



## Equality Impact Assessment Initial Screening - Relevance to Equality Duties

***Before you complete an Equality Impact Assessment you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course.***

The EIA should be used to identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- pregnancy and maternity
- caring responsibilities (usually only for HR policies and change management processes such as back offices)

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

Reform of hate crime laws - currently found in ss 28 to 32 of the Crime and Disorder Act 1998, section 66 of the Sentencing Code and Parts III and IIIA of the Public Order Act 1986

Aggravated offences and enhanced sentencing:

- 1) Extend current aggravated offences to cover sexual orientation, disability and transgender identity in addition to race and religion, which are already covered.
- 2) Expand scope of protection for disability, sexual orientation and transgender and gender diverse to include "association" with these characteristics;
- 3) Revise definition of sexual orientation to include "asexual" people
- 4) Revise definition of transgender to "transgender or gender diverse" and clarify that this includes non-binary and people who otherwise do not conform with male or female gender expectations, for example people who cross-dress;
- 5) Recommend that government review the need for a specific offence of public sexual harassment
- 6) Revise motivation limb of legal test for hate crime laws to include hostility or prejudice

Stirring up hatred offences:

- 7) Extend stirring up hatred offences to cover all five characteristics equally; and additionally extend to cover hatred on grounds of sex or gender
- 8) Replace offence relating to possession of racially inflammatory and inflammatory material with an offence of possession of inflammatory material with intent to stir up hatred;
- 9) Introduce new protection for discussion that reflects the belief that sex is binary and immutable;
- 10) Introduce a new protection for discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of countries and their governments; and for discussion and criticism of policy relating to immigration, citizenship and asylum;
- 11) Replace the dwelling exception with an exception for private conversations.

Other

12) Invite government to consider creation of a Commissioner for Countering Hate Crime.

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

Martin Wimpole

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
To ensure the criminal law provides an adequate and effective response to hate crime	Increased confidence in the criminal justice system among groups targeted for hate crime
To ensure that hate crime laws are fair, modern, clear and simple – in particular through equal protection for protected groups	Simplify and clarify the law so that it is understandable to different audiences and is more easily and effectively applicable in practice for law enforcement, legal practitioners and judges.
To address current concerns with hate crime laws, especially their complexity and inconsistency.	Ensure police practices are consistent across the different forms of hate crime.
To respond to particular concerns about the failure of the current law to address disability hate crime	

4. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

*(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments).*

The Law Commission is a consultative body and consults widely to support its proposals. The evidence we considered included both data as well as evidence provided by stakeholders.

#### 1. Data

Data on the number and types of “hate crime” is available from various sources. Different agencies, operating at different stages of the criminal justice process, have responsibility for collecting this information. Readers should note that the various sources are not directly comparable with one another (for example, the latest Crime Survey for England and Wales [CSEW] report figures are an average of the annual data gathered from the year ending March 2018 to the year ending March 2020, whereas the police recorded data on hate crime covers 2020/21). Readers should also note that cases will progress through the criminal justice system at different rates. A crime which is committed (and recorded by the police) in 2021 may not be prosecuted until 2022. This means, for example, that where numbers of cases prosecuted and numbers of convictions are provided for a given year, they will not cover precisely the same set of cases.

The Crime Survey for England and Wales (CSEW) is a victimisation face-to-face survey covering adults aged 16 and over resident in households in England and Wales.

For the combined year ending March 2018 to March 2020 the CSEW estimates an annual average of about 190,000 hate crime incidents representing about 3 percent of all CSEW crime. A summary of evidence of hate crime is provided across the five monitored strands in Table 1 below:

- Racially motivated;
- Disability motivated;
- Religiously motivated;
- Sexual orientation motivated; and
- Gender identity motivated

Table 1: Estimated number of incidents of hate crimes per year, England and Wales, 2017/18 to 2019/20

Monitored strand of hate crime:

All hate crime 190,000

- Race - 104,000
- Religion - 42,000
- Sexual orientation - 23,000
- Disability - 50,000
- Gender Identity - 7,000

(Source: Hate Crime, England Wales, 2019 to 2020, Appendix Tables, Appendix Table 7)

Adults in non-white ethnic groups are more likely to be victims of hate crime than white adults. Moreover, non-white adults are also more likely to be victims of overall CSEW crime. Those within the Asian ethnic group were most at risk of hate crime and within this group Muslim adults were most likely to experience religiously motivated hate crime.

Sexual orientation hate crimes averaged 23,000 per year but there is the very strong likelihood of these being significantly under-reported for reasons such “...as not thinking it would be taken seriously or because abuse has become part of their everyday lives...”

After race and religiously motivated hate crime, disability is the next largest category averaging 50,000 hate crime incidents per year. The number reporting gender identity hate crime is unreliable because it has only recently been included in CSEW questions and numbers remain low.

Gender identity had not been included in the previous report because although data was collected since 2011/12 the low volume meant it was not a reliable indicator. However, for this report it is now visible as 7,000 incidents have been reported.

Home Office and police data – recorded hate crime

Police forces flag an offence according to one or more of the five monitored strands at the time the offence is reported. This is unlike CSEW data which is based on face to face victimisation interviews as part of a general household survey.

For the year ending March 2021 the police in England Wales recorded 124,091 hate crimes. There is a noticeable year on year upward trend in offences. The increase has been explained largely through improved police recording. Improved identification of hate crime offences as ‘hate crimes’ may also have been a contributory factor.

The number of motivating factors in 2020/21 [119,868] exceeds the number of offences as a crime may have more than one motivating factor. In 2018/19 about 12 percent of hate crime offences were estimated to have involved several motivating factors. In most instances race and religion were the common factors. See table 2 below.

Table 2: Number of motivating factors, 2018/19 to 2020/21

Hate crime strand	2018/19	2019/20	2020/21	3 year average	% of total
Race	72,051	76,158	85,268	77,826	70
Religion	7,202	6,856	5,627	6,562	6
Sexual orientation	13,311	15,972	17,135	15,473	14

Disability	7,786	8,465	9,208	8,486	8
Transgender	2,185	2,542	2,630	2,452	2
Total number of motivating factors	102,535	109,99	119,868	105,931	
Total number of offences	97,474	105,362	114,958	110,799	

(Source: Hate crime for England and Wales, 2020 to 2021, See <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2020-to-2021/hate-crime-england-and-wales-2020-to-2021#fn:6> last visited 14/11/2021)

## 2. Primary research

Stakeholder engagement via formal submissions; stakeholder events and the online survey; academic conference at Oxford Brookes University; meetings with legal and academic experts, police and the Crown Prosecution Service, charities and civil society groups, and numerous individuals with an interest in hate crime laws; publication of consultation paper and responses received for the 62 questions posed from 2473 respondents.

In making our proposals in the consultation paper we considered the available data as to the prevalence of hate crime in England and Wales, which has one of the most comprehensive hate crime reporting and recording systems in the world. The data from the 'Crime Survey of England and Wales' and the Police Recorded Crime data formed a substantial part of the basis for our preliminary proposals. Prosecution statistics from the CPS were also considered. We note that although we set out to consider research into the profiles of hate crime victims and perpetrators, this was limited, although it did show that most offenders are from low social economic backgrounds.

Of the 2473 responses received, a high proportion were from individuals. A significant majority of these personal responses indicated strong opposition to hate crime laws altogether, or any extension of those that currently exist. It followed that these responses generally opposed most of our proposals for reform.

By contrast, there were 173 responses on behalf of organisations; comprising law enforcement agencies, legal experts, government and local authorities, and charitable and community organisations, civil society groups and religious bodies with an interest in hate crime laws. The majority of these responses were supportive of the broad direction of our proposals, and in particular the emphasis on parity of protection amongst the existing five characteristics recognised under hate crime laws. There was more variation in responses to some of the more detailed questions we asked about how the law should work, and the potential inclusion of additional characteristics in hate crime laws.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

*Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.*

We received a high number of submissions and consulted extensively. There were some gaps on the impacts on groups outside of the Equality Act 2010 such as people experiencing homelessness. We have suggested police recording of hate crimes against people experiencing homelessness may be helpful to better understand the scale and nature of the problem.

We also note that there was not sufficient evidence to show the adverse impact that the present exclusion of disability from stirring up of hatred offences has on the community. A similar lack of evidence was seen with regard to stirring up hatred against men.

However, these gaps were not detrimental to our ability to form a view.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

Improved response to hate crime overall benefits victims of hate crime.

Clear and consistent application of hate crime legislation which is easier to record and enforce across policing bodies.

Fairer application of the law which will apply equally across protected groups. Direct benefit to more victims of hate crime with a sufficiently serious label attached.

Wider societal benefit as greater awareness about other forms of hate crime and deterrence of this offending.

More considered response to dealing with hate crime offenders benefits perpetrators of this behaviour.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

We have recommended that sex or gender should not be added to the current hate crime characteristics as we do not believe it would not be an effective solution to the very real concerns surrounding violence and abuse towards women. We have suggested that as part of an alternative approach, the government should review the need for an offence of public sexual harassment.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is a risk that if misapplied by law enforcement agencies, the introduction of an offence of stirring up hatred on the basis of transgender or gender diverse status could adversely impact the right of individuals who hold gender critical beliefs to freely express their lawful beliefs and views. To mitigate against this risk we have recommended that the stirring up hatred offence provisions include explicit protections for expressions of the view that sex is binary and immutable.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

Hate crime laws already protect 5 characteristics: race, religion, sexual orientation, disability, transgender identity. This will remain the case under our proposed reforms, though there will be greater parity of protection amongst these groups.

We do not consider that the following additional reforms will have an adverse equality impact on a group protected under the Equality Act 2010:

- new offence of stirring up hatred against men and against women;
- addition of "asexuality" to the definition of sexual orientation
- addition of "prejudice" to motivation limb of the hostility test
- revisions to the legal test for stirring up hatred offences

We recommend that the new offence of stirring up hatred apply equally in respect of hatred towards men and hatred towards women.

The inclusion of "asexuality" does not prejudice the right of any other group defined by sexual orientation or otherwise.

Our recommendation to add "prejudice" to the motivation limb should not adversely impact any one group - its inclusion is intended to improve the response to crimes motivated by prejudice on the basis of disability.

The new test for stirring up hatred will be more restrictive than the existing test for racial hatred, by taking out of scope 'insulting' conduct, and introducing a 'freedom of expression' clause. However, we do not envisage that any conduct prosecuted under the current stirring up racial hatred legislation could not be successfully prosecuted under our proposed model.

10. Is a full Equality Impact Assessment Required? Yes  No

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

**If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.gsi.gov.uk/justice/equdiv/equal-impact.htm>, and should be referenced here.**

The proposed reforms do not substantially change the status quo, other than to provide parity of protection to existing groups, and respond to a concern about the failure of existing laws to address disability hate crime.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

As we are a recommendation body, and do not have direct responsibility for administering hate crime laws, it will be for the relevant government to monitor and review changes after implementation.

12. Name of Senior Manager and date approved

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made,**

**actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

The policy is to equalise and clarify the scope of protection for the five characteristics protected in hate crime laws, and clarify the application of offences of stirring up hatred. The principle of parity of protection was broadly supported in consultation, and is consistent with the furtherance of equality in law.

Name (must be grade 5 or above): Martin Wimpole

Department: Law Commission

Date: 7/12/2021

Note: The EIA should be sent **by email to [anthony.shepherd@justice.gsi.gov.uk](mailto:anthony.shepherd@justice.gsi.gov.uk) of the Corporate Equality Division (CED), for publication.**





# Full Equality Impact Assessment

13. Which group(s) of people have been identified as being disadvantaged by your proposals. What are the equality impacts?

14. What changes are you planning to make to your original proposals to minimise or eliminate the adverse equality impacts? Please provide details of the proposed actions, timetable for making the changes and the person(s) responsible for making the changes.

15. Please provide details of whether or not you will consult on the proposed changes, particularly with disabled people and if you do not plan to consult, please provide the rationale behind that decision.

16. Can the adverse impacts you identified during the initial screening be justified and the original proposals implemented without making any adjustments to them? Please set out the basis on which you justify implementing the proposals without adjustments.

17. Do your proposals miss an opportunity to promote equality of opportunity? If so, do you plan to take action to remedy this and if so, when? Please provide details.

18. You are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts.

Please provide details of how you will monitor/evaluate or review your proposals and when the review will take place.

19. Summary details, sign off by Senior Manager and date approved.

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

Name (must be grade 5 or above):

Department:

Date:

Note: The EIA should be sent **by email to [anthony.shepherd@justice.gsi.gov.uk](mailto:anthony.shepherd@justice.gsi.gov.uk) of the Corporate Equality Division (CED), for publication.**