

Response ID ANON-RTTB-2SD8-W

Submitted to Criminal Justice (Sentencing etc) Bill
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Introduction

What is your name?

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If you are providing a submission on behalf of an organisation or business, please state its name.

Organisation:
Equality Commission for Northern Ireland

The Committee for Justice has agreed to publish all responses as part of the survey results. If you would like to have your survey results anonymised and for us not to publish your name or organisation, please indicate so here.

I am content for my information, including details of my name and organisation, to be published in the survey results.

Particular persons or groups: Aggravation by hostility

Clause 33 introduces an aggravator to an offence if the offence is aggravated by the person's race, religion, sexual orientation or as a result of disability. Do you agree with this being an appropriate list of groups for the aggravators included in this Clause?

No

Please provide information to support your answer here::

The question asked is whether the list of groups is appropriate; the answer is no. The Commission has long asked that all the equality groups are covered, but at least those which are already protected from discrimination and harassment in statute. These groups are not all included in the Bill. We note, at this stage, that there is a clause to allow for additional groups to be added. The Commission makes note of The Executive Office's Strategic Framework to End Violence Against Women and Girls in recognising and tackling the "range of gender-based violence, abuse, and harm that is disproportionately experienced by women and girls."

The Commission is concerned to ensure that aggravation by hostility is sufficiently nuanced in the statutory provisions to enable the Courts to apply consequences which reflect the full range of harms and impacts on people. This is covered in more detail against Clause 34, but we make a number of suggestions for Clause 33 as follows:

- To ensure read across, the Commission recommends that Clause 33 (2) (a) includes "and" as well as "or" in the list of groups provided.
- We also recommend that Clause 33 (3) (b) includes words such as "or perception thereof".

The Commission notes the way in which the groups are defined in Clause 33 (4). Given Clause 33 (a) references "hostility based on the victim's membership (or presumed membership) of...", the approach generally seems appropriate.

However, the definition for "disability group" may need further consideration, as it may not be framed sufficiently to capture the concept of disability, if any physical impairment might be referred to in terms of hostility, however slight or short term.

The Commission recommends that the Committee consider amending the definition of disability group in Clause 33(4) to that contained in Article 1 of the UN Convention on the Rights of Persons with Disabilities, which includes: "long-term physical, mental, intellectual or sensory impairments".

Clause 34 sets out the consequences of aggravation by hostility. Do you agree with the consequences outlined in the Clause?

No

Please provide information to support your answer here::

In our consultation response at the stage of the policy development underpinning the Bill, the Commission welcomed the direction of travel to address hate crime experienced by people due to a combination of factors. Also, that people may be subject to combined types of prejudice and hostility, expressed or evidenced in a single hostile event.

All of these circumstances should be covered from the point at which the Bill becomes law and is commenced. The Commission therefore welcomes Clause 34.

The Commission notes and welcomes at Clause 34 (2) (ii) the words: “the offence is so aggravated (by reference to one or more of the kinds of hostility mention in section 33(1))”. Hence the recommendation in Clause 33 to include “and”.

But the Commission also notes that there is nothing provided in the Bill itself to differentiate the severity of the hostility demonstrated, differences in magnitude and impact, nor whether these might affect the consequences.

For example, without amendment to the definition of disability group, there is nothing on the face of the Bill to differentiate the type of physical impairment in hostility being demonstrated. So, should a hostile comment to the victim of the offence about a physical impairment such as a broken leg be treated differently in terms of consequences to a hostile action about a long term and disabling sensory impairment such as deafness/a hearing impairment?

There is also nothing in Clause 34 to suggest that the aggravation by hostility should attract greater consequences in particular circumstances or when it is a demonstration of hostility towards a combination of the listed groups.

The Commission recommends that the Committee satisfies itself that differing degrees of hostility will result in an appropriate range of consequences, and that this is adequately addressed in both the Bill provisions and future associated Guidelines. (The Commission has answered 'no' to this survey question, noting the binary options available. You will note the nuance of our comments above.)

Clause 35 provides the Department of Justice with the power to add, amend or revoke the kinds of hostility by which an offence may be aggravated if the hostility relates to a group or characteristic. Do you agree that the Department should be able to amend the groups for whom an aggravator applies?

Yes

Please provide information to support your answer here::

The Commission notes the Department's consideration of the inclusion of other equality groups, through the development of the policy framework and drafting of the Bill. We recognise the compromises necessary on these matters for the Bill to have been introduced. While we welcome this provision in general terms, it is with the following caveats and associated recommendations for the Committee to consider.

The Commission recommends, as it has since 2020, that all of the equality groups currently protected under the anti-discrimination legislation are also groups covered in the statutory provisions for aggravation by hostility. And so welcomes that there is provision to do this by regulation. The Commission further recommends that the Department's powers to regulate, when applied to these equality groups, maintain and ensure continuity with the anti-discrimination legislation.

The Commission has previously recommended that there should be periodic reviews of the practical effects of this legislation generally and the statutory provisions.

The Commission recommends that the Committee consider amending Clause 34 to associate the Department's exercising of its powers with a review. The review should be time bound and its results inform subsequent amendments or additions to Clause 33.

Do you have any other comments on Clauses 33 to 35 of the Bill?

No

Please provide information to support your answer here::

Aggravation by reason of vulnerability

Clause 36 introduces a new aggravator by reason of the victim being vulnerable, following a consultation which originally included older age and vulnerability as potential aggravators. Do you agree with including vulnerability as an aggravator in this Clause?

No

Please provide information to support your answer here::

In 2022, the Commission considered that the most appropriate legislative approach is to provide protection for equality groups under the hate crime legislation by introducing the 'by reason of' threshold, rather than through the introduction, within the hate crime legislation, of a general statutory aggravation that is framed in terms of the 'vulnerability' of a victim.

We note that the statutory provisions in the Bill at Clause 36 are for aggravation by reason of vulnerability and that Clause 36(7) defines “vulnerable person” for the purposes of the section.

The approach taken appears to give effect to the Commission's recommendations made in 2022, particularly the formulation of Clause 36(7)(b) which appears to address our concerns about the potential stereotyping of older and disabled people generally as vulnerable.

The Commission recommends that the Committee considers amending the wording of 36(7)(b):

• “physical or mental disability or illness”. While noting that the word impaired precedes this, the wording here should align to Article 1 of the UNCRPD,

which refers to “long-term physical, mental, intellectual or sensory impairments”;

• “or for any other reason” is not explained and may be interpreted too widely. This will be for interpretation by the Courts and we would understand this to be constrained, but the Committee may wish to consider the intent of including such an open phrase. It may also consider alternative wording used elsewhere in statute, such as “or otherwise”.

The Commission recommends that the Committee consider making this clause subject to a review by the Department, in terms of its interpretation and practical application by the Courts and prosecutors.

The review should be scheduled at the same time as the review we recommend for Clause 35.

(The Commission has answered 'no' to this survey question, noting the binary options available. You will note the nuance of our comments above.)

Do you have any other comments on Clause 36 of the Bill?

No

Please provide information to support your answer here::

Short Title

Do you have any comments on Clause 51 of the Bill?

Not Answered

Please provide any other comments or views you have here::

Any Other Comments on the Bill

Do you have any other comments or views on the Criminal Justice (Sentencing etc) Bill?

Yes

Please provide any other comments or views you have on the Criminal Justice (Sentencing etc) Bill here::

The Commission welcomes that the Bill adopts the approach taken in Part 6, having called for it. In particular, the use of the term hostility and that the approach is equivalent to that in Britain.

However, we note that there is no definition of hostility contained in the Bill. We presume that, as for the equivalent in Britain, it is intended for this to be a matter for the Courts, and in associated Guidelines. The Crown Prosecution Guidelines for prosecutors in England and Wales provide useful points for how hostility should be defined in practice, which includes prejudice – such as hostility related to disability. These are guidelines for section 66 of the Sentencing Act 2020.

The Commission recommends that the Committee ensures it is satisfied with this approach of not defining hostility in statute.