



HERE NI response to The Department of Justice Criminal Justice (Sentencing etc) Bill
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Introduction

HERE NI, established informally in 2000 and formally constituted as a Company Limited by Guarantee in 2004, is a regional organisation that works across all areas of Northern Ireland (NI). HERE NI advocate for and support LGBTQIA+ women and their families. HERE NI welcome the call for views on the Sentencing Bill, brought forward by the Department of Justice. In particular, the introduction of a Statutory Aggravator Model for hate crime. The need for the statutory aggravation model was emphasised in Judge Marrinan's Independent Review into Hate Crime legislation in Northern Ireland. Judge Marrinan recommended that:

Statutory aggravations should be added to all existing offences in Northern Ireland following the model adopted in Scotland and become the core method of prosecuting hate crimes in Northern Ireland. This would mean that any criminal offence could be charged in its aggravated form.

In the current draft Sentencing Bill, the statutory aggravator model applies where the victim belongs or is assumed to belong to a "racial group"; a "religious group"; a "sexual orientation group"; or a "disability group". HERE NI suggest that the Department of Justice consider bringing forward two more groups within this statutory aggravator model; 'transgender identity groups' and 'women and girls' (under a misogyny aggravator).

HERE NI are responding to the specific questions within the Sentencing Bill that affect the LGBTQIA+ communities and women that we represent. These are in relation to Part 6 of the Bill: Particular persons or groups (*Aggravation by hostility*). Overall, HERE NI believe that this Bill has the potential to create meaningful change for victims going through the judicial process, and improve the outcomes for, often vulnerable, individuals who have experienced hate crime.

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. Whilst we acknowledge the importance of these protections for existing groups, there are some missing groups who suffer under a lack of protection under current hate crime legislation. HERe NI have the following recommendations for the Department of Justice:

Recommendation 1: Inclusion of hostility motivated by transgender identity (or presumed transgender identity)

Trans individuals wishing to report a hate crime can do so, with the PSNI having updated their recording process for hate crime to include and collect data on transphobic hate crime. However, if this crime goes further through the judicial system to prosecution, usually the hate motivation will be dropped or misreported as a hate crime based on sexual orientation. HERe NI, therefore, suggest that transgender identity be included as a statutory aggravator group in addition to the current groups: a “racial group”; a “religious group”; a “sexual orientation group”; or a “disability group”. This would ensure accurate recording and understanding of the motivation of perpetrators. In acknowledging this, the Department of Justice and civil society organisations would be better equipped to support trans communities to reduce the prevalence of targeted hate crimes.

Recommendation 1.1: Inclusion of gender expression and differences in sex characteristics within hostility motivated by transgender identity.

Trans and intersex communities are overlapping and interconnected but still maintain distinct identities, experiences and needs; intersex is not a protected group under equality legislation, and therefore intersex people broadly suffer under a lack of legal protections. Many intersex people do not identify as transgender, however it is important that this Bill seeks to capture the experiences of intersex people in law. HERe NI therefore suggest that any transgender identity aggravator includes ‘*gender expression*’ and ‘*differences in sex characteristics*’ within the statutory aggravation model of transgender identity to ensure that these protections are included within this Bill for anyone who experiences hate crimes on the basis of gender expression or due to a difference in sex characteristics.

Recommendation 2: Inclusion of hostility motivated by misogyny (Women and Girls as a protected characteristic)

The inclusion of misogyny within the Statutory Aggravation Model would enable the law to recognise, call out and prosecute misogynistic crimes where they occur. The Scottish Working Group on Misogyny and Criminal Justice recommend that this new Aggravation does not apply to crimes which are already considered inherently misogynistic, such as domestic abuse, rape, and other sexual offences. Rather, they argue that it should apply to all other crimes such as “assault, criminal damage and offences such as threatening behaviour... so long as there is evidence of misogyny.”¹ In instances where a man has

¹ [Scottish Government: Misogyny and Criminal Justice in Scotland Working Group \(2021\)](#).

committed a crime against a woman, but there is no evidence of misogyny, this would not fall under this new Statutory Misogyny Aggravator. There has been cross-party support for legislation to make misogyny a hate crime in the Northern Ireland Assembly. A motion was also unanimously passed in the Northern Ireland Assembly on 23rd March 2021 which stated:

*“That this Assembly condemns violence against women and girls in all forms; notes with concern that Northern Ireland is the only place on these islands that does not have a specific strategy to tackle gender-based violence and abuse; regrets that the Executive is failing to meet its international obligations in this regard; and calls on the Executive to take immediate action to eliminate gender-based violence by introducing a Violence Against Women and Girls Strategy that is fully resourced and **underpinned by legislation to make misogyny a hate crime**, and to introduce standardised, comprehensive Relationship and Sexuality Education in our schools to eradicate sexist attitudes and build lifelong, positive relationships.”²*

Misogyny was also recognised as a historical and institutional issue within the Northern Ireland Ending Violence Against Women and Girls (EVAWG) Strategic Framework. The inclusion of misogyny as a statutory aggravator within the Sentencing Bill would increase victims’ confidence that the judicial system is taking an active approach to tackling violence against women and girls by calling these crimes out for what they are: misogynistic crimes.

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

Yes, however with conditions. Under Clause 34, the current Bill states that:

- (2) The court must— (a) state on conviction—
- (i) that the offence is aggravated by hostility, and
 - (ii) the court’s reasons for deciding that the offence is so aggravated (by reference to one or more of the kinds of hostility mentioned in section 33(1))

To identify the hostility and justify the courts’ reasoning, judges should be trained appropriately on the experienced and identities of protected groups; in this case, on transphobia and misogyny. Following critique of one Northern Ireland judge in 2022 who suggested a convicted sex offender should “find a wife”, the Lady Chief Justice Dame Siobhan Keegan announced: “The Judicial Studies Board regularly monitors developments and innovations to identify material and resources which might enhance the quality of training which judges receive.”³ A similar approach should be taken to ensure judges

² [Northern Ireland Assembly Motion: Violence Against Women and Girls Strategy \(2021\)](#)

³ [BBC \(2022\) Northern Ireland judges given training and guidance after 'find a wife' remark](#)

receive training on transphobia and misogyny. Legislation must be supported by adequate resources so that the police and the criminal justice system have the necessary information and training to properly recognise transphobia and misogyny and to enforce the law. Additionally, there is a need for a public awareness campaign so that everyone understands the law, how to use it and the implications for breaking it.

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 the aggravator applies?

Yes, with conditions. HRe NI support the power to add further kinds of hostility, however as an organisation that supports a minoritised group, we have concerns that this Clause would be used to revoke/remove protections for groups with minoritised identities. Across the UK over the past year we have seen attempts to roll back on the rights of protected groups; the UK Supreme Court Ruling For Women Scotland v The Scottish Ministers marked a rollback in rights for transgender women, as we see women's organisations move to exclude women on the basis of their sex (i.e. [Girlguiding have changed their organisational policy following the Ruling](#)).⁴ As we see institutions succumb to pressure from a rise in right-wing lobby groups, it is important that the rights of minority groups are protected and not vulnerable to removal within legislation.

Therefore, HRe NI support the power to add kinds of hostility but not remove existing protections within Clause 35.

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

An intersectional approach

HRe NI support the adoption of intersectional reporting in this Bill which would allow for reporting across multiple protected characteristics. This means that the experience of the victim would be fully captured and represented throughout the reporting and judicial process. Judge Marrinan's Hate Crime Review also captured this in Recommendation 11, which detailed:

“Any new legislation should provide appropriate recognition of the importance of intersectionality and be reflected in the drafting of the statutory aggravations”

In the rest of the UK, The Equality Act 2010 recognises 'combined discrimination' in Section 14. In theory, this is a step forward towards recognising that people lead multiple identity 'intersectional' lives (i.e. as a gay black woman or as a black disabled child from a religious minority). HRe NI support the Women's Policy Group call that this Bill should be able to apply multiple aggravating hostility-related factors at Sentencing stage. For example, if a

⁴ [BBC \(2026\) Transgender girls told to leave Girlguiding by September](#)

Muslim woman was attacked by a perpetrator motivated by both misogyny and islamophobia, adding “multiple group hostility” would not suggest that she was harmed more than someone attacked solely for their religion or gender; but that the intersecting harms of racism, misogyny, islamophobia and sectarianism means that their attack can be motivated by these multiple hostilities rather than just one. This approach better reflects the realities of motivations behind hate crimes and the impacts on victims. It would support wider efforts to identify, through data collection, the most common intersecting areas of prejudice and better protect people from these types of crimes.

Conclusion

Overall, Part 6 of the Sentencing Bill is an important mechanism to secure protections for minoritised groups subject to hostility in society. The Bill has the potential to strengthen rights-based protections, improve accuracy of data and promote awareness of misogyny, homophobia, transphobia and other forms of oppression. HERE NI believe the recommendations in our brief will be key to improving the lives of women and LGBTQIA+ people across Northern Ireland. If you would like to get in touch to discuss our recommendations further, please contact policy@hereni.org