

Law Commission Hate Crime Consultation 2020

Questionnaire based on summary paper (20 questions)

The summary consultation paper (24 pages) can be downloaded from the link – <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/09/Hate-crime-final-summary.pdf>

Respond to the consultation questions online via this link – <https://consult.justice.gov.uk/law-commission/summary-hate-crime/>
You can answer as many or as few as you like. You don't have to fill it all out at once – you can save your progress and come back to it later.

Deadline is **24 December 2020**.

Possible further characteristics for inclusion

Summary Consultation Question 1:

We provisionally propose that the criteria that should be considered for the addition of any further characteristics into hate crime laws should be:

- (1) Demonstrable need: evidence that criminal targeting based on prejudice or hostility towards the group is prevalent.
- (2) Additional Harm: evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.
- (3) Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of resources, and is consistent with the rights of others.

Do consultees agree?

Summary Consultation Question 2:

Should the characteristic of “sex or gender” be added to the characteristics protected by hate crime laws?

Summary Consultation Question 3:

Should the characteristic of “age” be added to the characteristics protected by hate crime laws?

Summary Consultation Question 4:

Should any of the following groups be specifically protected by hate crime laws?:

- sex workers
- homeless people
- alternative subcultures (for example, goths, punks, metallers, emos)
- philosophical beliefs (for example, humanism)

The legal test for hate crime

Summary Consultation Question 5:

We provisionally propose that the current legal position – where the commission of a hate crime can be satisfied through proof that the defendant demonstrated hostility towards a protected characteristic of the victim – should be maintained. Do consultees agree?

Summary Consultation Question 6:

We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by hostility or prejudice towards the protected characteristic.

Aggravated offences and enhanced sentencing

Summary Consultation Question 7:

We provisionally propose that both specified aggravated offences and statutory enhanced sentencing should be retained in the law of England and Wales. Do consultees agree?

Summary Consultation Question 8:

We provisionally propose that aggravated offences should apply to all five of the current characteristics equally, and any further characteristics that are added. Do consultees agree?

Summary Consultation Question 9:

We provisionally propose that aggravated versions of communications offences with an increased maximum penalty be introduced in reformed hate crime laws. Do consultees agree?

Summary Consultation Question 10:

Do you think aggravated versions of any other offences should be created? Why/Why not?

Summary Consultation Question 11:

Do you think that a wider group of characteristics should be protected through the process of sentencing? If yes, should this be achieved by:

- A residual characteristic in statutory enhanced sentencing; or
- Sentencing guidelines?

Stirring up hatred offences**Summary Consultation Question 12:**

We provisionally propose that intentionally stirring up hatred should be treated differently to the use of words or behaviour likely to stir up hatred. Specifically, where it can be shown that the speaker intended to stir up hatred, it should not be necessary to demonstrate that the words used were threatening, abusive, or insulting. Do consultees agree?

Summary Consultation Question 13:

Where it cannot be shown that the defendant intended to stir up hatred, we provisionally propose that the offences should cover only “threatening or abusive” (but not “insulting”) words or behaviour likely to stir up hatred. Do consultees agree?

Summary Consultation Question 14:

We provisionally propose to:

- replace the separate offences dealing with different forms of dissemination of inflammatory material (in sections 19 to 22 and 29C to 29F of the Public Order Act 1986) with a single offence of disseminating inflammatory material;
- align the defences available to innocent disseminators of inflammatory material to ensure consistency.

Do consultees agree?

Summary Consultation Question 15:

Under what circumstances, if any, should online platforms such as social media companies be criminally liable for dissemination of unlawful material that they host?

If “actual knowledge” is retained as a requirement for platform liability, should this be the standard applied in other cases of dissemination of inflammatory material where no intention to stir up hatred can be shown?

Summary Consultation Question 16:

We provisionally propose that:

- the current protections for discussion of religion and sexual orientation should apply to the new offence of stirring up hatred;
- similar protections be given in respect of transgender identity, sex/gender and disability.

Do you agree and if so what should these cover?

Football offences

Summary Consultation Question 17:

We provisionally propose that racist chanting at football matches should remain a distinct criminal offence. Do consultees agree?

Summary Consultation Question 18:

We provisionally propose that the offence in section 3 of the Football (Offences) Act 1991 should be extended to cover chanting based on sexual orientation. Do consultees agree?

We also seek consultees’ evidence on the prevalence of discriminatory chanting targeting characteristics other than race and sexual orientation, and would welcome views on whether the offence should be extended to cover all protected characteristics.

Summary Consultation Question 19:

Should the offence under section 3 of the Football (Offences) Act 1991 be extended to cover gestures and missile throwing?

Should the offence under section 3 of the Football (Offences) Act 1991 be extended to cover journeys to and from a designated football match?

A Hate Crime Commissioner?

Summary Consultation Question 20:

Should a Hate Crime Commissioner be introduced in England and Wales?