of stirring up hatred on grounds of transgender identity is necessary both in principle and in practice, should it follow the “broad” or the “narrow” model discussed above? [paragraph 4.77]

Broad:	Narrow:
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Provisions for the protection of freedom of expression

Question 11: If a new offence of stirring up hatred on grounds of disability were created, should it include explicit protection for freedom of expression? If so, what should it cover? [paragraph 4.84]

Yes:	No:	Other:
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Question 12: If a new offence of stirring up hatred on grounds of transgender identity were created, should it include explicit protection for freedom of expression? If so, what should it cover? [paragraph 4.85]

Yes:	No:	Other:

Defining “disability” and “transgender identity” in any new stirring up offences

Proposal 10: Our provisional view is that if new stirring up and aggravated offences were created, the same definitions of “disability” and “transgender identity” should be adopted in relation to both. Do consultees agree? If not, why not? [paragraph 4.88]

Agree:	Disagree:	Other:

DEFINING "DISABILITY"

Proposal 11: We consider that the definition of "disability" in section 146 would be suitable for new stirring up offences. Do consultees agree? If not, why not? [paragraph 4.91]

Agree:	Disagree:	Other:
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DEFINING "TRANSGENDER IDENTITY"

Proposal 12: We consider that the definition of transgender identity in section 146(6) would be suitable for new stirring up offences. Do consultees agree? If not, why not? [paragraph 4.93]

Agree:	Disagree:	Other:
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Question 13: Do consultees consider that in any new stirring up offence the definition of transgender identity in section 2(8) of the Scottish Offences (Aggravation by Prejudice) (Scotland) Act 2009 would be preferable to that in section 146(6) of the CJA 2003? If so, why? [paragraph 4.94]

Yes:	No:	Other:
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Existing sentencing provisions vs new stirring up offences

Question 14: Do consultees agree that the sentencing provisions in s 146 cannot capture this type of extreme and discrete wrongdoing against disabled or transgender people? [paragraph 4.100]

Agree:	Disagree:	Other:
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OTHER COMMENTS

If you have any comments not relating to one of the questions set out above, please set them out below.