



Home Office

Government response to recommendation 8 of the Law Commission's final report on hate crime laws

April 2023



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Crime, Sentencing and Courts Act 2022

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The Law Commission's final report on hate crime laws was published on 7 December 2021.

This response fulfils the statutory commitment made in Section 72 of the Police, Crime, Sentencing and Courts Act 2022 to respond to recommendation 8 of the Law Commission's report within a year of the Act coming into effect.

Recommendation 8.

We recommend that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing.

Government Response to Recommendation 8.

The Government agrees with this recommendation. The question of whether to add these characteristics to the law represents one of the most important aspects of the Law Commission's review and the Government recognises the strength of feeling associated with this issue. The Government is grateful to the Law Commission for its thoughtful analysis and thorough examination of all possible solutions.

Whilst the Government understands the disappointment that some stakeholders may feel towards the Law Commission's findings, the Government strongly agrees that the risks and problems identified clearly outweigh the benefits of adding these characteristics¹. The Government is particularly conscious of the potential difficulties arising to prosecuting serious crimes which disproportionately affect women and girls - such as sexual offences and domestic abuse - were sex or gender to be added to the hate crime framework. As the Law Commission highlights, this arises as it would be necessary to prove in some way that an offender demonstrated or was motivated by hostility in the context of an individual offence. This might be through evidence of a specific misogynistic motivation or behaviour as it concerns crimes against women, such as the use of a gendered slur during the offence. However, this could be difficult to determine given the nature of Violence Against Women and Girls (VAWG) crimes. The Law Commission concludes: "It might be practically difficult to prove a sex or gender-based aggravation in the context of VAWG crimes that usually take place in private, for example sexual offences or domestic abuse."

The Government is also acutely concerned about the risk that adding sex or gender to these laws could mean some sexual offence and domestic abuse

¹ The Government also notes that 'sex' and 'gender' have different meanings; the terms are not interchangeable.

cases result in a misogynistic designation whilst others do not (where there is a lack of specific evidence of hostility). This would potentially result in a two-tier hierarchy of prosecutions for these crimes, with some at risk of being socially perceived as 'less harmful' as a result of the hate crime element not having been proven. The Government believes that this would be an unacceptable unintended consequence and would send the completely wrong signal to the victims of these crimes. The Law Commission similarly highlights additional stakeholder concerns with respect to the fact that a sex-based hostility designation is unlikely to apply in crimes which occur in the context of same-sex relationships. Yet for domestic abuse and sexual offences, the likely absence of any hate crime labelling in this context again risks suggesting these types of crimes operate on a spectrum of harm, whereas the Government position is that these are always serious crimes and should be treated as such.

The Government additionally acknowledges the serious consideration given to other legal models which would add these characteristics to the law but notes the downsides to those models that make them an inappropriate solution, and which underpin the Law Commission's final recommendation. In particular, the Law Commission gave extensive consideration to hate crime legal models that excluded those offences where there were particular risks to prosecutions or brought with them the complicating issues outlined above – such as domestic abuse and sexual offences. However, the Government agrees that the alternative models would not be suitable. This is based on the Law Commission's findings that such models would then make the addition of the characteristics largely tokenistic, by excluding those most serious offences which frequently harm women and girls. It also noted the exclusion of these offences risks suggesting they are, by default, less serious or not rooted in misogynistic hostility, and would treat sex or gender unequally to other characteristics in the scope of hate crime laws. This would be contrary to the Law Commission's other recommendations to eliminate historic disparities in the treatment of characteristics in the law (particularly Recommendation 12). Finally, it noted that such an approach would make hate crime legislation more complex, undermining the coherence of the law as a whole. This is particularly concerning given the widespread acknowledgement that the hate crime legal framework is already regarded as complicated and difficult to understand.

Finally, the Government understands that it may appear contradictory that sex or gender is excluded from the hate crime framework given other characteristics are included. This has been raised as a legitimate concern by stakeholders and was frequently highlighted in debates on misogyny during the passage of the Police, Crime, Sentencing and Courts Act 2022 through Parliament. However, the Government notes the Law Commission's view that this argument does not address the suitability issues and potentially counterproductive impacts of adding sex or gender characteristics. For this reason, the Law Commission notes that whilst its exclusion "appears arbitrary

and problematic on its surface, the legal position is more complex than this". The Law Commission concludes that there are "suitability concerns surround the possible introduction of sex or gender-based hate crime, which do not apply in the same way to existing characteristics such as race or religion". The Government agrees with the Law Commission's conclusion.

The Government takes VAWG extremely seriously and will continue to pursue options outside of the hate crime framework to tackle these abhorrent crimes, building on existing progress to date. In July 2021, the Government published the cross-Government Tackling Violence Against Women and Girls Strategy to help ensure that women and girls are safe everywhere. This was followed by a complementary cross-Government Tackling Domestic Abuse Plan, published in March 2022. These documents aim to transform the whole of society's response to these crimes with actions to prevent abuse, support victims and pursue perpetrators, as well as to strengthen systems to respond to Violence Against Women and Girls.

The landmark Domestic Abuse Act 2021 is an important part of transforming the response to victims in every region in England and Wales and ensuring perpetrators are brought to justice. The Act includes the first general purpose legal definition of Domestic Abuse, explicitly recognised children as victims of domestic abuse, criminalised non-fatal strangulation, prohibits perpetrators of abuse from cross-examining their victims in person in the family courts and in civil proceedings, and creates new police powers including Domestic Abuse Protection Notices and Domestic Abuse Protection Orders. It also established the role of the Domestic Abuse Commissioner in law as an independent voice to stand up for victims and survivors.

Additionally, since 2010, the Government has criminalised forced marriage, revenge porn, and failing to protect a girl from Female Genital Mutilation. In 2015, the Government introduced the offence of controlling or coercive behaviour, underscoring that domestic abuse is more than physical violence. In 2022, virginity testing and hymenoplasty were criminalised. And, in February 2023, the Government brought into force legislation which raised the minimum age of marriage and civil partnership in England and Wales from 16 to 18, and expands the offence of forced marriage such that it is illegal to do anything to cause a child to marry before they turn 18, even if coercion is not used.

