

## **ABOUT HUMANISTS UK**

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We have campaigned actively for the protection of vulnerable people from harassment and incitement, as long as legitimate criticism of religions and religious practices is fully protected in law. We worked for several years on the Racial and Religious Hatred Act 2006 and were one of the leading proponents of the freedom of expression clause contained within it.

## **ABOUT FAITH TO FAITHLESS**

Faith to Faithless is a programme of Humanists UK which works to raise awareness of the issues faced by those who leave high-control religious groups or cults. Deciding to leave a religion can often mean rejection from your family and community, with little understanding of where to turn next. 'Apostates', as these people are sometimes called, may end up homeless, isolated, and at risk of abuse. Faith to Faithless provides an apostate support programme through facilitated peer support groups and other 'meet-ups', provides a platform for apostate voices to be heard, and raise awareness of the issues they face, and trains statutory and support organisations like the police, social services, and mental health organisations to better understand the issues apostates face, and the sorts of policy and practice implications this might have for them.

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## **SUMMARY**

- There is no legal basis for new hate crime legislation to exclude non-religious worldviews that are analogous to religions from the meaning of 'religious beliefs'. As long as the UK is a party to the European Convention on Human Rights (ECHR), references to religion must be read as including a reference to non-religious beliefs.
- To reflect the above and to avoid confusion, it would be best to make explicit reference to non-religious beliefs in the legislation, by changing the wording to 'religion or belief'. 'Belief' could then be defined with reference to those beliefs protected under the Convention. This would result in only those non-religious worldviews that are analogous to religions would be protected. In practice, this would apply almost exclusively to humanism. We are not aware of case law related to other worldviews.
- This is the approach that the Government of Wales is taking in its current Curriculum and Assessment (Wales) Bill. The Law Commission could use the approach to religion or belief in this Bill as a model for its proposals on hate crime.
- At any rate, we believe humanism merits protection under hate crime law on the basis that there is demonstrable need, additional harm, and clear suitability. It is not clear that humanists in the UK experience less hate crime than, for example, Christians or Buddhists. Given that such groups are already protected, it would therefore be inconsistent not to also extend protection to humanism.
- We therefore recommend the following wording to be included in proposed new legislation on hate crime: 'Reference to religion or belief is to religions and non-religious philosophical beliefs within the meaning of article 9 of the European Convention on Human Rights. A reference to religion includes a lack of religion and a reference to belief includes a lack of belief.'
- It is imperative that any new Hate Crime Act must maintain the protection for freedom of expression contained in the Public Order Act 1986 section 29J relating to the discussion of religion.



## **PREJUDICE AGAINST HUMANISTS – SOME GENERAL OBSERVATIONS**

‘In my observations, humanists, when they are attacked, are attacked more viciously and brutally than in other cases.’<sup>1</sup>

Here, the UN Special Rapporteur on Freedom of Religion or Belief, Dr Ahmed Shaheed, highlights the fact that humanists are one of the most vulnerable belief groups around the world to hate crime and state-sponsored persecution. In 13 countries being humanist is considered a capital crime under blasphemy and apostasy laws and it is an imprisonable offence in over 40 more. In the past five years there has been a worrying global trend of increased communal and vigilant violence against humanists, which has resulted in numerous high-profile murders – for example, that of Mashal Khan, who was beaten to death by fellow students at his University in Pakistan, simply for calling himself ‘The Humanist’ on Facebook.<sup>2</sup> Speaking in 2020, Dr Shaheed stated ‘Humanists are the invisible people of the present 21st century. While almost everybody is persecuted when they are in a minority, the attacks on humanists are particularly violent. They are exposed to harm in the communities where they live, and of course, for many of them, the family is not a safe place. The pandemic therefore intensifies that.’<sup>3</sup>

A recent study in the US suggests that ‘almost one-third [of non-religious people] mostly or always concealed their non-religious identity from their immediate family,’ with 43% doing so with extended family, 44% at work, and 43% at school. 55% reported negative experiences within their family, and 58% report likewise on social media.<sup>4</sup> More worryingly, US studies have shown that atheists are perceived to be less trustworthy than all other religious groups and criminals such as rapists. This mistrust is based upon the false belief that without divine regulation, non-religious people are not capable of being moral.<sup>5</sup> Polling suggests that 40% of US citizens would not vote for a non-religious political candidate regardless of policy – more than would not vote for a Muslim or for someone who is gay and lesbian.<sup>6</sup>

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<sup>1</sup> Dr Ahmed Shaheed, UN Special Rapporteur on Freedom of Religion or Belief, speaking at Humanists International’s 2017 General Assembly in London.

<https://humanism.org.uk/2017/08/07/humanists-uk-hosts-international-conference-on-threats-to-liberal-democracy-and-humanism/>

<sup>2</sup> “‘Humanist’ murdered by fellow university students for alleged ‘blasphemy’”, Humanists International, 13 April 2017: <https://humanists.international/2017/04/humanist-murdered-fellow-university-students-alleged-blasphemy/>

<sup>3</sup> ‘Pandemic measures misused to roll-back rights of humanists and the non-religious, new report shows’, Humanists International, 10 December 2020:

<https://humanists.international/2020/12/freedom-of-thought-report-2020/>

<sup>4</sup> Religion News Service, ‘New report finds non-religious people face stigma and discrimination’ 4 May 2020 <https://religionnews.com/2020/05/04/new-report-finds-nonreligious-people-face-stigma-and-discrimination/>

<sup>5</sup> Gervais, W. M., Shariff, A. F., & Norenzayan, A. (2011). Do you believe in atheists? Distrust is central to anti-atheist prejudice. *Journal of Personality and Social Psychology*, 101(6), 1189–1206.

<https://doi.org/10.1037/a0025882>

<sup>6</sup> Epiphenom, ‘Distrust of atheists is widespread and pervasive: more evidence’ 25 June 2015.

<https://www.patheos.com/blogs/epiphenom/2015/06/distrust-of-atheists-is-widespread-and-pervasive-more-evidence.html>



Although England and Wales has abolished its blasphemy law, prejudiced attitudes and stigma against the non-religious remain prevalent. These stigmatised views often include the belief that the non-religious are less moral or have no morals, are less trustworthy, or are more likely to be selfish. The British Social Attitudes Survey in 2008 found that more than one in four people think that the non-religious were somewhat more or very much more intolerant than religious people, and 34% think that they are somewhat or very much more selfish.<sup>7</sup>

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<sup>7</sup> British Social Attitudes Survey, 2008 data. <http://britsocat.com/>



## **RESPONSE TO CONSULTATION QUESTIONS**

We have responded only to questions that relate directly to our expertise in the field of religion or belief or freedom of expression. However, in principle, we support the proposals to align the other characteristics covered by hate crime legislation with those covered by the Equality Act 2010 and to update and amend the definitions of these characteristics in line with how they have developed and been interpreted by case law since 2010.

### **What is your name?**

Richy Thompson

### **What is the name of your organisation?**

Humanists UK

### **Are you responding to this consultation in a personal capacity or on behalf of your organisation?**

Response on behalf of organisation

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**If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.**

N/A

**Question 1: We provisionally propose that a single "Hate Crime Act" be used to bring together the various reforms to hate crime laws proposed in this paper. This could include:**

- **shifting the substantive aggravated offences currently in the CDA 1998 and the stirring up hatred offences in parts 3 and 3A of the POA 1986 to the new Hate Crime Act;**
- **making amendments to the enhanced sentencing provisions (currently in the CJA 2003 but planned to move to the Sentencing Code) and the Football (Offences) Act 1991; and**
- **if a Hate Crime Commissioner is to be introduced, the establishment of this office and its powers.**

**Do consultees agree that hate crime laws should, as far as practicable, be brought together in the form of a single "Hate Crime Act"?**

Yes.

**Question 2: We provisionally propose that the law should continue to specify protected characteristics for the purposes of hate crime laws.**



**Do consultees agree?**

Yes.

**Question 3. We provisionally propose that the criteria to determine whether a characteristic is included in hate crime laws should be:**

- 1) Demonstrable need: evidence that crime based on hostility or prejudice towards the group is prevalent.**
- 2) Additional Harm: there is evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.**
- 3) Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others.**

**Do consultees agree?**

We agree with the use of the three above criteria, but recommend that there should be an additional criterion stating that a characteristic should be included if to do otherwise would be out of line with the legal requirements under the Human Rights Act (HRA) 1998, which enshrines the ECHR into UK law. As part of this there would clearly need to be consideration of other international standards on combating hate crime, including the *Rabat Plan of Action on Prohibition of Incitement*. Such an approach would ensure that there is parity between the UK's hate crime legislation and both its national and international human rights frameworks. We expand on this criterion in our answer to question 20.

Using the above criteria it is clear that humanism, as a non-religious worldview, should be included under the protections against religious hatred in any new proposal for hate crime legislation.

Demonstrable need

Unlike sex/gender, age, homelessness, or any other brand new characteristics considered in this consultation, humanism must be understood in the context of it already being included under the existing characteristic of 'religion', a point we have made above and expand on in answer to question 20. Any change to the law in this area is simply a case of making this explicit. There are already many decades of demonstrable need for hate crime protection with regards to religious or belief hatred – this is not in dispute – and so the demonstrable need criterion is trivially met.

However, if it is not agreed that humanism is already protected, then there is still a demonstrable need for protection to be extended. We as an organisation have received threats due to our activities promoting humanism in the UK. In 2018 a serrated metal tin lid was posted to us in a handwritten unstamped envelope. We reported this to the Metropolitan Police as a hate crime, who subsequently visited our offices and assessed the security we have in place. Additionally, twice in the past decade, we have been sent in the post envelopes containing white powder (intended to be mistaken for anthrax). Again, we believe that these envelopes were threats of violence linked to our work as an organisation promoting humanism.

We have also recently become aware of an assault committed against one of our members, whose asylum case we were supporting on the basis of persecution because of his humanist beliefs: he



was attacked after revealing his beliefs to a fellow housemate in Home Office accommodation. The assailant was arrested and charged, and we believe the motivation for the violence was the victim's belief in and defence of Darwinism. This belief was part and parcel of his humanism.

We also frequently receive threats of supernatural violence by email targeting us as humanists, although we do not report such content as direct physical threats to the safety of our staff. Below is an example of such a threat:

'Dear All Non Believers, You live in Joyful Material world surrounded by gay Music sports & the Like. And worship dead Darwin as your guide. We live in the Universe of truth & Bow down to the Supreme Creator ALMIGHTY GOD. Pls stop criticism of Religious Schools & worshipping a mortal Darwin. Certainly this universe is coming to an end awaiting arrival of Holy Prophet Jesus & Holy Imam Mehdi Holy Quran agrees with Science: The Big Bang will meet big Crunch. This is clearly written in all Holy Scriptures. Then Universe will be as before as long as ALMIGHTY ALLAH wants. Then HE will recreate another permanent universe & revive all to assemble on the field of Judgement. They will be known by black ugly & bright faced people. Non believers & sinners ugly dark & the Holy ones bright faced. Read Holy Quran how the blessed will live forever in Paradise with their Parents & relatives & friends in ever lasting life in paradise & Unbelievers in hell. Their skin will be burnt & they will have repeated new flesh to burn & suffer. Fear ALMIGHTY GOD & accept Peaceful Islam as believers when there is time.'

Beyond our direct experience as an organisation, there is some statistical evidence that non-religious people are the victims of hate crimes because of the beliefs they hold. The Home Office hate crime figures for 2019/2020 record that 70 incidents (or 1% of total 'religiously motivated' crimes) were reported to police where the victim perceived that the motivation for the crime was 'no religion'.<sup>8</sup> This was a decrease from 2017/18 when police recorded 237 incidents (3%) where the perceived target religion was 'no religion'.<sup>9</sup> That this is so high is surprising, given how poorly understood it is that hate crime laws can be used at all by those with no religion.

It is clear that a number of crimes are occurring against humanists, because of their specific beliefs. But currently, it is (as with the non-religious more generally) not at all well understood that humanists have recourse to hate crime legislation, unlike their religious counterparts when experiencing the same treatment.

It is undoubtedly the case that humanists, despite being one of the most persecuted belief groups around the world, are fortunate that in the UK, they have not often been the target of hate crime compared to the size of their population. In this respect, hate crimes against humanists, and the larger non-religious population, are comparable with those targeted at Christians, which are relatively small in comparison to the number of adherents in the UK. Although this is something to be thankful for, it is not an argument against protecting humanists, no more than anyone would suggest that the low number of Christian cases would justify removing protection. The law does

<sup>8</sup> Home Office, 'Hate crime, England and Wales, 2019 to 2020'

<https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020>

<sup>9</sup> BBC News, 'Religious hate crimes: Rise in offences recorded by police', 16 October 2018

<https://www.bbc.co.uk/news/uk-45874265>



not have a threshold of incidents for religious groups to be offered protection. This would be an absurd proposition.

To take a different approach for humanists from for Christians or, say, Buddhists, would make a qualitative distinction between religious and non-religious beliefs, but not a quantitative one. In fact, many religious groups have no recorded hate crime incidents at all in 2020, but are still protected by virtue of their belief. There is no logical or just reason why humanists should be treated differently.

#### Additional harm

As per our answer for the previous criterion, this criterion should properly be considered against 'religion or belief' as one protected characteristic, not as two distinct characteristics. Only taking such a single-characteristic approach is in line with human rights law. Under such a view, humanism is in fact already protected by the existing law.

But, once again, if such a view is not taken, then we would say that empirical evidence of the harm humanists experience as a result of hate crimes is hard to quantify as most data collected on identity in this area focuses on religious adherents and excludes non-religious participants. Due to the exclusion of humanists from research in this area, we do not have direct evidence of additional fear or anxiety caused to the individual nor the damage to the wider humanist community. However, it is the case that those who identify as humanist are a numerically significant group with more people primarily identifying as humanists than most religious minorities who are protected. Moreover, their beliefs are experienced as strongly and form part of their identity in the same way as religious adherents.

According to the British Social Attitudes Survey, 52% of the population say they do not belong to any religion.<sup>10</sup> Separately, a private opinion poll commissioned by Humanists UK in 2019, carried out by YouGov, found that 7% of British adults primarily identify with the term 'humanist' (the other options presented to non-religious respondents being atheist, agnostic, spiritual, naturalist, none of these, and don't know).<sup>11</sup> Some of those who chose other options would likely also subscribe to the label 'humanist', but in any case, the results still reveal that there are more people in Britain who readily describe themselves as humanists than, for example, Muslims.

With that said, humanism is different from the major religions in being a descriptive label for a set of beliefs that have existed throughout history and across the world. Often when people come to self-identify as a humanist they say they have 'discovered' a term that has long applied to them. This doesn't happen with religions, but that does not mean humanists, whether self-identifying or not, hold a worldview that is any less cogent or substantive than that of religious people.

Despite humanists having no doctrinal compulsion to engage in any sort of formal practice or observance, join any organisation, or even identify with any particular creed, Humanists UK has 100,000 members and supporters. This is more active supporters than most minority religious groups in the UK who are covered by hate crime legislation. This suggests that for many UK

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<sup>10</sup> 'Latest British Social Attitudes survey shows continuing rise of the non-religious', Humanists UK, 2019: <https://humanism.org.uk/2019/07/11/latest-british-social-attitudes-survey-shows-continuing-rise-of-the-non-religious/>

<sup>11</sup> Polling carried out by YouGov for Humanists UK on 6-7 November 2019. Sample size 2,000.



humanists, their attachment and sense of identity with the belief system is sufficiently strong that they have chosen to engage within an institutional form.

For a humanist, their beliefs are as essential to their identity and lived experience of the world as religious beliefs are to their adherents. Therefore, the harm experienced should be treated in the same way as religiously motivated hate crimes. Although being a humanist, like holding any religious belief, is not entirely immutable (non-religious and religious people may change their beliefs in the course of their lifetimes), for most people such beliefs are a fixed characteristic of their essential nature. In preparing our response to this consultation, we asked demographer and sociologist of religion, Professor David Voas how he would describe humanist identity. He said the following:

‘For many people, beliefs about the nature of the world and the source of values are fundamental to their sense of who they are. That can be true whether or not those worldviews and ethical systems are based in religion. In addition, the nature of social identity is that it is assigned by others as well as ourselves. Even in the West, religious affiliation often serves to define the boundary of a group, and being outside these tribes can be just as important as being in one.’<sup>12</sup>

The centrality of humanism to the identity of humanists has been evidenced by the rise in the number of humanists choosing to mark life’s significant life stages (such as births, marriages, and deaths) in a way that is reflective of their humanist identity. We perform over 7,000 funerals each year – almost 2% of all deaths in England and Wales are accompanied by such a funeral. Humanist weddings are tailored ceremonies that reflect the couple’s humanist beliefs and are conducted by a certified humanist celebrant who shares those beliefs. They are not legally recognised in England and Wales. But since becoming legally recognised in Scotland in 2005, humanist marriages have become the most popular form of religion or belief marriage, with more humanist marriages taking place in 2019 than Christian marriages.<sup>13</sup> In England and Wales, despite humanist marriages not being legally recognised, over 1m000 couples per year choose to marry in a humanist ceremony. The fact that these couples choose these ceremonies, while still being required to incur the cost of an additional civil ceremony to gain legal recognition, is indicative of the value these couples place upon their humanist identity. To evidence this connection between humanism and identity, here is what Kate Harrison, the lead claimant in the recent High Court case on humanist marriage in England and Wales, said in her witness statement:

‘I believe this life to be the one and only life that I will have. As such there is, in my view, an ethical and humanist imperative to try my best to make the best of it, without the need for supernatural notions or support. Our decisions, according to my humanist beliefs, are best made by reference to the evidence of human experience, guided by reason, empathy and compassion. I believe in the inherent worth and dignity of all human beings. I want to celebrate and reverence (i.e., show my deepest respect for) our common humanity, irrespective of the many issues (including religious issues) that divide us, one from another.

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<sup>12</sup> Professor David Voas, Head of the Department of Social Science, UCL Institute of Education, in correspondence with Humanists UK, 7 December 2020.

<sup>13</sup> Humanists UK, ‘More humanist than Christian marriages in Scotland in 2019, new stats show’, 25 June 2020 <https://humanism.org.uk/2020/06/25/more-humanist-than-christian-marriages-in-scotland-in-2019-new-stats-show/>



Humanism provides me with a worldview and philosophical basis to try and do this. These beliefs flow, for me, directly from humanist beliefs, ideas and values as understood by organisations such as Humanists UK and Humanists International and within such documents as the Amsterdam Declaration. In saying that, of course, Humanists do not believe in revealed texts or scriptures and we differ on many issues... There is, however, an identifiable core of humanist beliefs and values from which my specific humanist beliefs flow, such as my desire to have an explicitly humanist form of marriage, recognised as valid by the state in which I live.

'My desire to have a legally valid humanist ceremony reflects that tradition and is central to my own identity as a humanist. The act of getting married is, of course, deeply and profoundly personal and is, for me, bound up with my humanist beliefs and values. We have discussed marriage and do wish to be legally married but as a committed humanist, I cannot envisage marrying in any ceremony other than a legal, humanist one which allows me to not only express my feelings and beliefs fully and authentically, but will also demonstrate and add weight to my personal commitment and efforts to live my life as a humanist. This desire for an expressly and legally recognised humanist form of marriage flows directly from my long-standing humanist beliefs, beliefs which have led me to become a [humanist] celebrant and pastoral carer. Humanism is – manifestly – a key part of my identity and my core/primary belief system. I first started to identify as a humanist as a young adult, while at university.'

For many humanists, such as Ms Harrison, discriminatory government policies – such as the failure to recognise humanist marriage – have had a profoundly negative impact upon our lives. It would be fair to extrapolate that targeted hate crime would also have a significantly harmful effect upon our wellbeing. Humanism defines our fundamental beliefs about the nature of the universe, how we form and justify claims of knowledge, our beliefs about what happens after death, and how to approach questions of values, morality, and societal problems. Although humanists do not typically have institutional or congregational structures, nonetheless the shared characteristic of belief gives rise to a strong sense of both individual and collective identity, which is severely harmed by the experience of hate crimes and continued perpetuation of negative social attitudes towards humanists. In this way, the additional harm criterion can be applied to humanists in the same way that it is applied to those who experience religiously motivated hate crimes.

Additionally, when it comes to religion or belief, it is not the case that harm should be measured by the damage to a 'group' of people sharing this characteristic and not on the impact on the individual. In the case of *Eweida v British Airways*, 'the judgment of the ECHR appears to make clear that the idea of group disadvantage is not required in relation to a manifestation of religion or belief. Instead, the ECHR held that an individual manifestation of a belief is capable of being protected, provided that it is "intimately linked" to the religion or belief, regardless of whether or not it is shared by others.'<sup>14</sup> This means that case law has it that one individual can hold a belief and it can still merit legal protection. With regards to hate crime, it is sufficient to demonstrate that

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<sup>14</sup> Harrison, Clarke, Rickerbys Solicitors, '*Eweida v British Airways* – what does it mean for employers?' 19 March 2013. <https://www.hcrlaw.com/blog/eweida-v-british-airways-mean-employers/>



humanism is intrinsically linked to the identity of the holder for that person to have grounds for equal legal protection for that belief.

#### Suitability

Once again, as per our answer for the first criterion, this criterion should properly be considered against 'religion or belief' as one protected characteristic, not as two distinct characteristics. Only taking such a single-characteristic approach is in line with human rights law. Under such a view, humanism is in fact already protected by the existing law.

But, once again, if such a view is not taken, then we would say that including humanism under an expanded definition of religious hatred is the most appropriate approach, as it would have the positive symbolic effect of providing equality between religious and non-religious communities – in line with most other UK law, including both equality and human rights law – as well as being a public condemnation of belief-based hate as has shown already to be the case for religiously motivated crimes since legal protection was extended to this characteristic. In this way, there is no issue with regards to the rights of others. The inclusion of 'belief' will not in any way weaken the protection for religion (or any other characteristic). It only enhances protections for people who hold positive non-religious beliefs.

Further, as our proposal is to include non-religious beliefs within the already established framework of religious hate crime, there is no issue regarding the coherency of such protection. It is unlikely that any problem of double counting, resourcing, or adverse harm would arise. Policing structures are already in place to both record and investigate such crimes as these are the same structures needed for religious hate crimes, just extended to include non-religious worldviews. The fact that (as explored in more detail in answer to question 20) the UK's Equality Act, the HRA, as well as their corresponding international equivalents, protect the ground of 'religion or belief' shows not only that extending these protections is conceptual and practically possible, but that non-religious belief must be included when considering religious protection.

#### In line with legal requirements under the HRA

We believe that a further criterion should be added to the three outlined above, which looks at the legal requirements for characteristics to be included within hate crime legislation in line with the UK's human rights obligations. We expand more on our argument regarding this in our answer to question 20. However, suffice to say, with the regard to the inclusion of humanism, there is no legal basis on which non-religious beliefs can be excluded from any new hate crime legislation. This is because it is clear that the legal meaning of 'religion' includes (or must be read as including) non-religious beliefs, and the HRA requires all legislation to be compatible with Convention rights, i.e. the right to freedom of religion or belief. This is already the case with regard to the existing legislation, never mind about any revised legislation.

**Question 5: We provisionally propose to retain the current definition of religion for the purposes of hate crime laws (we consider the question of non-religious beliefs separately in Chapter 14).**

#### **Do consultees agree?**

The definition of religion should be amended to make explicit the parallel inclusion of non-religious worldviews that are analogous to religions. We have expanded upon our reasoning why we say this,



and how this could be achieved in a very precise way, in our answer to question 20. There we recommend the following definition:

‘Reference to religion or belief is to religions and non-religious philosophical beliefs within the meaning of article 9 of the European Convention on Human Rights. A reference to religion includes a lack of religion and a reference to belief includes a lack of belief.’

Regarding the definition of ‘religion’ itself, we support hate crime legislation retaining the current definition of religion as in *R (Hodkin and another) v Registrar General of Births, Deaths and Marriages*. Although the Public Order Act 1986 defines ‘religious hatred’ as ‘hatred against a group of persons defined by reference to religious belief or lack of religious belief’ it does not put into statute a definition of religion itself, which therefore has to be found in case law. In this respect, the relevant definition is provided by *Hodkin*.

However, we would like to draw the Commission’s attention to the problem of hate crimes committed against apostates. Although we acknowledge that apostates are covered by the present law by virtue of a lack of religious belief, we do not believe that in practice the law offers adequate protection against anti-apostasy hate crimes. The guidance accompanying the legislation and in use in police forces needs to be made explicit about identifying and recording apostate hate crime.

We believe that apostates are a uniquely vulnerable group who are likely to be the victims of hate crimes from within their former religious communities. Faith to Faithless is a support network for apostates which works closely with people who have left high-control and coercive religious backgrounds, often being cut off from all contact with their families and communities and at risk of social isolation and honour-based violence. Through our work, we have uncovered significant evidence of religious and honour-based crimes. However, these crimes are less likely than equivalent religious believers to report hate crimes to the police.

Although the Crown Prosecution Service’s guidance for racist and religious hate crime states that ‘hostility towards converts and apostates’ is covered by the definition of ‘religious group’,<sup>15</sup> this is not explicitly specified in the legislation. It is unclear how this reference can best be used to address the type of treatment apostates are likely to receive, such as being forced to undergo violent exorcisms, and in such cases how hostility can be adequately demonstrated.

A recent study conducted by Ellen Johnson at Sheffield Hallam University, currently undergoing peer review, looked at the experience of hate crime by apostates in England and Wales. A survey was conducted with 77 respondents, which found that 81% indicated at least one experience of hate crime, with over 50% experiencing two or more types of hate crime.<sup>16</sup> However, just 12% of incidents were reported to the police, and a further 4% reported to a third party.<sup>17</sup> By comparison, the Crime Survey for England and Wales reported 53% of hate crimes came to the attention of the

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<sup>15</sup> Crown Prosecution Service, ‘Racist and Religious Hate Crime – Prosecution Guidance’, [accessed 25 November 2020]

<https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>

<sup>16</sup> Ellen Johnson, *Apostasy, Human Rights and Hate Crime in England and Wales: A Mixed Methods Study* 2019. p34. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3475161](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475161)

<sup>17</sup> *Ibid* p46.



police,<sup>18</sup> and the Leicester Hate Crime study found that 24% of victims reported their most recent experience to the police.<sup>19</sup> Johnson concluded,

‘these comparative statistics have been collated by different criteria; however, it is clear that reporting rates for apostasy hate crime are extremely low. Reporting did not appear to correlate to the severity of the incident; only 50% of respondents who had experienced physical assault reported it to the police, whereas 60% of victims of violent crime recorded by the Leicester Hate Crime Project reported it.’<sup>20</sup>

Her results revealed that 21% stated that they did not report the hate crime to police because they were ‘afraid that you wouldn’t be taken seriously’, 30% because they ‘did not think that any action would be taken’, 15% were ‘worried about wasting police time’ and, most significantly, 45% stated that they were ‘not aware that this may be considered a hate crime.’<sup>21</sup> There are therefore serious barriers to apostates coming forward to report hate crimes.

That there is confusion about the very name ‘religious hatred’ is all the less surprising given that the hate crime awareness campaign on public transport run in the last few years does not mention the non-religious (merely saying ‘religion’ is the hate crime category).

We therefore believe that the legislation needs to be more explicit that the non-religious are covered by the current hate crime legislation. The name ‘religious hatred’ is highly misleading.

Moreover, the Government confirmed in a written question that it ‘does not currently collect data on crimes motivated by anti-apostasy.’<sup>22</sup> The question is why not? If apostasy is included under the provisions, there seems to be no reason why data is not collected and reported alongside that pertaining to religious groups.

The extent of Government oversight is nicely highlighted by an incident that happened when the Home Office first reported hate crime statistics, broken down by religion. BBC News Online ran an article on the data, and in the analysis by Home Affairs Correspondent Dominic Casciani stated:

‘Curiously, police recorded 237 incidents where the perceived target religion was “no religion” at all. We’ve asked the Home Office to explain how that can be a religious hate crime – they don’t know why the police recorded the figures that way. They stress that this is the

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<sup>18</sup> Home Office ‘Hate Crime, England and Wales 2017/18 Statistical Bulletin’ (2018), p25 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/748598/hate-crime-1718-hosb2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf) accessed 22/8/2019

<sup>19</sup> Chakraborti et al, ‘The Leicester Hate Crime Project: Findings and Conclusions’ (2014) University of Leicester, p66 <https://www2.le.ac.uk/departments/criminology/hate/documents/fc-full-report>

<sup>20</sup> Ellen Johnson, *Apostasy, Human Rights and Hate Crime in England and Wales: A Mixed Methods Study* 2019, p46. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3475161](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475161)

<sup>21</sup> Other reasons included 17% for ‘fear of being “outed”’, 21% for ‘fear of reprisal that reporting may lead to further abuse’, 9% ‘prevented from reporting e.g. by family or someone close to you’ or ‘did not know how to report’, and 21% for other reasons.

<sup>22</sup> Written question 61287 to Home Office, ‘Hate Crime: Religion’ tabled on 23 January 2017 <https://questions-statements.parliament.uk/written-questions/detail/2017-01-23/61287>



first set of statistics and – as such – is experimental, adding that it will be improved in the future.’<sup>23</sup>

The article was symptomatic of the types of exclusion and misconception that occur when exclusive language is used: it gives the impression that the non-religious are not considered or conceived of as being affected by hate crime. We contacted the BBC to correct the article to show that non-religious people could be the victims of religiously motivated hate crimes. We also contacted John Flatley, Programme Director for Crime and Policing Statistics in October 2018 to ask why the Home Office was unable to clarify that non-religious people might be the victims of hate crimes. He replied to say that ‘having reviewed our bulletin, your email has highlighted that we need to be clearer on this point and we will seek to make this so in future releases. With any new collection, there is a period of bedding-in both in terms of those supplying the data being clear about the recording rules and internally in communicating some of the nuances.’

The law is not providing adequate protection for apostates, with almost half of victims unaware that their experience amounts to a crime and just over half believing that they would not be taken seriously or that no action would result if they reported it to police. We recommend that the term ‘religious hatred’ is changed to ‘religious or belief hatred’, to make the inclusion of the non-religious explicit. Accompanying guidance may also need to be amended to make explicit reference to apostates.

**Question 6: We do not propose to add sectarian groups to the groups protected by hate crime laws (given that they are already covered by existing protection for “religious groups”).**

**Do consultees agree?**

Yes.

**Question 20: We invite consultees’ views on whether “philosophical beliefs” should be recognised as a hate crime category.**

The first thing to say is that under section 3 of the HRA 1998 it is already the case that the existing law has to be read in a way as to protect non-religious worldviews that are analogous to religions, for example humanism. This is also true of any new Hate Crime Bill. So these ‘philosophical beliefs’ are already a hate crime category, and if religion continues to be, then so must they.

Section 3 of the HRA says:

‘So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the [ECHR] rights.’

It is well-established in case law that this means that references to religion should be read as inclusive of analogous non-religious worldviews, such as humanism.

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<sup>23</sup> BBC News, ‘Religious hate crimes: Rise in offences recorded by police’, 16 October 2018: <https://www.bbc.co.uk/news/uk-45874265>



To expand on why we say this: it is clear from an international perspective that references to religion have for many decades either been accompanied by references to non-religious beliefs or have been intended to cover analogous non-religious beliefs. For example, Article 9 of the ECHR, which mirrors Article 18 of the Universal Declaration of Human Rights, states,

'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.'<sup>24</sup> (underlining added)

What beliefs are protected under this right is expanded upon in *UN General Comment 22*:

'Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions... The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.'<sup>25</sup> (underlining added)

That references in law to 'religion' must be read as also including analogous non-religious worldviews is further reflected in binding case law, which can be seen from the following:

'As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned.' – *Kokkinakis v Greece*: (1994) 17 EHRR 397.<sup>26</sup>

[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious... will seldom, if ever, arise under the European Convention... it does not matter whether the... beliefs... are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found

<sup>24</sup> *European Convention on Human Rights*, [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>25</sup> UN Human Rights Committee, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 1993, <https://www.refworld.org/docid/453883fb22.html>

<sup>26</sup> [1994] 17 EHRR 397, *Kokkinakis v Greece*, para 31 <http://hudoc.echr.coe.int/eng?i=001-57827>



with religious beliefs. – *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Nicholls.<sup>27</sup> (underlining added)

Lord Walker adds that it is:

‘unnecessary for the House to grapple with the definition of “religion” because Article 9 protects, not just the forum internum of religious belief, but “freedom of thought, conscience and religion”... Plainly these expressions cover a wider field than even the most expansive notion of religion.’ – *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Walker.<sup>28</sup>

“convictions” were defined as “those ideas based on human knowledge and reasoning concerning the world, life, society etc, which a person adopts and professes according to the dictates of his or her conscience.” These ideas can more briefly be characterised as a person’s outlook on life including, in particular, a concept of human behaviour in society’ *Arrowsmith v United Kingdom* (1981) 3 EHRR 218<sup>29</sup>

In light of the above European and domestic case law and UN convention definitions, it is well established that humanism must be read into the definition of religion. In the most recent case of *R (Harrison and others) v Secretary of State for Justice* [2020], it was ruled that the failure to legally recognise humanist marriages, when religious marriages are recognised, is ‘discrimination’ under Article 9 of the ECHR as having a humanist marriage was a manifestation of the humanist beliefs of the claimants.<sup>30</sup>

Similarly, in Northern Ireland, case law established by the 2017 *Smyth* judgment led to humanists being permitted to solemnise marriages after the High Court found that:

‘the State has chosen to authorise the solemnisation of religious marriage ceremonies in recognition of those bodies’ beliefs. Having done so, in my view it should provide equal recognition to individuals who hold humanists [sic] beliefs on the basis of my findings that humanism does meet the test of a belief body and that a wedding ceremony conducted by a humanist constitutes a manifestation of that belief.’<sup>31</sup>

In the 2015 High Court case (*R*) *Fox v Secretary of State for Education*, the case was determined on the basis that statutory religious education had to cover non-religious worldviews on an equal basis with religions. Mr Justice Warby ruled,

‘In carrying out its educational functions the state owes parents a positive duty to respect their religious and philosophical convictions... the state has a duty to take care that

<sup>27</sup> [2005] UKHL 15, *R v Secretary of State for Education ex parte Williamson*, para 24

<https://publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm>

<sup>28</sup> *Ibid*, para 55

<sup>29</sup> [1981] 3 EHRR 218, *Arrowsmith v United Kingdom*, <https://www.bailii.org/eu/cases/ECHR/1978/7.html>

<sup>30</sup> [2020] EWHC 2096, *Harrison and others v Secretary of State for Justice*  
<https://www.casemine.com/judgement/uk/5f28ec562c94e03986856fca>

<sup>31</sup> *Smyth* [2017] NIQB 55,

<https://judiciaryni.uk/sites/judiciary/files/decisions/Smyth%27s%20%28Laura%29%20Application.pdf>



information or knowledge included in the curriculum is conveyed in a pluralistic manner... the state must accord equal respect to different religious convictions, and to non-religious beliefs; it is not entitled to discriminate between religions and beliefs on a qualitative basis; its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents' convictions.<sup>32</sup> (underlining added)

He made clear that by 'philosophical convictions' and 'non-religious beliefs' he meant those covered by Article 2 of the First Protocol to the ECHR, which extends to beliefs analogous to religious beliefs. Article 2 of the First Protocol is, in this sense, identical to Article 9.

This is also the approach of the *Rabat Plan of Action on Prohibition of Incitement*, which makes clear that non-religious worldviews are included in protections. We believe that the Law Commission should use the *Rabat Plan* as a model for how it approaches hate crime, as it is considered the international gold standard for combating hate crime. Not only does the plan use the term 'religion or belief' throughout but explicitly states:

'restrictions [on hate crime] must be formulated in a way that makes clear that its sole purpose is to protect individuals and communities belonging to ethnic, national or religious groups, holding specific beliefs or opinions, whether of a religious or other nature, from hostility, discrimination or violence, rather than to protect belief systems, religions or institutions as such from criticism.'<sup>33</sup> (underlining added)

It is clear from the above that it is well-established that discrimination against non-religious worldviews that are analogous to religions is covered by Article 14, taken together with Article 9. Therefore, section 3 of the HRA means that even if hate crime legislation is cast narrowly in terms of religion, it has to be read as including non-religious worldviews. To claim that this is not the case or to restrict it only to religion would run counter to the HRA (as well as over 70 years of international precedent and human rights thinking).

Given this, it would be significantly clearer and assist all relevant stakeholders if proposals for a new Hate Crime Act are simply drafted in a way that explicitly includes such non-religious worldviews from the start.

We say this because a law expressed only in terms of 'religion' will not be generally understood by most people, including victims. They will not realise even that such a law includes a lack of religious beliefs, never mind positively held non-religious worldviews. Using the term 'religion or belief' would make clear that non-religious worldviews are not only included but included on an equal basis and not as a technicality, after-thought, or as simply the negation of religious beliefs: as beliefs worthy of equal respect and consideration in a democratic society.

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<sup>32</sup> [2015] EWHC 3404, (R) *Fox v Secretary of State for Education*  
<https://humanism.org.uk/wp-content/uploads/R-Fox-v-SSfE-2015-EWHC-3404-Admin-251115.pdf>

<sup>33</sup> United Nations Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights – Addendum: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, 11 January 2013.  
[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)



We understand that there is a desire to prevent this legislation becoming amorphous and offering legal protection to a wide range of beliefs, such as has been seen in some UK employment tribunal decisions based on the Equality Act 2010 (where for example opposition to foxhunting and support for public service broadcasting have come under protection), as this could undermine the symbolic and normative power of hate crime legislation. However, inclusion of just non-religious worldviews that are analogous to religions would be limited almost exclusively to humanism. As far as we know, the only other examples of analogous beliefs found in case law are atheism and agnosticism – both of which are only narrow views on the existence of a god or gods, and as such are already unambiguously covered through the provision related to a lack of religious belief.

Therefore, to the best of our knowledge the humanist community is the only group that would be calling for this change (but as described above this community represents a sizable portion of the UK population). Below we outline an example of where this has been achieved in legislation in the UK.

#### The approach taken in Wales

The approach of including only non-religious worldviews that are considered to be analogous to religions can be seen in legislation currently proposed by the Welsh Government, the Curriculum and Assessment (Wales) Bill, which is under active consideration in the Senedd. The Bill explicitly states that the Religion, Values, and Ethics school curriculum, as well as ‘reflect[ing... the] principal religions represented in Great Britain’:

‘must also reflect the fact that a range of non-religious philosophical convictions are held in Great Britain.’<sup>34</sup>

The Bill’s explanatory memorandum outlines the reasoning for this explicit inclusion as that ‘it reflects the need under the [ECHR] to include non-religious philosophical convictions as well as established religions found in Great Britain.’<sup>35</sup>

It goes on to say:

‘the reference to “philosophical convictions” is to philosophical convictions within the meaning of Article 2 of the First Protocol to the European Convention on Human Rights.’

– and the First Protocol covers non-religious beliefs in the same way as article 9 and article 14 as we have described above.<sup>36</sup>

The protocol reads thus,

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<sup>34</sup> Welsh Government, *Curriculum and Assessment (Wales) Bill [AS INTRODUCED]* 62, 3(b) <https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf>

<sup>35</sup> Welsh Government, *Curriculum And Assessment (Wales) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2020 <https://gov.wales/sites/default/files/publications/2020-07/curriculum-and-assessment-bill-explanatory-memorandum.pdf>

<sup>36</sup> Welsh Government, *Curriculum and Assessment (Wales) Bill [AS INTRODUCED]* <https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf>



'In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'<sup>37</sup> (underlining added)

It was established in case law by *Folgerø and Others v. Norway*,<sup>38</sup> in a case involving the religious education curriculum, that the protocol refers only to those philosophical convictions which can be seen as analogous to religious beliefs – exactly as with Article 9. Building upon this precedent, as part of its curriculum framework, the Welsh Government announced,

'It is our intention also that RE reflects our historical and contemporary relationship in Wales to philosophy and religious views, including non-religious beliefs. Therefore the current legislation will be amended to ensure the agreed syllabus for RE takes account of non-religious worldviews which are analogous to religions (e.g. humanism).'<sup>39</sup> (underlining added)

Therefore, we recommend the following wording to be included in any proposed Hate Crime Act:

**'Reference to religion or belief is to religions and non-religious philosophical beliefs within the meaning of article 9 of the European Convention on Human Rights. A reference to religion includes a lack of religion and a reference to belief includes a lack of belief.'**

This would demonstrate not only that humanism must be included, but also that it can be achieved in a concise and precise way, which does not dilute the protections for religions or allow in wider philosophical beliefs as seen in some employment tribunal cases in the UK. Associated guidance could, in practice, make clear that this means humanism is protected – the Welsh Government has, again, taken a similar approach. We hope that the Law Commission will consider the above and take from it a framework by which the religious belief ground should be explicitly extended to include humanism.

**Question 45: We provisionally propose that intentionally stirring up hatred be treated differently from the use of words or behaviour likely to stir up hatred. Specifically, where it can be shown that the speaker intended to stir up hatred, it should not be necessary to demonstrate that the words used were threatening, abusive, or insulting.**

#### **Do consultees agree?**

Yes. As long as there is a suitable protection for freedom of speech as is currently in Public Order Act, and intent is demonstrated then it should not be necessary to demonstrate that the words were threatening, abusive or insulting.

<sup>37</sup> Equality and Human Rights Commission, 'Article 2 of the First Protocol: Right to education'.  
<https://www.equalityhumanrights.com/en/human-rights-act/article-2-first-protocol-right-education>

<sup>38</sup> [2006] 15472/02, *FOLGERØ and Others v Norway*, European Court of Human Rights,  
<http://hudoc.echr.coe.int/eng?i=001-72492>

<sup>39</sup> Welsh Government Consultation Document, *Our National Mission: A Transformational Curriculum Proposals for a new legislative framework*, January 2019 <https://gov.wales/sites/default/files/consultations/2019-02/consultation-document-transformational-curriculum-v2.pdf>



**Question 46: We provisionally propose that where intent to stir up hatred cannot be proven, it should be necessary for the prosecution to prove that:**

- 1) the defendant's words or behaviour were threatening or abusive;**
- 2) the defendant's words or behaviour were likely to stir up hatred;**
- 3) the defendant knew or ought to have known that their words or behaviour were threatening or abusive; and**
- 4) the defendant knew or ought to have known that their words or behaviour were likely to stir up hatred.**

**Do consultees agree?**

Yes. As stated in our response to question 45, we believe that as long as there is sufficient protection for freedom of expression and the criteria is limited only to 'threatening or abusive' words and behaviour and not merely 'insulting', then we agree with the above limbs being used by the prosecution in the absence of intent.

**Question 47: We provisionally propose that there should be a single threshold to determine whether words or behaviour are covered by the "likely to" limb of the stirring up offences, applying to all protected characteristics.**

**Do consultees agree?**

Yes.

**If so, would consultees favour applying a single threshold of "threatening or abusive" but not "insulting" words to prosecutions brought under the "likely to" limb?**

Yes.

**Question 48. We provisionally propose that the offences of stirring up hatred be extended to cover hatred on the grounds of transgender identity and disability. Do consultees agree?**

Yes.

**Question 49. We provisionally propose that the stirring up offences be extended to cover sex or gender. Do consultees agree?**

Yes.

**Question 51. We provisionally propose that the current exclusion of words or behaviour used in a dwelling from the stirring up offences should be removed. Do consultees agree?**

We agree with the updating of the private dwelling exception, but not its entire removal. We would recommend that it is replaced with a 'private conversation' defence as used in Canada.

**Question 52. We provisionally propose that the current protections in sections 29J and 29JA apply to the new offence of stirring up hatred.**

**Do consultees agree?**

Yes. The importance of freedom of expression and the right to freely criticise religious and humanist beliefs and ideas of fundamental importance cannot be overstated. It is imperative that any new Hate Crime Act must maintain the protection for freedom of expression contained in the Public Order Act 1986 relating to the discussion of religion or belief.



We only suggest that the first clause of 26J be amended to make explicit that it covers non-religious worldviews, i.e. change 'religions' to 'religions or beliefs'.

**We invite consultees' views on whether similar protections should be given in respect of transgender identity, disability, and sex or gender, and what these should cover.**

We do not take a position on this as it is outside of our area of expertise.

**Question 53. We invite consultees' views on whether there should be similar protections to those in sections 29J and 29JA under the racial hatred offences.**

We do not take a position on this as it is outside of our area of expertise.

**For more details, information, and evidence, contact Humanists UK:**

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