

Response to DoJ Consultation on Hate Crime Legislation in Northern Ireland (No.1)

March 2022

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations.
2. This submission is in response to the consultation¹ launched by the NI Department of Justice ('DoJ') in January 2022 on certain aspects of recommendations of the Independent Review of Hate Crime Legislation in Northern Ireland, led by Judge Marrinan, which reported in December 2020.²
3. CAJ has a long track record of working to secure protections against incitement to hatred and engaging on 'hate crimes' issues directly and through the work of the CAJ-UNISON convened Equality Coalition network of over 100 NGOs and trade unions working on equality issues. CAJ were part of the Expert Working Group of the Independent Review and issued a detailed submission to its consultation.³ This submission will be referred to throughout as it sets out our position into many of the questions now subject to consultation.
4. The response of the DoJ to the Review was issued in July 2021.⁴ It accepted many of the recommendations of the Review. These recommendations are therefore not part of the DoJ consultation as they were already consulted on by the Review. DoJ did not reject any recommendations of the Review. Some recommendations the DoJ considered 'required further consideration' (at times on particular details). It is these recommendations that are now subject to DoJ consultation.
5. The DoJ plans consultation in two phases. This is the first stage. It covers the following issues (in summary):
 - Aspects of the statutory aggravation hate crimes model
 - Sectarian Aggravator in hate crimes law
 - Aspects of incitement to hatred offences
 - Special measures/cross examination
 - Misogyny and hate crimes law

¹ <https://www.justice-ni.gov.uk/consultations/consultation-hate-crime-legislation-northern-ireland>

² <https://www.justice-ni.gov.uk/publications/hate-crime-legislation-independent-review>

³ <https://caj.org.uk/2020/04/28/submission-to-the-independent-review-of-hate-crime-legislation-in-northern-ireland/>

⁴ <https://www.justice-ni.gov.uk/publications/review-hate-crime-legislation-ni-departmental-response>.

6. Further recommendations that will be consulted on in the second phase are: addition of Gender and Age as protected characteristics; other elements of the incitement to hatred ('stirring up') offences; and the statutory duty on public authorities to remove hate expression.
7. This submission will respond to each of the areas in the current consultation in turn.

Aspects of the Statutory Aggravation model for Hate Crimes

8. This section covers the issue of whether a third test (the 'by reason of' test) should be added to the thresholds for hate crimes, and questions regarding the definition of hate crimes.

The 'by reason of' test

9. The existing thresholds for hate crimes legislation are when a person 'demonstrates *hostility*' (e.g., makes homophobic remarks at the time of an assault) or where there is evidence of 'motivation by *hostility*' (e.g., evidence emerges of far-right views having motivated a racist/sectarian attack). There was a proposal to add a third limb to the test – the 'by reason of test' (e.g., when for example an elderly person is targeted as they are considered vulnerable).
10. DoJ do not recommend the addition of a third threshold limb of the 'by reason of' test. CAJ supports this recommendation and opposed this third limb for the reasons set out in our original submission to the Review.⁵

Definition of Hate Crimes

11. The DoJ consultation refers to the recommendation of the review for a definition of hate crimes and that the concept of 'hostility' (in the two tests above) be augmented to also include concepts of 'bias, prejudice, contempt, bigotry'.
12. The DoJ on balance recommends instead that
 - A hate crime definition should not be included in the legislation but instead a working definition should be adopted for criminal justice partners.
 - The definition threshold in law should remain solely as 'hostility' and that the additional concepts of 'bias, prejudice, contempt, bigotry' could be reflected in the working definition instead.
13. CAJ advocated for and still sees merit in the inclusion of a definition of hate crimes (drawing on international standards) on the face of the legislation.⁶ Not least this is for the definition to serve as a safeguard to help ensure an interpretation of provisions consistent with the purposes of hate crimes legislation. To this end, we

⁵ Namely (paragraph 4.9): "Another proposal considered is to augment the two limbed test with a third limb whereby it becomes an aggravated offence if the victim was subject to the crime 'because of' their membership of a protected group. For example, if the victim was targeted because they were elderly or a man (if age and sex respectively are included). This would therefore not require hatred, for example, of the elderly as a group, but could constitute an aggravated offence for broader (stereotypical) reasons of perceived vulnerability. We do not support this change as it moves away from the purpose of hate crimes legislation. Vulnerability can and should be dealt with by alternate provisions for sentencing that take into account the vulnerability of the victim."

⁶ See section 1 of the CAJ submission.

recommended the inclusion of a ‘purpose’ type clause in the legislation, that could be used to set out other safeguards, including the Human Rights Act 1998. We cited the formulation in the Investigatory Powers Act 2016 as an example of such a clause.⁷

14. CAJ also supported the arguments in the review that it would be beneficial to augment or interpret the concept of hostility with the concepts of ‘bias, prejudice, contempt, bigotry.’⁸ We had also set out an international standard definition of hate and hostility as: *“The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group”*.⁹

Sectarian Aggravator in Hate Crimes law

15. CAJ is supportive of a definition, drawing on international standards, of sectarianism in the hate crimes law. The Equality Coalition had commissioned a specific report on a definition of sectarianism in law undertaken by Dr Robbie McVeigh.¹⁰
16. Our submission deals with the definition of sectarianism in detail. We are supportive of a model that expressly names, defines, and targets sectarianism. The proposal of the Review is that there be a specific ‘sectarian aggravator’ (i.e., that an offence is aggravated by sectarian prejudice) which requires a definition of sectarianism. The DoJ accepts the recommendation that there should be a sectarian aggravator and the consultation seeks views on this and the definition of sectarianism.
17. The Northern Ireland Human Rights Commission and the primary treaty bodies dealing with anti-racism at United Nations and Council of Europe level (to which the UK is a party) have both stated that sectarianism in Northern Ireland should be treated as a specific form of racism.¹¹

⁷ see [sections 1 & 2 Investigatory Powers Act 2016](#).

⁸ Paragraph 4.8; “The consultation document seeks views as to whether hostility in the second limb should be augmented to include other hate motivation indicators that have been used elsewhere. This would involve adding the concepts of ‘bias’, ‘prejudice’ (or ‘bigotry’) and possibly ‘contempt’ to what is presently hostility. We concur with the arguments in the consultation document that this is beneficial and would like to see the motivation limb of the test augmented to offences motivated (wholly or partly) by ‘hostility, bias, prejudice or contempt’ relating to a protected ground. Notably the term contempt is used in the ECRI definition of racism.”

⁹ The Camden Principles on Freedom of Expression and Equality, Article XIX, April 2009.

¹⁰ McVeigh, Dr Robbie *‘Expert Paper Sectarianism in Northern Ireland: Towards a Definition in Law’* (Equality Coalition, April 2014) www.equalitycoalition.net/wp-content/uploads/2012/11/Sectarianism-in-Northern-Ireland-Towards-a-definition-in-Law-April-2014-Unison-logo.pdf

¹¹ In 2011 the UN Committee on the Elimination of all Forms of Racial Discrimination made clear that *“Sectarian discrimination in Northern Ireland [...] attract[s] the provisions of ICERD in the context of “intersectionality” between religion and racial discrimination”* (paragraph 1(e) UN Doc CERD/C/GBR/18-20, List of themes on the UK). Later in the same year the Council of Europe Advisory Committee on the Framework Convention for National Minorities directly addressed the approach in the predecessor draft strategy to *Together* raising concerns that the Committee *“finds the approach in the CSI Strategy to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards”*. *Third Opinion on the United Kingdom adopted on 30 June 2011* ACFC/OP/III(2011)006, paragraph 126. The UN Committee on the Elimination of all Forms of Racial Discrimination stated its position following representations from the Northern Ireland Human Rights Commission. The Commission had raised concerns that *“policy presenting sectarianism as a concept entirely separate from racism problematically locates the phenomenon outside the well-developed discourse of commitments, analysis and practice reflected in international human rights law”* Northern Ireland Human

18. In general, we are supportive of a sectarian aggravator as an approach and, as set out in our submission, we accordingly wish to see sectarianism defined in accordance with international standards. We also concur that the ‘sectarianism aggravator’ should be in reference to the local-specific form of ‘sectarianism’ (i.e., the form of racism specific to the Irish and Scottish context), rather than to forms of sectarianism elsewhere in the world. Protections for other forms of racism (including where religion can be an ethnic indicator or a characteristic in its own right such as antisemitism and islamophobia) will be afforded protection through the broader protected grounds related to ethnicity and religion.

19. The Council of Europe in its most recent report on the UK’s compliance with treaty-based obligations on minority rights again reiterated its concerns *“that to treat sectarianism as a distinct issue rather than a form of racism is problematic, as it allows it to fall outside the scope of accepted anti-discrimination and human rights protection standards.”* The report alluded to the problem of the lack of a “legal definition of sectarianism” and that *“no progress on the definition of sectarianism is expected in the short term”* from the NI authorities. It was consequently recommended the authorities should define:

*Sectarianism in legislation, drawing on international standards relating to racism and human rights in general; and to ensure that sectarian crimes are dealt with in the criminal justice system in a way equivalent to other forms of hate crime.*¹²

20. To date neither the Executive Office nor DoJ in the present consultation have sought to take forward this recommendation from international experts.

21. The Council of Europe European Commission against Racism and Intolerance (ECRI) instrument on hate speech provides definitions of a number of key concepts, including racism, as follows:

“racism” shall mean the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons;¹³

22. In our submission CAJ we suggested a definition of sectarianism grounded in this standard drawing on the relevant protected grounds of ‘race’, language, religion, nationality or national or ethnic origin.¹⁴ We also drew attention to the definition developed by the *Institute of Conflict Research (ICR)*: *“Sectarianism should be considered as a form of racism specific to the Irish context. Sectarianism is the diversity of prejudicial and discriminatory attitudes, behaviours and practices between members of the two majority communities in and about Northern Ireland, who may be defined as Catholic or Protestant; Irish or British;”*

Rights Commission, ‘Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the International Convention on the Elimination of All Forms of Racial Discrimination’ (ICERD), paras 17-23.

¹² ACFC/OP/IV(2016)005 4th Opinion on the UK, paragraph 86 & 90.

¹³ ECRI General Policy Recommendation No. 15, explanatory memorandum, paragraph 7.

¹⁴ See paragraphs 1.217.

23. CAJ in our submission concurred with the Review (as does the DoJ consultation) that the category of ‘political opinion’ in NI fair employment legislation is not appropriate for incitement to hatred and hate crimes legislation as it risks criminalising political expression.¹⁵
24. The present DoJ consultation, and the Hate Crimes Review, draw attention to the problem of sectarian hate crime under the current aggravated sentencing ‘hate crimes’ legislation in Northern Ireland, solely relying on the concept of ‘religious group’, and excluding other indicators of ethnicity. We concur that this ground is far too narrow to adequately cover sectarianism in Northern Ireland.
25. The current ‘stirring up’ (incitement to hatred) legislation in Northern Ireland contains a much broader set of grounds that can capture sectarian incitement. It includes ‘religious belief’ but also ‘race, nationality (including citizenship) or ethnic or national origins’ and hence most of the grounds of racism in the Council of Europe standards with the exception of ‘language’. We reiterate that the inclusion of ‘language’ as a ground is important to ensure protection of speakers of Irish and Ulster Scots from sectarian hate crimes. The reasons for this are set out in detail by Judge Marrinan in the Hate Crimes Review.¹⁶
26. The Hate Crimes Review recommended an adapted version of the *Working Group on Defining Sectarianism in Scots law*¹⁷ be applied in Northern Ireland but did not specifically consult on this working group’s definition of sectarianism. The DoJ in proposing the adoption of the ‘sectarian aggravator’ is presently consulting on the Scottish Working Group’s definition and is not proposing the adaptation of a definition as recommended by the Council of Europe.
27. Whilst there are some merits in the Scottish Working Group’s definition of sectarianism there are also significant weaknesses and gaps.¹⁸ A primary problem is

¹⁵ Paragraph 1.23.

¹⁶ Hate Crimes Review Consultation document, paragraph 13.18.

¹⁷ <https://www.gov.scot/publications/final-report-working-group-defining-sectarianism-scots-law/pages/1/>

¹⁸ The full definition is:

(2) for the purposes of this section, an offence is aggravated by sectarian prejudice if either Condition A or Condition B are met, or if Condition A and Condition B are both met.

(3) Condition A is that: —

(a) at the time of committing the offence or immediately before or after doing so, the offender demonstrates hostility towards the victim (if any) of the offence based on the victim’s membership (or presumed membership) of a Roman Catholic or Protestant denominational group, or of a social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation; or

(b) The offence is motivated (wholly or partly) by hostility towards members of a Roman Catholic or Protestant denominational group, or of a social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation, based on their membership of that group.

(4) Condition B is that: – (a) at the time of committing the offence or immediately before or after doing so, the offender demonstrates hostility towards the victim (if any) of the offence based on the victim’s membership (or presumed membership) of a group based on their Irish or British nationality (including citizenship) or ethnic or national origins; or (b) the offence is motivated (wholly or partly) by hostility towards members of a group based on their Irish or British nationality (including citizenship) or ethnic or national origins.

(9) In this section, “Roman Catholic or Protestant denomination group” means a group of persons defined by reference to their:- (a) Roman Catholic or Protestant denominational religious belief or lack of religious belief; (b) membership of or adherence to a Roman Catholic or Protestant denominational church or religious organisation;

that the definition is detached from international standards relating to racism and provides no linkage to same, in conflict with Council of Europe recommendations.

28. There appears consensus from the Review and present consultation that there is a problem *over relying on 'religion'* as an indicator of sectarianism in NI. This is self-evident in the sense whereby religion is used as an ethnic indicator for what is often termed 'community background' rather than as an indicator as to whether a person is practicing a religion.
29. On the one hand the Scottish Working Group definition does move beyond religion as a sole indicator as it also includes grounds of a persons (actual or perceived) "Irish or British nationality (including citizenship) or ethnic or national origins."
30. However, the proposal still centres on conceptualisations of 'Roman [sic] Catholic'¹⁹ and Protestant as the core part of its broader definition, introducing what appear to be novel concepts for law of protecting a:

"Roman Catholic or Protestant denominational group," defined as a group of persons defined by reference to their: (a) Roman Catholic or Protestant denominational religious belief or lack of religious belief; (b) membership of or adherence to a Roman Catholic or Protestant denominational church or religious organisation; (c) support for the culture and traditions of a Roman Catholic or Protestant denominational church or religious organisation; or (d) participation in activities associated with such a culture or such traditions.

and

"a social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation;"

31. This conceptualisation again moves away from international standards that tie down sectarianism as a form of racism. It also moves away from an approach of religion (alongside others) as an ethnic indicator for community background, rather it frames a protection around actual religious adherence to a Catholic or Protestant church. It provides a model where religious belief is a sole indicator of the listed group concepts. The Working Group also states that "any legal definition of sectarianism should be limited to sectarianism rooted in *religious hostilities and rivalries* within Christianity" (emphasis added) although does concede the word 'sectarian' should not be defined in purely religious terms.²⁰
32. The model may expressly protect members of religious organisations. The extent to which the above provisions protect other groups that face sectarian crime but have no formal connection to Catholic or Protestant denominational *affiliations*, is less clear. Take for example an overtly sectarian attack against a cross-community group campaigning for housing rights, whose premises are subject to a sectarian attack on the back of campaigning against sectarian housing inequalities. There is no link to

(c) support for the culture and traditions of a Roman Catholic or Protestant denominational church or religious organisation; or (d) participation in activities associated with such a culture or such traditions.

¹⁹ The term 'Roman' Catholic does not tend to be a term of self-identification for Catholics in this jurisdiction but is rather a Protestant ascription. This is not unique however to the Scottish Working Groups' recommendation. It is common across anti-discrimination and equality law.

²⁰ <https://www.gov.scot/publications/final-report-working-group-defining-sectarianism-scots-law/pages/4/>

denominational groups, rather perception on another relevant ground would need to be relied upon.

33. We consider a more straightforward definition of sectarianism as a form of racism based on 'contempt' or the 'notion of superiority' on the full list of protected grounds would afford clearer protection. Neither of these concepts, from the ECRI standard on racism, feature in the Scottish Working Group definition.
34. A significant gap in the Scottish Working Group definition also relates to the exclusion of 'language' from the protected grounds. This could be because sectarianism directed at Irish and Scots speakers is not such an obvious or prevalent phenomenon in Scotland as in Northern Ireland. Speakers of Irish and Ulster Scots are drawn from across the community divide in this jurisdiction. If an Irish speaker who is and identifies as British and a Protestant is a victim of a sectarian hate crime for their use of the language, they would be left to rely on being 'perceived' as a Catholic or Irish (even when obviously not the case) to seek protections. The same would apply to an Ulster Scots speaker who is Catholic/Irish. These types of examples were elaborated on in the Review. We again propose that the gap relating to language is filled, and that language with specific reference to Irish and Ulster Scots, is included.
35. In summary CAJ:
 - Supports definition in law of sectarianism for a statutory sectarianism aggravator (question 5)
 - Supports the inclusion of protected grounds beyond religion – including the proposed reference to Irish or British nationality (including citizenship) or ethnic or national origins; but cautions against the inclusion of novel concepts of Catholic and Protestant 'denominational' and 'social and cultural' group; and instead advocates that DoJ return to the Council of Europe Recommendation to define sectarianism in line with international standards relating to racism (Q6);
 - Agrees 'Political opinion' should not be part of the definition (Q7)
 - Advocates inclusion of the ground of 'language' within the definition (Q8)
 - Agrees the definition of sectarianism should refer to the specific form of sectarianism in this jurisdiction. (Q9)

Incitement to Hatred Offences

36. A number of specific questions are asked regarding the 'stirring up' hatred offences in NI law which link to human rights obligations to tackle incitement to hatred.

Dwelling Defence and public context ('private conversations')

37. The first question (10) relates to whether the current dwelling defence should be removed. This is a provision whereby, 'dwelling' is defined as a person's home and a person who would otherwise have engaged in conduct inciting hatred is not deemed

to have done so if the conduct in question took place in their own home and the only intended audience were persons in their own home.²¹

38. CAJ agrees the Dwelling Defence should be removed and is not fit for purpose. It would enable a member of a far right neo-Nazi group to hold a meeting with a dozen followers where racist hatred is unquestionably stirred up, but no offence is committed if the meeting is held in the organisers own home. The dwelling defence is a significant loophole that should be closed.
39. DoJ asks (Q11, Q12, Q13) if the dwelling defence should be replaced by a defence of private conversations, and if so how should 'private conversations' be defined.
- 3.1 In our submission to the Review, we cover the formulation of this issue in detail.²² We point to the interpretation of incitement to hatred in international standards requiring the incitement to take place '*in a public context*'. The Council of Europe ECRI standard states (emphasis added):

The relevant factors for a particular use of hate speech to reach the threshold for criminal responsibility are where such use both amounts to its more serious character - namely, it is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination - and the use concerned occurs *in a public context*.²³

40. We therefore suggest that this concept of public context is drawn upon in formulating the qualification and interpretation of stirring up offences to private conversations. We also emphasise that the main safeguard in relation to the incitement to hatred offences recommended by the Review would be explicitly incorporating ECHR rights (including the Article 10 right to freedom of expression) into the hate crimes bill.

Personal consent of the DPP for incitement prosecutions

41. CAJ in our original submission concurred with the position (q14-15) that prosecutions for incitement to hatred offences should not require the personal consent of the Director of Public Prosecutions (DPP), given the existing evidential and public interest tests for prosecution are already codified.

Special Measures and Cross-Examination

42. Whilst we did not do any specific analysis of special measures and cross examination in our submission, we are in principle in favour of their application to hate crimes (Q16-20)

Misogyny and hate crimes law

43. In our submission we reflected on the considerable evidence base of the widespread occurrence of gender-based hate expression and hate crime against women, including incitement to hatred and other crimes based on hatred and contempt of

²¹ <https://www.legislation.gov.uk/nisi/1987/463/part/III> "(3) In proceedings for an offence under this Article it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling."

²² See

²³ As above, explanatory note paragraph 173.

women and girls as a group. We advocated that there was a pressing social need to deal with this, and supported the addition of the protected characteristic of 'sex' from current anti-discrimination and equality law- but with an explicit interpretive link to misogyny,

44. We do not support a 'gender-neutral' approach to ensure an artificial parity of protections for men and women. We do not consider this a rational approach. No evidence at all has been presented of a pattern of *gender-based* hate crime against men. Men can of course face crime, but this does not make it 'gender-based' as it is not based on hatred, contempt, or a notion of superiority over men as a group. Men can be, and frequently are, victims of hate crimes (mostly perpetrated by other men) on other protected grounds (e.g., ethnicity, sexual orientation). Human rights standards are clear that there should be a presumption against a gender-neutral approach in legislation.
45. We therefore reject the surreal contention (q23) that if misogyny be included in the hate crimes bill that 'misandry' be also included "to ensure fairness in legislation" and "recognise the experience of male victims."²⁴ As set out by the Scottish working group on Misogyny and Criminal Justice "*Misogyny is prejudice, malice and/or contempt for women.*" and "*Misogyny is a way of thinking that upholds the primary status of men and a sense of male entitlement, while subordinating women and limiting their power and freedom.*" There is no evidence a reverse ideology of 'misandry' in practice. Our overarching concern here is that any gender-neutral approach risks the purpose of hate crimes provisions being turned on its head and ironically being used as a tool to entrench misogyny further through abuse of the provisions by misogynistic members of the dominant group.
46. In the CAJ submission, in addition to adding a provision linking misogyny into both hate crimes (aggravated offences) and incitement to hatred legislation we also advocated for inclusion in hate crime law of related offences that can deal with specific issues of misogynistic conduct that can reach a criminal threshold. We referred to amended offences on harassment, and duties under international standards citing the (UN) Istanbul Convention (as regards public sexual harassment), and UN CEDAW²⁵ (including harassment accessing abortion services).
47. The DoJ consultation document refers to transmisogyny as well as misogyny regarding the proposed scope of the offence. We do not consider this necessary. Following the Review, DoJ have already accepted that hate crime on the basis of transphobia be protected against through the addition of a protected ground of 'transgender identity'. It is notable that this is not a 'gender identity' neutral approach. Rather it is one that targets the ideology of transphobia by encompassing transmen and transwomen, which protection through the concept of 'transmisogyny' would not. The issue is further made redundant as the DoJ has also accepted intersectionality whereby victims can rely on more than one protected ground.

²⁴ It is notable that this is (rightly) not the approach to disability in the current legislation, which expressly protects persons with a disability and not those without given there is no evidence that the latter are victims of hate crimes.

²⁵ Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

48. The DoJ consultation preceded the publication in Scotland of the independent report of the working group on Misogyny and Criminal Justice.²⁶ This has provided a comprehensive blueprint on how misogyny can be incorporated into law that can be considered and adapted for the Northern Ireland context. In summary it recommends:

- A Statutory Misogyny Aggravation offence (i.e., tying the aggravation to the concept of misogyny rather than the protected ground of sex/gender).
- A new offence of incitement to hatred (stirring up) against women and girls. (With women and girls as the protected characteristics)
- New offence of Public Misogynistic Harassment
- New offence of Issuing Threats of, or Invoking, Rape or Sexual Assault or Disfigurement of Women and Girls online and offline.

49. In terms of the Misogyny Aggravation offence the report proposes misogyny be defined as: “prejudice and / or malice and / or contempt towards women”. The report notes that ‘contempt’ – speaks to ‘denigration, disrespect or scorn towards women, which holds them in a subordinate position’.²⁷ The report notes that ‘contempt’ has not been a feature of hate crimes legislation, and now recommends its incorporation in a misogyny aggravator. We concur that it is appropriate, and it was a concept both recommended by the NI Review and that features in aforementioned international standards covering racism (including sectarianism).

50. The Scottish Working Group on Misogyny recommends certain offences (Q21) that are inherently misogynistic (rape, other sexual offences, and domestic abuse) should fall outside the scope of the misogyny aggravator as the misogynistic element is already recognised.

51. We consider that the DoJ should further explore this model and consult upon its tailored application to NI (including within an aggravated offences model) in the second phase of consultation. In our initial view it would appear to make more sense in the specific context of NI to incorporate provisions to tackle misogyny into the overarching hate crimes bill in this jurisdiction. This is not least as the bill is already likely to contain a revised incitement to hatred (stirring up) offence, the new aggravated offences model and a number of other additional offences. Furthermore, the NI legislation is already likely to have a specific ‘aggravator’ model in the purpose protections of sectarianism.

CAJ, March 2022

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²⁶ <https://www.gov.scot/publications/misogyny-human-rights-issue/>

²⁷ <https://www.gov.scot/publications/misogyny-human-rights-issue/pages/8/>